



Terms and Conditions of Sale

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The following terms and conditions are hereby incorporated into and made a part of the "Customer" purchase order(s) with ABX Engineering Inc. (hereafter "ABX") for printed circuit board assemblies, electro mechanical assembly and/or related contract manufacturing services to be provided by ABX.

1. **INCORPORATION OF TERMS; APPLICABILITY TO FUTURE ORDERS.** In order to support Customer custom manufacturing requirements, ABX will deliver to Customer the items indicated on ABX's Contract Manufacturing quotes. Customer Bill(s) of Material(s) are converted to one or more ABX quote forms which reference the item(s) listed on Customer captioned purchase order(s) and confirmed my ABX's written acknowledgement. Deliveries will, to the extent reasonably possible in accordance with the production schedule of ABX, shall be based on the release dates indicated on Customer purchase order(s). The terms and conditions set forth in this Agreement are hereby incorporated into and made a part of ABX's quote form(s) and Customer purchase order(s) to ABX for Contract Manufacturing Services, and the terms and condition of this Agreement shall, together with the terms and conditions of ABX's quotes(s) and invoices to Customer reflecting the sale of Contract Manufacturing Services hereunder, take precedence over any different or conflicting terms appearing in any such purchase order or other document originated by Customer. The terms and provisions of this agreement will apply to any and all additions to, and re-bookings, continuations, or extensions of Customer purchase order (s) referenced herein, as well as to any and all additional orders from Customer to ABX for Contract Manufacturing Services, unless both parties execute a separate written agreement with respect to any such orders.

Customer purchase orders shall not be deemed accepted until acknowledged in writing by ABX.

2. **DOCUMENTS TO BE SHIPPED TO ABX.** The following documents must be supplied to ABX: bill of materials in Excel; assembly drawings; Gerber files; parts list; current engineering change orders, schematic drawings; materials; or other descriptive instructions/directions that assist in production; test instructions and packaging instructions as agreed between Customer and ABX.

If the standard workmanship procedures, which are based on IPC-A-610 Class II (Acceptability of Electronics Assemblies) - current revision workmanship standards II, are not suitable for Customer product, and/or if Customer intend to supply different or additional materials to ABX in connection with the assembly process, Customer must attach a list of any such additional test requirements and/or materials or other descriptive instructions/directions to this agreement, and the purchase order shall be of no force or effect until ABX and Customer have acknowledged in writing any such additional or amended list.

3. **ABX STOCKING LOCATION.** Said items will be stocked at ABX's facility located at 880 Hinckley Road and/or 839 Hinckley Road, Burlingame, California 94010.
4. **PRICING.** ABX agrees that the prices set forth in Customer purchase order(s) are firm once ABX acknowledges said purchase order in writing. Exceptions may occur with Purchase Price Variance (refer to section 5) or Minimum Order Quantity which must be acknowledged in writing from customer before proceeding.
5. **PPV ADJUSTMENTS.** When non-standard (or obsolete) inventory is required for Customer's assembly, ABX will use its best efforts to estimate pricing. However, after receipt and acceptance of Customer order, ABX will confirm price and estimated delivery of any non-standard (or obsolete) items. ABX will request confirmation from Customer with regards to such items, for which Customer has the following options – a) where Customer has items in stock, supply items to ABX as Customer Furnished Parts (CFP), b)) where Customer has items in stock, sell items to ABX, c) Customer to authorize ABX to procure items from supplier as specified by ABX. Upon procurement of said inventory or parts, ABX will bill customer a separate invoice and/or credit memo for PPV (Purchase Price Variance) based on the actual price of said non-standard inventory. Any dispute with the PPV will be made in writing within ten (10) days of issuance, and ABX shall be entitled, at its sole discretion to hold production until said dispute has been resolved or to cancel the purchase order.
6. **CUSTOMERS ACCEPTANCE OF GOODS.** Customer must notify ABX in writing, by email, USPS Certified or Express Mail, or Federal Express within sixty (60) working days after Customer receipt thereof, of any assembled products delivered hereunder which are claimed not to conform to Customer purchase order(s). Failure to so notify ABX shall constitute Customer irrevocable, unqualified acceptance of such assembled products and shall constitute a waiver by Customer of any and all claims that such goods do not conform to Customer purchase order(s) and/or ABX's Contract Manufacturing quote(s).



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7. **DELIVERY SCHEDULE; RESCHEDULING.** Once accepted, the purchase order and the delivery schedule listed on Customer captioned purchase order(s) is a FIRM, NON-CANCELLABLE AND NON-RETURNABLE SCHEDULE to ABX for the quantities of Products ordered. ABX will use its best efforts to meet accelerated delivery schedules or increased quantities. If Customer delivery schedule calls for shipments of Products to be made in advance of the normal lead time for ABX's acquisition of components and devices from ABX's list of approved suppliers, Customer has the option of requesting ABX to acquire such components and devices from sources other than from ABX's list of approved suppliers. Such requests from the Customer, constitutes Customer approval for ABX to procure such items from sources other than the ABX list of approved suppliers. If Customer makes such a request, Customer will so acknowledge said request in writing, which will then be attached to and become part of this agreement.

Shipments of any Products purchased are expressly subject to ABX's availability schedule. ABX shall make every reasonable effort to meet any scheduled delivery date(s), but shall not be liable for its failure to meet such dates. Customer shall not have the right to reschedule all or any portion or installment of the Products without the written permission of ABX. In the event Customer is unable to receive the Products at the time of delivery, ABX, at its sole option and convenience, may deliver such Products to storage at any suitable location including ABX's facilities. All reasonable costs incurred by ABX for the transportation, storage, and insurance of such Products shall be borne by Customer. ABX reserves the right to make partial deliveries pursuant to this paragraph. ABX shall invoice such partial deliveries separately and Customer shall pay such invoices when due without regard to later deliveries. Should the Customer fail to deliver parts (CFP) as agreed and scheduled ABX may bill for completed assemblies and customer will honor invoice.

Should the Customer fail to deliver parts (CFP) and or parts that ABX is required to procure from the Customer as agreed and scheduled, this shall constitute a material breach, which by default shall entitle ABX to immediate payment of the full value of the defaulted Purchase Order(s). Customer shall be entitled to delivery of all work-in-process upon payment of the defaulted purchase order.

8. **TERM; CANCELLATION.** This agreement is initially intended to be for a term equal to the number of months in the delivery schedule contained in Customer subject purchase orders, but can be cancelled at any time by either party on thirty (30) days advance written notice to the other by email, USPS Certified, or Express Mail, or Federal Express. Any such notice of cancellation shall be subject to the provision of this paragraph and paragraphs 5, 7, 9, 10 and 11. Any cancellation by the customer shall apply only to purchase orders or releases against purchase orders which have not been accepted by ABX as of the effective date of such a cancellation notice from ABX.
9. **CUSTOMER OBLIGATIONS AND NON-CANCELLABLE/NON-RETURNABLE PARTS, NON-FRANCHISED / OBSOLETE PARTS, AND EXCESS INVENTORY / UNUSED PORTIONS OF "TAPE AND REEL" PARTS.** In addition to Customer obligation for accepting delivery of and paying for all finished Products ordered, in the event of cancellation, expiration, delay of delivery dates or termination of this agreement, Customer is obligated to accept delivery of and to pay for any excess inventory (MOQ), including the unused portions of all parts which are supplied by suppliers in "tape and reel" form, and for all parts which are designed non-franchised and / or obsolete and all parts designated as non-cancelable/non-returnable (NCNR).
10. **CUSTOMER OBLIGATIONS IN THE EVENT OF ENGINEERING OR DESIGN CHANGE ORDERS.** Customer may request in writing that ABX incorporate an engineering change into a Product. Such request shall include a detailed description of the proposed change sufficient to permit ABX and any impacted approved suppliers to evaluate it. ABX evaluation shall be in writing and shall state the impact of the requested change on delivery schedule and expected cost. ABX shall not be obligated to proceed with the requested engineering change until the parties have agreed on the changes to the Product, Specifications, delivery schedule and pricing, including without limitation the cost to be paid by the Customer for re-assembly, retooling and Inventory on hand and on order that becomes obsolete. Pricing for obsolete Inventory as a result of such change shall be based upon the cost of such Inventory plus ABX's standard material handling fee.

In the event Customer issue any engineering change orders, design change orders or issue scheduled delivery change orders, or any similar order or notice requiring any change in the contract manufactured products listed in Customer purchase order(s) or ABX's quotes, Customer is obligated to accept delivery of and to pay for (or to pay applicable restocking charge if return of the affected component or device with such a charge is permitted by the supplier) any and all products which have been ordered by ABX and which are rendered obsolete or otherwise unusable by reason of such order or notice, whether such



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products are considered to be "standard", non-cancelable/non-returnable, franchised, or non-franchised, completed Products, or work in process. In addition, Customer acknowledge that any such orders may result in prices changes and changes to the delivery schedule set forth in Customer subject purchase order (s).

11. **POSSIBLE ADJUSTMENT OF PRICES UPON CANCELLATION.** All prices quoted by ABX are dependent upon the entire quantity of products specified in Customer Purchase Order(s) being accepted and paid for by Customer. In the event Customer cancels all of any portion of Customer said purchase order(s), Customer is responsible for the payment of any and all debits and/or charge backs to ABX, including in-house overhead costs, from suppliers arising from or related to such cancellation, including but not limited to the cancellation, loss, or withdrawal of any volume discounts or any other pricing adjustments, caused by the reduced quantity of merchandise delivered by the supplier against ABX's purchase orders.

Estimated Annual Usage (EAU) quantities are considered firm orders and therefore fall under the cancellation language in the paragraph above.

12. **DISCLAIMER OF WARRANTY ON PRODUCTS NOT FABRICATED BY ABX.** Except for the representation that the products will be assembled in accordance with Customer plans and specifications which have been supplied to ABX and which are in effect at the time of assembly of the subject products, ABX specifically disclaims any and all warranties on or for products purchased hereunder which ABX does not manufacture, assemble, or fabricate, including but not limited to the warranties of merchants ability or fitness for a particular purpose. For purposes of this agreement, components, bare circuit boards, and the products assembled by ABX's and / or Customer approved suppliers are deemed not to have been manufactured, assembled, or fabricated by ABX. Upon request, ABX will transfer to Customer, without assuming any liability by reason of such transfer, and without recourse, any and all transferable warranties ABX receives from assembler and/or ABX's suppliers of the component parts of the product Customer has ordered from ABX. With respect to any such products that do not comply with any such applicable warranties, ABX's sole responsibility shall be to refund Customer the purchase price of such products, without interest, on the conditions that Customer notify ABX in writing of the claimed defect within sixty (60) days, and return such products(s), to ABX freight prepaid within five days after Customer receipt of ABX's return merchandise authorization with respect to such products, and that the ABX supplier of such products acknowledges that such products do not conform to its warranty. In the event that such products (s) are determined by the respective ABX suppliers thereof not to be covered by their warranties, such product(s) will be returned to Customer freight collect, and ABX shall have the right to make appropriate adjustments to Customer account balance reflecting the return of such product(s) to Customer.

13. **WARRANTY ON PRODUCTS ASSEMBLED BY ABX.** In lieu of any and all other warranties, express or implied, in fact or arising by operation of law, including without limitation any and all warranties of merchantability and/or fitness for a particular purpose, each and all of which are expressly disclaimed, ABX warrants to Customer that all products purchased by Customer hereunder which are assembled by ABX, or of which value is added by ABX will be free of defects in materials and workmanship for a period of sixty (60) days from the date of their manufacture, assembly, or fabrication, as the cause may be. ABX's rights and sole liability under said warranty, and the condition relating to the return of such Product(s), shall be set forth in paragraph 11. Any and all warranties hereunder shall be void and of no force or effect if Customer modifies or attempts to rework or repair any product without prior written approval by ABX. For purposes of this agreement, the performance of Contract Manufacturing services by ABX shall not constitute or be deemed to constitute the increasing of replacement value by ABX to any of the products ordered.

Customer hereunder is solely responsible for testing (unless otherwise specified by contract) and analysis of ABX assemblies, and expressly acknowledges that ABX has no liability for any defects discovered or presented after sixty (60) days from date of delivery.

14. **CUSTOMERS RESPONSIBILITY FOR PRODUCT DESIGN & PERFORMANCE** When ABX provides testing, calibration and other services in addition to the assembly of the Printed Circuit Board Assembly or Electromechanical Units ("Units") designed or customized by Customer or a third party, ABX will make a reasonable attempt to troubleshoot and repair units that do not pass testing or calibration. Units that fail testing or calibration and cannot be diagnosed and/or repaired by ABX will be shipped to the Customer for troubleshooting, repair or scrap disposition. ABX does not promise or guarantee that all Units which fail testing can be diagnosed and/or repaired by ABX, and Customer will be invoiced at the contractual rate for those Units with no additional credits or discounts, regardless of result.



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15. **LIMITATION OF LIABILITY.** With respect to all products Customer purchases from ABX pursuant to this agreement, whether or not such products are manufactured or fabricated or have value added to them by ABX, Customer shall not be entitled to recover from ABX or assembler, and neither ABX nor assembler shall be liable for any indirect, consequential, special or incidental damages of any kind or nature whatsoever, including but not limited to damages or reimbursement for loss of profit, manufacturing costs, labor costs, sales costs, overhead expense, and/or loss of goodwill. Under no circumstances shall Customer recovery for any claim asserted hereunder against ABX or assembler, jointly or severally, exceed the purchase price of such products, whether such claims in the nature of a breach of contract or warranty, or a tort, or otherwise.
16. **INDEMNIFICATION** – Customer shall defend, hold harmless and indemnify ABX, its directors, officers, employees and agents, against losses, damages, and expenses, including attorneys' fees, arising from any claim or proceeding brought by a third party against ABX claiming (whether ultimately proven or not) indirect, special, incidental or consequential damages, bodily injury, death, property damage, business interruption and/or personal injury caused by or resulting from the use of any Product sold under this Agreement, or the conduct, operations, and/or performance of ABX under this Agreement. It is further agreed that damage to the property being sold, installed, and/or maintained by ABX within the scope of this Agreement shall remain the sole responsibility of ABX, but in any case shall not exceed the equivalent of the agreed upon purchase price of the items in question of this Agreement. The following shall be excluded from ABX's indemnification obligations: any actual or alleged infringement of patents, copyrights, trade secrets, trademarks, or other proprietary rights resulting from compliance with Customer's designs, specifications or instructions, from modification of such Product, from use of such Product other than as specified by ABX, or from use of such Product with any Products not supplied by ABX. Customer shall defend, indemnify and hold ABX, its officers, directors, employees and agents, harmless against, any losses, damages, liabilities, obligations, claims or demands either at law or in equity, costs and expenses, including attorneys' fees for all events excluded from ABX's indemnity obligations by the foregoing sentence. The foregoing states the entire liability and exclusive remedies of Customer and ABX for Products furnished hereunder.
17. **NON-WAIVER.** The failure of either party at any time to require performance by the other party of any provisions hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver by any party of a breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provisions, or as a waiver of the provision itself.
18. **AUTHORITY.** Each party represents and warrants to the other that it has the right and lawful authority to enter into this agreement, that it has not entered into any other outstanding agreements or obligations inconsistent with the terms and provisions hereof, and that the performance of each and all of its obligations hereunder has been duly authorized and approved.
19. **ATTORNEY'S FEES.** In the event action is brought to enforce or interpret this agreement, and/or to recover damages for its breach, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees.
20. **CONSTRUCTION.** This agreement shall be construed fairly according to its terms, without regard to which party, or which party's attorneys, prepared its forms.
21. **SECURITY INTEREST.** ABX reserves, and Customer grants to ABX a security interest, to secure performance and payment of all present and future debts, obligations or evidences of indebtedness of Customer to ABX, the following described collateral:
- All inventory of the Customer acquired from ABX as well as
accounts receivable, and proceeds from the sale of such inventory.**
- Nothing contained herein shall be deemed consent of ABX to the sale of any collateral by Customer, except to customers in the ordinary course of business. Customer hereby approves and ratifies any financing statement filed by ABX against Customer consistent with this agreement.
22. **INSOLVENCY.** If ABX reasonably deems itself to be insecure as to payment by Customer, or if Customer becomes insolvent, ABX may refuse to ship or deliver and may stop delivery of goods or services in transit. All amounts due ABX shall become immediately due and payable at ABX's option if Customer becomes insolvent, is the subject of an order of relief in bankruptcy, makes an assignment for the benefit of creditors, suffers a judgment or a tax lien.



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23. **LATE FEES & RETURNED CHECK CHARGE.** Customer shall pay the purchase price according to the terms of the invoice and within 25 days unless agreed in writing. A late payment charge of 1.5% per month shall be added to any amount not paid when due and a \$25.00 handling charge for any returned check

24. **CUSTOMER NON-PAYMENT.** In the event that Customer fails to pay in full, all overdue invoices (accounts receivables), ABX reserves the right to sell any completed assemblies and all associated inventory (including work in progress) that is held by ABX.

25. **ENTIRE AGREEMENT; GOVERNING LAW; SEVERABILITY.** This agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof, and it supersedes all previous negotiations, commitments and writing with respect to such subject matter. This agreement may be modified only by written agreement between the parties executed on behalf of ABX by a corporate officer. Any purported modification hereof not in compliance with the foregoing sentence shall be null and void. If any part or provision of this agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity of any provision hereof. This agreement shall be deemed to have been made and entered in San Mateo County, California, and shall be construed in accordance with the laws of the State of California without reference to its conflict of law rules. Legal remedies will be arrived at through binding arbitration to be held in San Mateo County, California.