

1. ACCEPTANCE AND EFFECTIVE DATE

These Terms and Conditions constitute an integrated agreement with the agreement(s) to which they are attached or incorporated by reference (collectively this "Agreement") between R&D Altanova, and, to the extent named in this Agreement, its affiliates, (collectively, "The Company") and Buyer. Buyer's acceptance of this Agreement shall occur when Buyer places an order with The Company, absent Buyer's prior written rejection communicated to The Company or upon Buyer's acceptance of any Product or service referenced herein, whichever occurs first.

2. CONDITIONS OF SALE

If Buyer has submitted an offer, in any form including a purchase order, then no agreement shall be formed between The Company and Buyer without The Company's affirmative action. If Buyer's offer contains Buyer's own terms and conditions, then unless Buyer assents to the Terms and Conditions of this Agreement, this is a rejection of Buyer's offer. If Buyer treats the Terms and Conditions hereof as a counter offer, Buyer may accept the counter offer only on the Terms and Conditions of this Agreement, and terms and conditions contained in Buyer's acceptance additional to or not identical with the terms of the counter offer will not become part of this Agreement.

The failure of The Company to object to provisions contained in any order or other communication from Buyer shall not be construed as a waiver of the Terms and Conditions hereof, nor an acceptance of any such provisions.

3. TAXES

Buyer shall pay all federal, state, county or other local taxes, however designated, levied or based upon this Agreement, the prices hereunder, the services hereunder or all Product or Product use, and any taxes or amounts in lieu thereof paid or payable by The Company with respect to the foregoing, exclusive of taxes based on net income. All personal property taxes assessable on all Product after delivery shall be borne by Buyer. In the event The Company is required to pay any such tax or duty, Buyer shall reimburse The Company.

4. DELIVERY AND RISK OF LOSS

Delivery shall be made within a reasonable time ex works or FOB Origin, using The Company standard methods for packaging and shipping Products, and possession of and title to all Products ordered hereunder shall be deemed to pass to Buyer upon delivery to the carrier at the point of shipment. Buyer shall assume title and all risk of loss or damage upon delivery to carrier at point of shipment. The Company shall not be liable for any delays, loss or damage in transit. All transportation charges or costs of insurance which may be assessed in connection with all Product delivered hereunder shall be added to the price quoted to Buyer and shall be paid by Buyer.

5. PAYMENT

All the Company invoices shall be due and payable net 30 days. Delinquent amounts shall be subject to late charges of one percent (1%) per month on unpaid balances. Buyer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with The Company, whether relating to a The Company breach, bankruptcy or otherwise.

6. LIMITED WARRANTY

Printed Circuit Board ("PCB") Manufacturing Warranty: The Company warrants its Products to be free of manufacturing and workmanship defects for a period of 12 months from ship date (the "Warranty Period"). The Company does not warranty PCB pad life or the life or functionality of components added to a PCB during the assembly process. Where additional content is added to a PCB (such as probe heads, or additional components), the warranty of the PCB does not extend to the additional content; The Company is not responsible for the value of any additional content (such as space transformers, probe heads, test sockets, or any other mechanical/electrical content) used in conjunction with the Product, or the labor or processes involved in that additional content. The Company is only responsible for processing the Product order according to the manufacturing data provided ("build to print") and is not responsible for the functionality or performance of a Product in any application. All warranty claims must be made in reference to a specific defect in the Product. When components or additional content are added to a Product, the Buyer assumes responsibility for diagnosing components and additional content not provided by The Company prior to making a warranty claim.

Printed Circuit Board Design warranty: When the Company is providing a PCB design or layout, Buyer maintains responsibility for the functionality and performance of the design and layout. The Company warrants that the manufacturing files derived from the layout will match the Buyer's approved layout. In the event of a design error or defect, notification of such a design error must be made by the Buyer within the Warranty Period (as defined above). Design warranties apply only to the first three (3) pieces of each individual design manufactured by The Company for Buyer. Any quantities manufactured in addition to such three PCB pieces are considered a *risk buy* for Buyer and are not covered by any design warranty. Should a design error be identified, The Company will replace or repair the first three pieces under warranty; the remainder of the quantities are not covered by the design warranty. For any PCB designs from The Company not manufactured by The Company, the warranty is limited to the design correction only and The Company will not be responsible for any associated manufacturing or assembly costs of replacements. Upon the Company providing the design files, Buyer assumes responsibility for the control of any intellectual property licensing and integrity of design data provided by The Company.

Repairs of Manufacturing or Design related defects or errors: The Company reserves the right to repair any manufacturing or design related defects in its Products. The decision to repair or replace a defective Product is at the sole discretion of The Company. In the event of a repair, The Company is not responsible for labor or additional content that may need to be removed to facilitate the repair. The Company warrants any repair work completed by an authorized provider for 90 days or the extent of the original Warranty Period, whichever is longer.

EXCEPT FOR THE WARRANTY SET FORTH ABOVE, THE COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

THE REMEDIES SET FORTH ABOVE SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND THE COMPANY ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH ABOVE.

7. ACCEPTANCE, RETURNS

Buyer shall inspect the Products within five business days of receipt and shall be deemed to have accepted the Products unless it notifies The Company in writing of any defects within the five business day period. All Products returned for warranty or any other reason to The Company must bear a The Company return material authorization number. No Product shall be returned to The Company without prior approval. Buyer shall pay for return shipping and shall assume all risk of loss or damage in shipment and delivery of the Product to The Company.

8. NO EXTENSION OF WARRANTY

If a Product or part thereof is replaced or repaired, this shall not enlarge or extend the Warranty Period for any Product beyond the Warranty Period for the original Product.

9. LIMITATION OF LIABILITY

The Company shall not be liable for any direct or indirect injury, damage or loss arising out of the connection of Product to other equipment or products.

IN NO EVENT SHALL THE COMPANY BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10. PATENT INDEMNITY

The Company shall indemnify and hold Buyer harmless with respect to the sale or use of Product furnished under this Agreement which is of The Company standard manufacture or design as to the infringement of any valid U.S. patent; PROVIDED that this indemnity and hold harmless shall only be effective if Buyer immediately gives The Company written notice of any assertion, claim, action or proceeding for patent infringement, and that The Company shall have sole direction and control of any negotiations or of any suit that may be brought including the right to settle, and the Buyer shall assist The Company in any reasonable way required by The Company with respect thereto.

The Company shall not indemnify Buyer nor hold Buyer harmless from any actual or alleged infringement of the rights of others based on combination of Product furnished hereunder by The Company with product of another or arising out of any Product manufactured or sold by The Company to meet Buyer's specifications. Buyer agrees to indemnify and hold The Company harmless from any actual or alleged infringement of the rights of others based on combination of Product furnished hereunder by The Company with product of another or arising out of any Product manufactured or sold by The Company to meet Buyer's Specifications.

Should Product provided hereunder or the operation of such Product become, or in the opinion of The Company be likely to become, the subject of claim of infringement of a U.S. patent, The Company shall at any time and at its option and its expense have the right to avoid or reduce the alleged or actual infringement by (a) substituting for such Product or portion thereof other equally suitable replacements, (b) modifying such Product or a portion thereof, (c) obtaining for Buyer the right to continue the use of such Product or (d) taking back such Product or a portion thereof and granting Buyer a credit for the portion taken back less reasonable depreciation.

11. DEFAULT

Buyer shall be deemed to be in default upon failure to comply with any of the Terms and Conditions of this Agreement or any other written agreement with The Company or upon the appointment of a receiver for its business or should Buyer become subject to an insolvency proceeding under any bankruptcy act. Upon such default in addition to any other remedies it may have at law or in equity, The Company may cancel any outstanding order from Buyer, refuse to make deliveries and declare all obligations immediately due and payable. The Company retains a security interest in all Products provided hereunder until The Company receives payment in full for all amounts owed by Buyer to The Company hereunder. Buyer shall be liable for The Company expense of retaking, holding, preparing for sale, selling and the like, including reasonable attorney's fees and legal expenses, in the event of Buyer's default. Buyer waives all claims for damages or trespass arising from any such retaking. Buyer shall be notified in writing of any default other than the failure to pay money due hereunder and shall have a two (2) week period to cure such default.

12. FORCE MAJEURE

The Company shall not be liable or responsible, nor be deemed to have defaulted or breached this Agreement, for any delays in performance beyond the reasonable control of The Company including, but not limited to, fire, flood, earthquake, explosion, epidemic, unusually severe weather, strike, lockout, labor dispute, Act of God or public enemy, public disorder, act of Buyer, restriction of civil or military authority in their sovereign or contractual capacities, transportation failure, telecommunication breakdown, power outage, or inability to obtain labor, materials or manufacturing facilities, or the inability to meet Buyer specifications beyond the "state of the art". In the event of any such delay, delivery shall be appropriately adjusted.

13. PRODUCT MAINTENANCE

The Company shall have no obligation to repair or maintain any Product provided hereunder following the Warranty Period for such Product unless the Buyer and The Company shall have entered into a separate maintenance agreement in writing covering the maintenance of such Product.

14. NO WAIVER OF CONDITIONS

The failure of The Company to insist upon Buyer's strict performance of any of the Terms and Conditions hereunder or a delay by The Company in exercising any of its remedies hereunder shall not constitute a waiver of these Terms and Conditions or a waiver of any default or any remedy. No waiver by The Company of any term of this Agreement is effective unless explicitly set forth in writing and signed by the Company.

15. NO IMPLIED LICENSE

The sale or otherwise furnishing by The Company or a The Company affiliated company of any Product, or any part thereof, or the furnishing of any information in the form of data, service or application assistance, does not convey any license or guarantee by implication, estoppel or otherwise under any proprietary or patent rights of The Company or a The Company affiliated company or of any other party relating either to combinations of such Product or part of a Product with any other products, parts, apparatus or equipment, or the use of such Product in practicing any process.

16. PRODUCT

The word "Product" as used herein shall include hardware, software, and firmware relating to PCBs and other Products of the Company.

17. APPLICABLE LAW; SUBMISSION TO JURISDICTION

The laws of the State of New Jersey shall govern the interpretation and enforcement of this Agreement. Any action to enforce this Agreement shall be brought in the federal or state courts located in the State of New Jersey, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding. The prevailing party in such an action shall be entitled to recover its reasonable attorneys' fees and costs. The term "prevailing party" shall include a defendant who has by motion, judgment, verdict, order or dismissal, successfully defended against any claims that have been asserted against it.

18. EXPORT

The Buyer agrees to comply with all applicable laws and regulations of the various states and of the United States. The Buyer shall not knowingly, without the prior written approval, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any other applicable government agency, export, either directly or indirectly, any Product or any portion of Product, to any country for which such approval is required. Buyer acknowledges that the Product may also be subject to the export laws and regulations of the country in which the Product is received, and Buyer shall abide by such laws and regulations. Buyer also understands that the requirements and restrictions of U.S. law may vary depending on the Product delivered and may change over time and that, to determine the precise controls applicable to the Product acquired, it is necessary for the Buyer to refer to the U.S. Export Administration Regulations and the U.S. Foreign Assets Control Regulations, or other applicable export regulations.

19. NOTICES

Any notices provided for hereunder shall be given in writing and transmitted by personal delivery or prepaid first class registered, or certified mail fully addressed in the case of The Company at 3601 South Clinton Ave, South Plainfield, NJ 07080 and in the case of Buyer at its address shown in this Agreement or otherwise provided to the Company.

20. ENTIRE AGREEMENT

This Agreement (as defined above) constitutes the entire agreement between the parties hereto and supersedes all prior oral and written communications and agreements between the parties in connection with the sale of the Product and services provided herein. In the event of any discrepancy or inconsistency between this Agreement and any other form or agreement used by either party in connection herewith, the Terms and Conditions of this Agreement shall govern. This Agreement may be modified only by a written instrument duly signed by both The Company and Buyer.

Information regarding The Company products and services presented on or through its website is made available solely for general information purposes. This information does not form part of the specifications of any Product unless expressly repeated in this Agreement and The Company does not warrant the accuracy, completeness or usefulness of this information. Any reliance Buyer places on such information is strictly at Buyer's own risk.

21. CONFIDENTIALITY

All non-public, confidential or proprietary information of The Company, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by The Company to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by The Company in writing. Upon request of the Company, Buyer shall promptly return all documents and other materials received from the Company. The Company shall be entitled to injunctive relief for any violation of this provision. This provision does not apply to information that is (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

21. SURVIVAL

Provisions of this Agreement that by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidentiality, Applicable Law; Submission to Jurisdiction and Survival.