

# BUSINESS AGREEMENT

It is mutually agreed on \_\_\_\_\_, between **KOA Electronics (H.K.) LTD.**, Unit 2315, Metropolis Tower, 10 Metropolis Drive, Hung Hom., Kowloon, Hong Kong (hereinafter called "SELLER") and \_\_\_\_\_(hereinafter called "BUYER").

## WITNESSETH

WHEREAS, SELLER is engaged in the sales of the Products as hereinafter defined,

WHEREAS, BUYER purchases the Products from SELLER.

NOW THEREFORE, in consideration of premises and of the mutual obligations hereunder set forth the parties hereto agree as follows.

## Article 1 Definition

For the purpose of this Agreement, each of the following terms shall have the following meaning respectively:

1. "Products" means all types of the products manufactured and sold by SELLER to BUYER.
2. "Specification" means the mechanical, electrical and other requirements and any subsequent modifications or revisions that the Products must meet under this Agreement. The Specification is issued by SELLER but may be changed subject to mutual agreement by the parties.

## Article 2 Terms of Agreement

1. During the term of this Agreement, BUYER shall have the right to place orders with SELLER for such Products as in its discretion it may require from time to time.
2. No sales contract shall be binding unless and until confirmed and accepted by SELLER at its discretion.
3. The relevant provisions in this Agreement shall be applicable to each sales contract to be made hereunder between the parties.
4. The ownership of the Products shall be transferred from SELLER to BUYER when the cargo arrives at any appointed premises within the territory of Hong Kong SAR.
5. SELLER shall not be liable for any delay in shipment or for non-delivery of the Products by any causes beyond the reasonable control of SELLER.

## Article 3 Terms and Conditions

1. The prices, payment and other terms of conditions (i.e. cancellation window, rescheduling window etc) between SELLER and BUYER shall be determined upon deliberation and shall be separately confirmed in each sales contract.
2. In case of any changes in the terms and conditions including prices and payment terms, the parties shall agree in writing in advance.

#### **Article 4    Warranty**

1. SELLER warrants that the Products shall conform to the Specification and/or catalogue issued by SELLER. There shall be no warranties, which extend beyond the description of such Specification and/or catalogue. SELLER does not make and hereby disclaims any warranty in respect of the Products other than as provided above in this article, whether expressed or implied, including without limitation implied warranty of merchantability or fitness for any purpose.
2. In the event that any Products are found not to meet the Specification. BUYER may submit claims in writing for such Products to SELLER within ninety (90) days from the date of delivery.
3. In case any of those claims is found justifiable due to faulty materials or workmanship or any other reason caused by SELLER, SELLER shall replace the defective Products with other Products, upon request of BUYER.
4. SELLER shall not be liable for consequential or indirect damages under any circumstances.
5. SELLER shall not be liable for any defects of Products or any part thereof caused by any failure of BUYER or its purchaser to follow normal handling procedures specified in the Specification and/or catalogue.
6. BUYER shall give appropriate instructions to its purchasers of the Products to have the Products used strictly in accordance with the purposes of the Specification.
7. BUYER shall not revise, modify or alter the Specification of the Products or the purposes for which the Products are used, without prior approval of SELLER.
8. SELLER has the right to change of Specification at its own discretion. Such changes shall be in writing notified to BUYER in advance.
9. In order to minimize damages in relation to any defective Products, SELLER shall secure the traceability system covering the materials supply of the Products. BUYER shall secure the traceability system on its own production, which is provided with each lot number of the Products or any other tracking information.

#### **Article 5    Validity**

1. This Agreement shall become effective on Effective Date for initial period of three (3) years period and renewed automatically by consecutive twelve (12) months period unless terminated by either party by twelve (12) months prior written notice to the other Party with effect from the end of the initial contract term or the respective end of the extension period.
2. Either party shall have the right to terminate this Agreement in the event that either of following shall occur;
  - (a) the other party defaults in any of its obligations hereunder and fails to cure such default within thirty (30) days after receipt of written notice thereof from the non-defaulting party;
  - (b) there shall be filed by or against the other party application for bankruptcy, dissolution, liquidation, composition or company reorganization;
  - (c) procedures of compulsory execution, official auction, preservative measures or dispositions of assets for recovery of taxes in arrears have been taken against the other party;
  - (d) a receiver of trustee is appointed with respect to any of the assets of the other party;
  - (e) the other party makes a general assignment for the benefit of creditors;
  - (f) the other party becomes insolvent, including, but not limited to, the condition of (i) default in

- payment of any invoice or (ii) failure to satisfy any judgment of payment entered against the other party;
- (g) the whole or substantial part of the business of the other party is transferred to a third party by order of court or otherwise;
  - (h) the other party takes voluntary or involuntary advantage of any other debtor relief proceedings;
  - (i) the other party discontinues its business for any reason; or
  - (j) either government or any governmental entity expropriates or condemns all or substantially all of the assets or the capital stock of the other party or of any lessor portion of such assets or capital stock.

## **Article 6 Force Majeure**

Neither party of this Agreement shall be liable in any manner for failure or delay upon fulfillment of all or part of this Agreement, directly or indirectly owing to any causes of circumstances beyond its control, including Acts of God, Governmental orders or restriction, war, warlike conditions, revolutions, strike, fire and flood.

## **Article 7 Confidentiality**

1. "Confidential Information" shall mean any information disclosed by a party to the other in connection with this Agreement or any sales contract, which is – when disclosed in tangible form or via electronic communication, including internet based provision of information – marked as "confidential", "proprietary" or similarly by the disclosing party or which is – when disclosed orally or visually – identified as confidential prior to disclosure and – within [(20) twenty] Working Days from disclosure - conveyed to the receiving party in form of a written summary marked "confidential", "proprietary" or similarly. Confidential Information shall include any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof.
  - 1.1 Neither Party shall use the other Party's Confidential Information for any purpose other than for the implementation and performance of this Agreement and any sales contract ("Purpose").
  - 1.2 Copies of Confidential Information shall only be made if reasonably required for the Purpose and shall be marked as "confidential", "proprietary" or similarly.
2. The confidentiality obligations contained in this Article 7.1 shall not apply to any information which:
  - 2.1 was in the possession of the receiving Party without an obligation to confidentiality prior to receipt from the disclosing Party;
  - 2.2 is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach of this Agreement by the receiving Party or is lawfully obtained by the receiving Party from a third party without an obligation to confidentiality.
  - 2.3 is developed by the receiving Party or its Subsidiaries independently of any Confidential Information or under the exceptions as set out in this Article 7.2.;
  - 2.4 is required to be disclosed by any ruling of a competent governmental or regulatory authority or court or by mandatory law.
  - 2.5 is approved for release by written agreement of the disclosing Party.

3. Each Party shall be liable for acts or omissions by any Party's employees resulting in unauthorized distribution, use and/or disclosure of Confidential Information as if such acts or omissions had been its own acts or omissions.
4. Upon any termination or expiration of this Agreement the receiving Party shall cease using any Confidential Information of the disclosing Party. Within ninety (90) days after termination of this Agreement the disclosing Party may request in writing from the receiving Party that the receiving Party at its discretion either return or destroy all Confidential Information received from the disclosing Party and stored electronically and/or on record-bearing media as well as any copies thereof. The receiving Party shall confirm in writing such destruction or return of the Confidential Information as well as any copies thereof to the disclosing Party within thirty (30) Working Days after receipt of the disclosing Party's request.
5. The rights and obligations under this Article 7 shall survive the termination of this Agreement for a period of five (5) years.

#### **Article 8 Export Control Regulations**

For all Products to be delivered to be provided according to this Agreement SELLER shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations") and shall obtain all necessary export licenses, unless Buyer or any party other than SELLER is required to apply for the export licenses pursuant to the applicable Foreign Trade Regulations.

#### **Article 9 Settlement of problems**

Any problem in relation to this Agreement shall be amicably settled basically between SELLER and BUYER. However, in the event of any dispute, controversy or difference which may arise between the parties hereto out of or in relation to or in connection with this Agreement, it shall be finally settled by arbitration in Commercial Arbitration Association in Hong Kong SAR.

#### **Article 10 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of Hong Kong.

#### **Article 11 Entire Agreement**

This Agreement constitutes the entire agreement between the parties and supersedes any prior written or oral agreements between the parties concerning the subject matter. No modifications of this Agreement shall be binding unless executed in writing by both parties.

#### **Article 12 Assignment**

This Agreement or any part of this Agreement may not be assigned or transferred by either party without the prior written consent of the other party. Any assignment or transfer without such consent shall be null and void.

**Article 13 No Waiver**

No failure or delay of one party to require performance by the other of any provision of this Agreement shall in any way adversely affect such party's right to require full performance of such provision after that, unless expressly made by that party in writing. No waiver by one party of a breach of any provision of this Agreement shall be taken to be a waiver by such party of any succeeding breach of such provision.

**Article 14 Severability**

If any provisions of this Agreement is found invalid or unenforceable, the validity or enforceability of the remaining provisions or portions hereof shall not be affected, unless the invalid or unenforceable provision was material or essential to either one of the parties.

IN WITNESS WHEREOF, duly authorized representatives of both parties have hereunder affixed their signatures, each party retaining one (1) copy thereof, respectively.

Date:

Date:

**SELLER: KOA Electronics (HK) LTD.**

**BUYER:**

\_\_\_\_\_  
Ryota Shiraiwa  
Managing Director

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