



**BUYER'S TERMS AND  
CONDITIONS OF SALE**

1. **ACCEPTANCE OF TERMS.** These Buyer's Terms and Conditions of Sale ("Terms") are incorporated into and made a part of the attached Purchase Order ("PO"). These Terms supersede all terms and conditions of sale offered by Seller at any time, including, without limitation, any terms contained in Seller's PO acknowledgment.

2. **PRICE AND PAYMENT.** All prices in the PO are firm and may not be changed unless Buyer issues a written PO confirming the change. Seller's requests for price changes must be submitted to Buyer in writing prior to manufacture. All prices in the PO include all costs of packaging, handling, shipping and transportation, and all federal, state and local sales, use, excise and other taxes, fees and duties. Unless otherwise provided in the PO, payment is due net sixty (60) days from the date Buyer receives delivery of the products and services therein.

3. **RECORDS.** Seller agrees to provide Buyer all records confirming Seller's compliance with an appropriate quality system for Buyer's review, including, without limitation, the following: (a) process controls, (b) materials certification and records tracing all raw materials and processes used in manufacturing, assembling and providing all products and services listed in the PO, including, without limitation, cleaning, plating and heat treating processes, and the dates of manufacture, and (c) inspection records confirming appropriate calibrated measuring equipment and statistically valid sampling plans. Seller shall maintain a Device Master File for all products listed in the PO for at least ten (10) years after the last delivery of such product, or such other time as Buyer may direct in writing.

4. **SPECIFICATIONS AND CHANGES.** All specifications, drawings and other data submitted by Buyer to Seller (collectively, "Specifications") are incorporated into and made a part of the PO. All products and services delivered by Seller shall comply with the Specifications and Seller shall not make any changes to the products that deviate from the Specifications without the prior written consent of Buyer. Buyer reserves the right at any time to make changes in the Specifications and the methods of shipment and packaging, and the time and place of delivery. In such event, Buyer and Seller may agree on an equitable adjustment in the price and/or time of delivery (subject to the Price and Payment section), but any claim by Seller for an adjustment in the price and/or time of delivery shall be deemed waived unless Seller gives Buyer written notice of its request for an adjustment within ten (10) days following Seller's receipt of Buyer's notice of such changes.

5. **DELIVERY.** All products and services are delivered F.O.B. (UCC), Buyer's warehouse, Elk River, Minnesota. Buyer's receipt and payment for any products or services does not constitute acceptance.

6. **WARRANTY.** Seller warrants that the products and services delivered under the PO will be merchantable, of good material and workmanship, free from defects and fit for the use intended by Buyer and that, for a period of two (2) years after the date of Buyer's receipt of delivery, will be in full conformity with the Specifications ("Warranty"). This Warranty shall be in addition to any warranties of broader scope, and service warranties, given by Seller to Buyer, and shall survive Buyer's inspection, test, acceptance of and payment for the products and services, and shall benefit Buyer, its successors, assigns, customers and other third parties. Any attempt by Seller to limit, disclaim or restrict the

Warranty by acknowledgment or otherwise shall be null and void.

7. **BUYER'S PROPERTY.** Buyer shall, at all times, own exclusively all Specifications, rights and ideas, know-how, computer software and programming, inventions, works of authorship and data provided to Seller or resulting from Seller's performance of any PO, including all patent rights, copyrights, proprietary information and other intellectual property rights. Seller agrees to transfer and assign to Buyer, at no cost, all of Seller's right, title and interest to such property.

8. **BUYER'S REMEDIES.** If any products or services are found to be defective or not in conformity with the requirements of the PO or any of these Terms, Buyer may, at its option, and at Seller's expense: (a) rescind the PO without liability; (b) reject and return such products and services; (c) take action to cure all defects and/or bring the products into conformity with all Specifications; (d) withhold total or partial payment; and/or (e) require Seller to immediately re-perform or replace any defective portion of the products and services. Any replacement products and services provided by Seller shall be subject to the Warranty to the same extent as items originally delivered under this PO.

9. **INDEMNIFICATION AND LIABILITY.** Seller agrees to indemnify and hold Buyer harmless from and against all claims, demands, causes of action and lawsuits of Seller and any third party, whether arising in contract, tort or under any statute or legal theory, arising from or relating in any manner to the products and services furnished by Seller, or from any act or omission of Seller, its agents, employees, suppliers or subcontractors, including, without limitation, all claims resulting in direct and indirect loss, damage, property



damage, death or personal injury, and all consequential, special, punitive and incidental damages, costs of recall and attorney fees; provided, however, that Seller shall not be liable for such claims arising solely from the negligence of the Buyer. Seller's indemnity shall remain in effect for the statute of limitations applicable to the claim, without regard to the term of Seller's Warranty.

NOTWITHSTANDING ANY RULE OF LAW OR PROVISION OF CONTRACT, AND REGARDLESS OF THE THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, CONTRACT, STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY, INDEMNITY OR OTHERWISE: (A) BUYER, ITS OFFICERS, EMPLOYEES, AGENTS AND ASSIGNS SHALL NOT BE LIABLE TO SELLER OR ANY THIRD PARTY FOR CONSEQUENTIAL, SPECIAL, PUNITIVE, INCIDENTAL OR INDIRECT LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, AND (B) BUYER'S LIABILITY UNDER ANY PO SHALL NOT EXCEED THE PRICE LISTED IN THAT PO.

COMPLIANCE WITH LAWS. Seller represents and warrants that Seller is in compliance with the provisions of all applicable federal, state and local laws, rules, regulations and orders concerning its products and services, including without limitation, the Toxic Substances Control Act, 15 U.S.C. Chapter 53, Defense Federal Acquisition Regulation Supplement (DFARS) and Conflict-Free Minerals Statement, Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended. Seller shall adopt a plan, in form and substance satisfactory to Buyer, for itself and each supplier of materials and components that are incorporated into the products that will identify and quantify all Conflict Minerals that are

incorporated into the materials or components supplied for incorporation into the products, and to identify the ultimate source of each such Conflict Mineral. Seller further represents and warrants that it is in full compliance with RoHS 2 – EU Directive 2011/65, also known as RoHS Recast, effective July 21, 2011, waste electrical and electronic equipment (WEEE), EU Directive 2002/96/EC, as revised by WEEE Directive, 2012/19/EU, effective July 4, 2012, Regulation (EC) #1907/2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), China New Chemical Substance Notification, MEP Order No. 7 (China REACH) and the Globally Harmonized System of Classification and Labelling of Chemicals, (GHS), as amended. Seller shall provide Buyer a compliance statement confirming that its raw materials, products and components comply with all of the above laws, as amended, and will require its direct and indirect suppliers (successively until the smelter is identified) to make all related declarations and disclosures requested by Buyer. Seller assumes all liability for, and agrees to indemnify and hold Buyer harmless from, all Seller and third-party claims, including all government claims, fines, penalties and attorney fees, relating to, or arising from, any violation of any laws, directives, rules and regulations.

10. TERMINATION. Buyer may terminate the PO in whole or in part, without incurring any liability to Seller or any third party, immediately upon Seller's default, including, without limitation, Seller's failure to deliver products or services in compliance with the PO and these Terms, or if Seller becomes insolvent or bankrupt or makes an assignment for the benefit of creditors. In addition, Buyer may terminate the PO at any time without cause under the Specifications and Changes section, in which case Buyer's liability shall be limited to the price of the existing

finished products inventory and services already provided. Finished products shall mean products that have passed final acceptance tests and are awaiting delivery. In the event of termination, whether with or without cause, Seller shall remain liable for all of Seller's duties, representations and warranties hereunder, including those in Warranty, Indemnification and Liability and Compliance with Laws.

11. GOVERNING LAW. The PO and these Terms, and all other agreements between Buyer and Seller shall be governed by the laws of the State of Minnesota, without regard to its choice of law rules. Seller consents to personal jurisdiction in the State and federal courts of Minnesota. Any dispute between Buyer and Seller shall be filed and venued exclusively in the State or federal courts of Minnesota and Seller waives all objections to venue therein, including *forum non conveniens*.

12. INTEGRATION. The PO and these Terms contain the entire agreement between the Buyer and Seller concerning its subject matter and may not be modified except in writing signed by Buyer. If any provision of the PO or these Terms is invalid, the remaining provisions shall remain in full force and effect. If Buyer fails to exercise, or delays its exercise of, any right or remedy hereunder, such failure or delay shall not operate as a waiver in any later instance.