Bachmann Hong Kong Ltd.
(AP market)

General Conditions

for the Supply of Products and Services of the Electrical Electronics Industry (GC) for commercial transactions between businesses

Article I: General Provisions

1. DEFINITION AND INTERPRETATION

(a) In this GC unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Defect(s)"	means the claimable defects of Supplies or any part(s) of the Supplies under Articles VIII and IX, on which the Purchaser can rely.
"Documents"	means the cost estimates, drawings, and any other documents related to the Supplies.
"Guaranteed characteristics"	means the guaranteed specifications, details of the Supplies and all other data sheets and criteria confirmed in writing by the Supplier and applicable to the Supplies
"Intellectual Property Rights" (IPR)	means any and all patents, trademarks and service marks, registered designs, design rights and copyright, moral rights, rights in data and databases and other protectable lists of information, rights in confidential information, trade secrets, inventions and Know-How trade and business names, domain names, get-ups, logos and trade dress (including all extensions, revivals and renewals, where relevant) in each case whether registered or unregistered and applications for any of them and the goodwill attaching to any of them and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them

	which may subsist anywhere in the world.
"HKSAR"	means the Hong Kong Special Administrative Region
"Know How"	means all technical information not at present in the public domain held in any form (including, that comprised in or derived from drawings, data, formulae, specifications, notes, chemical compounds, biological materials, component lists, instructions, manuals, brochures, catalogues and/or process descriptions).
"Retained Goods"	means the Supplies or any part of the Supplies that are in possession of the Purchaser but whose title and property rights pertain to the Supplier.
"Supplies"	means the goods and, if applicable, services agreed to be provided by the Supplier to the Purchaser

(b) Legal relations between Supplier and Purchaser in connection with the Supplies shall be solely governed by the present GC. The Purchaser's general terms and conditions shall apply only if expressly accepted by the Supplier in writing. The scope of delivery shall be determined by the congruent mutual written declarations.

(c) The Supplier herewith reserves any Intellectual Property Rights (including copyrights) ("IPR") pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. The above 1st and 2nd Sentences shall apply mutatis mutandis to the Purchaser's Documents; these may, however, be made accessible to those third parties to whom the Supplier has rightfully subcontracted the provision or the manufacture of the Supplies.

(d) The Purchaser has the non-exclusive right to use standard software and firmware, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. Without express agreement the Purchaser may make one back-up copy of standard software.

(e) Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser.

Article II: Prices, Terms of Payment, and Set-Off

1. Unless otherwise agreed in writing by the Supplier on other terms of payment, prices are **ex works and excluding packaging;** value added tax, if applicable, shall be added at the then applicable rate.

2. If the Supplier also agrees to provide services for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e.g. for traveling and transport as well as allowances. The Purchaser shall comply with such terms and conditions as stipulated by the Supplier in provision of such services.

3. Payments shall be made to the Supplier's paying office.

4. Unless otherwise agreed by the Supplier in writing and subject to such terms of payment as stipulated by the Supplier, payment shall be due and payable at the time of placement of the order of the Supplies and shall be made without any set-off, counterclaim or deduction whatsoever.

5. The Purchaser may set off only those claims which are undisputed or non-appealable.

6. The Supplier shall be entitled to submit its invoice with its delivery advice note or at any time afterwards except that where delivery has been postponed at the request of, or by the default of the Purchaser, the Supplier may submit its invoice at any time after the Supplies are ready for delivery or would have been ready in the ordinary course but for the Purchaser's request or default.

7. No disputes arising under this contract, nor delays, shall interfere with prompt payment in full by the Purchaser.

8. If the Purchaser shall default in payment, the Supplier shall be entitled, without prejudice to any other right or remedy, to do all or any of the following:

    a. to suspend any or all further deliveries under this contract and under any other contract or contracts between the Supplier and the Purchaser then current, without notice;

    b. to charge interest on any amount outstanding at the rate of 6% per annum above the prime lending rate of the Hongkong & Shanghai Banking Corporation Limited, such interest being charged as a separate, continuing obligation together with any legal costs and expenses incurred;

    c. to serve notice on the Purchaser requiring immediate payment for all Supplies supplied by the Supplier under this contract and all other contracts with the Purchaser whether or not payment is otherwise due; and

    d. to sue for the purchase price of the Supplies even though (in the case of the Supplies) title may not have passed to the Purchaser.

Article III: Retention of Title

1. The items pertaining to the Supplies (“Retained Goods”) shall remain the Supplier’s property until the Purchaser has fulfilled and satisfied each and every claim Supplier has against the Purchaser on account of the business relationship under this GC and/or under all other contracts between the Supplier and the Purchaser (including any sums due under contracts made after the contract made under this GC) whether or not the same are immediately payable.

2. For the duration of the retention of title, the Purchaser may not pledge

the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

3. Should Purchaser resell Retained Goods, it assigns to the Supplier, already today, all claims it will have against its customers out of the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, Purchaser shall assign to the Supplier such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by Supplier.

4. Under the circumstances that Purchaser process, amalgamate or combine Retained Goods with other items, the following provisions shall apply :-

   (a) Purchaser may process, amalgamate or combine Retained Goods with other items, so long as it is made for Supplier. Purchaser shall store the new items thus created for Supplier, exercising the due care of a diligent business person. The new items are considered as Retained Goods.
   (b) Already today, Supplier and Purchaser agree that if Retained Goods are combined or amalgamated with other items that are not the property of Supplier, Supplier shall acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated to the other items at the time of combination or amalgamation. In this respect, the new items are considered as Retained Goods.
   (c) The provisions on the assignment of claims according to No.4 above shall also apply to the new item. The assignment, however, shall only apply to the amount corresponding to the value invoiced by Supplier for the Retained Goods that have been processed, combined or amalgamated.
   (d) Where Purchaser combines Retained Goods with real estate or

movable goods, it shall, without any further declaration being necessary to this effect, also assign to Supplier as security its claim to consideration for the combination, including all collateral rights for the prorate amount of the value the combined Retained Goods have on the other combined items at the time of the combination.

5. Until further notice, Purchaser may collect assigned claims relating to the resale. Supplier is entitled to withdraw Purchaser's permission to collect funds for good reason, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified indications for overindebtedness or pending insolvency of Purchaser. In addition, Supplier may, upon expiry of an adequate period of notice disclose the assignment, realize the claims assigned and demand that Purchaser informs its customer of the assignment.

6. The Purchaser shall inform the Supplier forthwith of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, Purchaser shall, without undue delay, provide Supplier with the information and/or Documents necessary to assert the claims it has against its customers.

7. Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations the Supplier shall be entitled to rescind the contract and take back the retained Goods in the case of continues failure following expiry of a reasonable remedy period set by the Supplier; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that the Supplier takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be constructed to constitute a rescission of the contract, unless the Supplier so expressly declares.

Article IV: Time for Supplies; Delay

1. Times set for Supplies shall only be binding if all Documents to be furnished by the Purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment

and other obligations of the Purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if the Supplier is responsible for the delay.

2. If non-observance of the times set is due to:

(a) force majeure, such as mobilization, war, terror attacks, rebellion or similar events (e.g. strike or lockout);
(b) virus attacks or other attacks on the Supplier's IT systems occurring despite protective measures were in place that complied with the principles of proper care;
(c) hindrances attributable to German, US, HKSAR or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which Supplier is not responsible; or
(d) the fact that Supplier does not receive its own supplies in due time or in due form such times shall be extended accordingly.

6. If dispatch or delivery, due to Purchaser's request, is delayed by more than one month after notification of the readiness for dispatch was given, the Purchaser may be charged, for every additional month commenced, storage costs of 0.5% of the price of the items of the Supplies, but in no case more than a total of 5%. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

Article V: Passing of Risk

1. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:
(a) If the delivery does not include assembly or erection, at the time when it is shipped or picked up the carrier. Upon the Purchaser's request, the Supplier shall insure the delivery against the usual risks of transport at the Purchaser's expense;
(b) If the delivery includes assembly or erection, at the day of taking over in the Purchaser's own works or, if so agreed, after a successful trial run.

2. The risk shall pass to the Purchaser if dispatch, delivery, the start or

performance of assembly or erection, the taking over in the Purchaser's own works, or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

Article VI: Acceptance and Rejection of Supplies

1. The Purchaser shall not refuse to receive or accept the Supplies due to minor defects.

2. The Purchaser may reject any Supplies that are defective or damaged or otherwise manufactured not in accordance with the Guaranteed Characteristics in any material respect by giving a Notification of Defects in accordance with Article VII No. 4.

3. Where the Purchaser rejects the Supplies or parts thereof in accordance with the above, such Supplies shall be returned to the Supplier at the risk and expense of the Supplier for immediate repair or replacement by the Supplier or, alternatively, at the Supplier's option, the Supplier shall credit or refund to the Purchaser with an amount equal to the price of the Supplies or parts thereof in question.

4. If there is any difference of opinion between the parties as to whether the Purchaser is entitled to reject any Supplies supplied by the Supplier, then the Supplier's opinion shall prevail.

Article VII: Defects as to Quality

The Supplier shall be liable for defects as to quality (hereinafter referred to as "Defects",) as follows:

1. The Supplier shall:
   1.1 ensure that the Supplies shall :-
      (a) conform in all material respects to the Guaranteed Characteristics;
      (b) be of satisfactory quality and free from defects in materials and workmanship (minor defects excluded); and
   1.2 not make any material change to the Guaranteed Characteristics

without notifying the Purchaser of its intention to implement such change.

2. Defective parts or defective services of the Supplies rejected by the Purchaser under Article VI shall be, at the Supplier's discretion, repaired, replaced or provided again free of charge, provided that the reason for the Defect had already existed at the time when the risk passed.

3. Claims for repair or replacement are subject to a limitation or warranty period of 24 months from the date of delivery and provided that the Purchaser has complied with its obligation to make notification under No. 4 of this Article. This shall not apply where longer periods are prescribed in the case of intent, fraudulent concealment of the Defect. The legal provisions under the Limitation Ordinance regarding suspension and commencement of limitation periods shall be unaffected.

4. Notifications of Defect by the Purchaser shall be given in written form without undue delay in accordance with the following :-

   (a) in the case of Defects apparent on visual inspection, the Purchaser shall give such notice within 5 days of delivery;
   (b) in relation to Defects not apparent on visual inspection the Purchaser shall notify the Supplier as promptly as reasonably practicable after the Defect in question has come to the attention of the Purchaser and in any event, within 14 days of delivery;
   (c) if the Purchaser fails to give such a notice, except in respect of any Defect which is not one which should be apparent on reasonable inspection, the Supplies shall be conclusively presumed to be in all respects in accordance with the Guaranteed Characteristics and accordingly the Purchaser shall be deemed to have accepted the delivery of the Supplies in question and the Supplier shall have no liability to the Purchaser with respect to the Supplies.

5. In the case of notification of a Defect, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the Defect,

but in any event not more than 5 % of the price of the Supplies in question. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the Defect involved is justified and incontestable. The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle the Supplier to demand reimbursement of its expenses by the Purchaser.

6. The Supplier shall be given the opportunity to repair or to replace the defective goods within a reasonable period of time.

7. The Supplier shall not be liable for, and the Purchaser shall have not claims based on minor defects or
   (a) Defect in cases of insignificant deviations from the agreed quality, or only minor impairment of usability, of natural wear and tear, or
   (b) damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation soil, or
   (c) claims based on particular external influences not assumed under the contract, or from non-reproducible software errors or
   (d) claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof; or
   (e) minor defects attributable to any services of assembly or erection provided collaterally by the Supplier.

8. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labor and material, to the extent that expenses are increased because the subject-matter of the Supplies has subsequently been brought to another location than the Purchaser’s branch office, unless doing so complies with the normal use of the Supplies.

9. The Purchaser shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the non-compliance of No. 1 of this Article, in the case of loss of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of contract on the part of the Supplier. The

above provisions do not imply a change in the burden of proof to the detriment of the Purchaser. Any other or additional claims of the Purchaser exceeding the claims provided for in this Article VII, based on a Defect, are excluded. The implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose applicable to the Supplier under section 15, 16 & 17 of the Sales of Goods Ordinance (Chapter 26) are expressly excluded insofar as the law allows. Except expressly provided under No. 1 of this Article, there is no condition or warranty as to the quality or fitness for any particular purpose of the Supplies supplied under this GC.

Article VIII: Intellectual Property Rights (including Copyrights); Defects in Title

1. Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' intellectual property rights (including copyrights) (hereinafter referred to "as IPR") with respect to the country of the place of delivery only. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Article VII No.3 (insofar as the limitation is permitted under the laws) as follows:

   (a) The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be impossible for the Supplier under reasonable conditions, the Purchaser may rescind the contract;
   (b) The Supplier's liability to pay damages is governed by Article XII;
   (c) The above obligations of the Supplier shall apply only if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the Supplier's discretion. If the Purchaser stops using the Supplies in order to reduce the

damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued..

2. Claims of the Purchaser shall be excluded if it is responsible for the infringement of an IPR.

3. Claims of the Purchaser are also exclude if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.

4. In addition, with respect to claims by the Purchaser pursuant to No.1 a) above, Article VII Nos. 5 and 6 shall apply mutatis mutandis in the event of an infringement of an IPR.

5. Where other defects in title occur, Article VII shall apply mutatis mutandis.

6. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Article IX, based on a defect in title, are excluded.

Article IX: Conditional Performance

1. The performance of this contract is conditional upon that no hindrances attributable to German, US, the Hong Kong Special Administrative Region or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions exist.

2. The Purchaser shall provide any information and Documents required for export, transport and import purposes.

Article X: Impossibility of Performance; Adaptation of Contract

1. To the extent that delivery is impossible, the Purchaser is entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages is, however, limited to an amount of 10% of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of liability based on intent, gross negligence or loss of life, bodily injury or damage to health; this does not imply a change in the burden of proof to the detriment of the Purchaser. The Purchaser's right to rescind the contract shall be unaffected.

2. Where events within the meaning of Article IV No.2 (a) to (c) substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons, the Supplier shall have the right to rescind the contract. The same applies if required export permits are not granted or cannot be used. If the Supplier intends to exercise its right to rescind the contract. it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with the Purchaser.

Article XI: Other Claims for Damages

1. Unless otherwise provided for in the present GC, the Purchaser has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort.

2. This does not apply if liability is based on:
   (a) intent;
   (b) gross negligence on the part of the owners, legal representatives or executives;
   (c) fraud;
   (d) failure to comply with a Guaranteed Characteristics;

(e) negligence causing bodily injury or death; or
(f) breach of a fundamental condition of contract.
However, claims for damages arising from a breach of a fundamental condition of contract or otherwise shall be limited to the reasonably foreseeable damage or loss which is intrinsic to the contract.

3. The above provision does not imply a change in the burden or proof to the detriment or loss of the Purchaser.

4. Notwithstanding any other provisions of this GC, the Supplier shall not have any liability whatsoever and whether arising in contract, tort (including negligence), breach of statutory duty or otherwise for any:
   (a) loss of profit,
   (b) loss of anticipated savings;
   (c) loss of business;
   (d) loss or damage to goodwill;
   (e) increased production costs; or
   (f) any indirect, special or consequential losses or damage.

5. The total liability of the Supplier to the Purchaser that may arise from this contract and the Supplies shall be limited to amount of the agreed purchase price of the Supplies of the order made under this GC.

Article XII: Applicable law & Jurisdiction

1. This contract and its interpretation shall be governed by the laws of the Hong Kong Special Administrative Region , to the exclusion of the **United Nations Convention on contracts for the International Sale of Goods (CISG).**

2. Without prejudice to the arbitration clause under Article XIII, the Supplier may bring an action for injunctive remedies at any court at the Hong Kong Special Administrative Region or the Purchaser’s place of business or other relevant jurisdiction.

Article XIII: Dispute Resolution

Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding both contractual and non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre under the Hong Kong International Arbitration Centre Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The seat of arbitration shall be in Hong Kong. The number of arbitrator shall be one. The arbitration proceedings shall be conducted in English. The arbitral decision shall be final and binding upon the parties.

Article XIV: Severability Clause

The legal invalidity of one or more provisions of this GC in no way affects the validity of the remaining provisions. This shall not apply if it would be unreasonably onerous for one of the parties to be obligated to continue the contract.

Article XV : Entire Agreement

1. Each party acknowledges that this GC together with all documents entered into or to be entered into under its terms (a) together constitutes the entire agreement and understanding between the parties with respect to the subject matter of this GC and (b) in relation to such subject matter supersedes all prior discussions, understanding and agreements between the parties and their agents. The scope of delivery shall be determined by the congruent mutual written declarations.

2. Each party agrees that in entering into the contract and the documents referred to in this GC, it is not relying on any statements, warranties or representations given or made (whether negligently or innocently and whether express or implied), or any acts or omissions by or on the part of any party in relation to the subject matter of this GC, except those expressly set out in this GC.

(End)