



Terms and Conditions of Sale

These terms and conditions ("**Terms**") of sale govern the sale of goods, manufacturing services, design support or other services, production equipment, or prototypes (altogether known as "**Products**") by Benchmark Electronics, Inc. or its affiliates ("**Benchmark**") to a Benchmark customer ("**Buyer**"). Benchmark and Buyer are each a "**Party**" and collectively the "**Parties**".

1) Precedence. Buyer's submission of any purchase order to Benchmark is Buyer's acknowledgment and acceptance of these Terms. Benchmark rejects any other terms, including any other terms recited on or incorporated by reference in any purchase order. Fulfillment of a Buyer purchase order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. However, if Benchmark and Buyer negotiated and signed a separate written contract covering the sale of Products, or if Buyer accepted in writing a Benchmark proposal or quote ("**Quote**") offering different or modified terms, then the terms and conditions of such contract or accepted Quote shall prevail only to the extent they are inconsistent with these Terms.

2) Prices. Unless otherwise provided in the Quote, prices are quoted in U.S. Dollars, based on quantities specified in the Quote, and are valid for thirty (30) days from the date of the Quote. Prices do not include: duties, taxes or other charges; export licensing; and cost of compliance with any environmental legislation. Unless otherwise provided in the Quote, Benchmark's ISO-9001 Quality System and IPC-A-610D Class II workmanship standards are the basis for all Quotes.

3) Orders. Buyer purchase orders shall identify the Products, mutually agreed unit quantities, part numbers, part revision, descriptions, designs, specifications, unit or lot prices and delivery dates. All accepted purchase orders are binding obligations upon Buyer. Buyer shall provide any Buyer required materials or equipment in a form fit for purpose and ready for use. Replacement tooling due to ECO changes and/or tool wear will be billed to Buyer as required. Buyer will assist in the expeditious disposition of any excess or obsolete components.

4) Delivery. The Products will be delivered or performed within a reasonable time after the receipt of Buyer's purchase order, subject to availability of components, materials and resources. Benchmark may make partial shipments of Products to Buyer. Buyer shall pay for the units shipped irrespective of whole or partial shipments. Unless otherwise provided in the Quote, all Product shipments shall be "*EXW Benchmark facility Incoterms® 2020*". Title to and risk of loss or damage to the Product shall pass to Buyer upon "delivery" per the applicable Incoterm. Unless otherwise provided in the Quote, the parties mutually agree that acceptance is deemed to occur no later than fifteen (15) days after Buyer receipt of Product or Benchmark performance of services.

5) Payment. Benchmark shall invoice Buyer upon shipment of Products, performance of services or as incurred with respect to NRE charges. Payment terms are **either** cash in advance, **or** upon approved credit terms thirty (30) days after the invoice date. Benchmark reserves the right to accrue and charge interest on all invoices not paid within five (5) days after the due date at the rate of 1.5% per month. Buyer shall reimburse Benchmark for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees.

6) Limited Warranties. This Section sets forth Benchmark's sole and exclusive warranty and Buyer's sole and exclusive remedies with respect to Benchmark's breach of such warranty.

- a) Benchmark warrants for twelve (12) months from date of manufacture that Benchmark's workmanship shall (i) conform to specifications at shipment and (ii) be free from defects. Benchmark shall, at its option and at its expense, repair, replace or issue a credit for Product that does not meet the foregoing warranty during the warranty period. Benchmark will pass on to Buyer all manufacturers' component warranties to the extent that they are transferable, but does not independently warrant any components. Any prototypes are provided "AS IS", with no warranty whatsoever.
- b) Benchmark warrants for a period of ninety (90) days following acceptance that any services provided will be performed in a professional and workmanlike manner and in accordance with any applicable specification, or documentation. Should the services fail to conform to this warranty, Benchmark's sole liability and Buyer's exclusive remedy is for Benchmark to re-perform such non-conforming services or test fabrication at Benchmark's cost.
- c) Buyer must obtain Benchmark agreement and a return material authorization number from Benchmark prior to return shipment. All returns shall state the specific reason for such return. Return shipping costs for valid returns shall be paid by Benchmark. Buyer shall pay all shipping costs and a handling charge for invalid or no defect found returns. The warranty for any replacement or repaired item shall continue for the greater of **either** the full remaining balance of the original warranty period, calculated as of the date that Buyer returns the defective Products to Benchmark, **or** sixty (60) days from the date that the replacement Product is returned to Buyer.
- d) Unless stated in the specification, Benchmark's warranty excludes defects or failures resulting from "tin whiskers" or other similar phenomena; manufacturing process phenomena that are unknown to the industry or of limited knowledge base within the industry, such that reasonably informed engineers would not reasonably have knowledge of such, or where no sovereign remedy or cure is known to the industry, and Benchmark has followed all reasonably well known prevention and mitigation steps; or result from Buyer specified or stipulated manufacturing methods.
- e) This warranty shall be void with respect to Product which has been subject to accident, disaster (including lightning or excessive voltage), neglect, abuse, misuse, improper handling (including improper handling in accordance with static sensitive electronic device handling requirements, testing, storage, operation, maintenance or installation), alterations, modifications, or repairs by Buyer or third parties; defective Buyer-furnished items, including test equipment or test software; Products without specified functional tests to allow adequate failure diagnosis; or Products found to be non-operable which have passed all Buyer-specified tests prior to shipment, yet failed some functionality or performance criteria in the field.
- f) Buyer will provide its own warranties directly to any of its end users or other third parties. Buyer will not pass through to end users or other third parties the warranties made by Benchmark under these Terms. Furthermore, Buyer will not make any representations to end users or other third parties on behalf of Benchmark, and Buyer will expressly indicate that the end users and third parties must look solely to Buyer in connection with any problems, warranty claims or other matters concerning the Product.
- g) EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, BENCHMARK MAKES NO REPRESENTATION AND DISCLAIMS ANY OTHER WARRANTIES WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY, OR (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE, OR (III) WARRANTY OF TITLE, OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL

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PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

7) Termination. Benchmark may terminate this agreement for cause if Buyer materially breaches these Terms, and such breach is not cured within forty-five (45) days after the Buyer is notified in writing of the breach. The following breaches shall not be subject to cure: (i) payment-related breaches; (ii) Buyer becomes insolvent or otherwise generally unable to pay debts as they come due, or makes a general assignment for the benefit of creditors; or (iii) Buyer files a voluntary petition, or any involuntary petition is filed against Buyer, under any bankruptcy law or similar statute that is not vacated within ten (10) days through court order.

8) Indemnity.

- a) Benchmark shall indemnify, defend, and hold harmless Buyer and Buyer's affiliates, shareholders, directors, officers, employees, contractors, agents and other representatives from all third party demands, claims, actions, causes of action, proceedings, suits, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs and expenses (including fees and disbursements of counsel) of every kind (each a "**Claim**," and, collectively "**Claims**") based upon personal injury or death or property damage to the extent any of the foregoing is proximately caused by either Benchmark's manufacturing processes, or the gross negligence or willful acts or omissions of Benchmark or its officers, employees, subcontractors or agents; or intellectual property infringement arising from or in connection with Benchmark's manufacturing processes or Benchmark background IP.
- b) Buyer shall indemnify, defend, and hold harmless Benchmark and Benchmark's affiliates, shareholders, directors, officers, employees, contractors, agents and other representatives from all Claims based upon personal injury or death or property damage to the extent any of the foregoing is proximately caused either by a defective Product, alleged infringement or dilution of any copyright or other proprietary rights of a third party due to Products built to Buyer's information or specification, any defect in Buyer-specified materials, components or design of the Products or caused by Buyer-specified suppliers or by the negligent or willful acts or omissions of Buyer or its officers, employees, subcontractors or agents, or strict liability in tort; or intellectual property infringement arising from or in connection with the Products, specifications, Buyer's intellectual property and/or Buyer-furnished Items.
- c) A Party entitled to indemnification pursuant to subsections 8)a) & b) ("**Indemnitee**") shall promptly notify the other Party from whom indemnity is sought ("**Indemnitor**") in writing of any claims covered by this indemnity. Promptly after receipt of such notice, the Indemnitor shall assume the defense of such claim with counsel reasonably satisfactory to the Indemnitee. The Indemnitor shall not compromise any claim or consent to the entry of any judgment without an unconditional release of all liability of the Indemnitee to each claimant or plaintiff.

9) Limitations. To the fullest extent allowable by law and except as provided in Section 8) above (Indemnity), IN NO EVENT SHALL BENCHMARK BE LIABLE TO BUYER FOR ANY LOST PROFITS, COSTS OF COVER, OR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND OR NATURE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR CONNECTED WITH OR RESULTING FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, OR USE OF ANY PRODUCTS OR THE FURNISHING OF ANY SERVICE OR PART THEREOF, WHETHER SUCH LIABILITY IS BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAD BEEN WARNED OF THE POSSIBILITY OF ANY SUCH DAMAGES. In no event will Benchmark's aggregate cumulative liability for any claims arising out of or related to these Terms or the Products exceed the price actually paid by Buyer for Products which gave rise to such claims. No action relating to Products may be brought by Buyer more than one (1) year after shipment or provision thereof.

10) Confidential Information. The parties' rights and responsibilities concerning confidential information shall be governed by the parties' separate non-disclosure agreement.

11) Intellectual Property. Buyer hereby grants to Benchmark a non-exclusive, royalty free license (without the right to sublicense) to use Buyer's intellectual property (including Buyer-furnished Items) to manufacture and sell the Products exclusively to Buyer and to no other party. Except as may be required to perform warranty or other continuing obligations, upon the termination or expiration of these Terms: (a) the licenses granted herein by Buyer shall terminate; (b) Benchmark shall return to Buyer all of Buyer's intellectual property in Benchmark's possession; and (c) Benchmark shall cease all further use of Buyer's intellectual property. Each Party retains all right, title and interest in and to any respective background intellectual property, which for Benchmark includes without limitation Benchmark's know-how, design tools, methodologies, unrelated developments, software, algorithms, or other means that may be used to (i) design, manufacture, assemble or test products, or (ii) design production means or the processes by which products are manufactured, assembled, or tested or any improvements or modifications thereto.

12) Insurance. Buyer agrees to carry the following insurance: Workers' Compensation and Employers Liability Insurance as prescribed by state or country law with minimum limits of \$5,000,000 per accident / \$5,000,000 per disease / \$5,000,000 policy limit; Comprehensive Automobile Liability – Bodily Injury/Property Damage Insurance covering all motor vehicles used in connection with these Terms, with minimum limits of \$1,000,000 combined single limit per occurrence; Comprehensive General Liability Insurance, including blanket contractual liability and broad form property damage, with minimum limits of \$5,000,000 combined single limit per occurrence and an aggregate limit of at least \$20,000,000 but in no event less than the amount otherwise carried by the contract holder. Coverage must be written on ISO occurrence form CG 00 01 12 04 (or an equivalent substitute form) or ISO claims-made form CG 00 02 12 04 (or an equivalent substitute form). The policy must include coverage for, but not limited to, Bodily Injury and Property Damage, Personal Injury and Advertising Injury, Fire legal liability, Products Liability (including with respect to the design of the Products and all components) and completed operations.

13) Compliance with Laws. Buyer and Seller shall, respectively, at all times comply with all applicable governmental laws, statutes, ordinances, rules, regulations, orders, and other requirements, health, safety, wages, hours, immigration, equal employment opportunity, nondiscrimination, working conditions, import or export control, customs, and transportation. These laws include all laws covering anti-corruption/anti-bribery, including the Foreign Corrupt Practices Act (FCPA) and applicable export regulations (EAR, ITAR and OFAC). Buyer hereby represents that neither Buyer nor any parent, subsidiary or affiliate of Buyer is included on any of the restricted party lists maintained by the U.S. Government or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom.

14) Product Content Regulation. Buyer shall have the sole responsibility to evaluate and ensure that all Product design elements (including any specifications, bill of materials ("**BOM**"), components, approved vendor list and/or approved manufacturer list) meet the requirements of any

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applicable PCR, including whether all components and materials incorporated into, and the packaging and labeling of, such Product(s) conform to any applicable PCR. Buyer shall have the sole responsibility and expense for any Product's required PCR compliance, including: (i) any REACH-required application and registration, and/or otherwise obtaining compliance for all Products, Buyer-directed processes and/or components; and (ii) any WEEE-required funding or utilizing recycling mechanisms applicable to any Product and/or component. "**Product Content Regulation**" or "**PCR**" refers to the following laws and/or regulations on content, packaging, or labeling of Products, Components or substances, and/or similar issues: "**RoHS**" (EU Directives 2011/65/EU on Restriction of Hazardous Substances Directive and 2015/863 amending Annex II to Directive 2011/65/EU); "**WEEE**" (EU Directive 2002/96/EC on Waste Electrical and Electronic Equipment); "**REACH**" (EC Regulation No 1907/2006 on Registration, Evaluation and Authorization of Chemicals); and EU Member State's implementations of the foregoing; "**Conflict Minerals**" as defined in the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act § 1502(b), implementing legislation and rules; the People's Republic of China (PRC) Management Methods for the Restriction of the Use of Hazardous Substances in Electrical and Electronic Products; and/or any other mutually agreed PCR; together with implementing regulations and/or administrative rules.

15) Force Majeure. Benchmark shall not be responsible for any failure to perform due to the occurrence of unforeseen circumstances beyond Benchmark's reasonable control and which could not have been avoided by exercise of due care.

16) Audit. Except for agreed, routine quality audits, Buyer shall not be allowed the right to audit or examine Benchmark's pricing or sourcing information or financial books and records.

17) Assignment. These Terms or any rights or obligations hereunder may not be transferred or assigned without the prior written consent of Benchmark, which consent shall not be unreasonably withheld or delayed. Any purported assignment without written consent shall be void.

18) Notices. Any notices required or permitted hereunder shall be given to the appropriate Party at the address specified in the Quote or at such other address as the Party shall specify in writing, and sent to the attention of such Party's Chief Executive Officer. Such notice shall be sent by certified mail, return receipt requested, or by FedEx or other reputable delivery service.

19) Governing Law. These Terms shall be interpreted in accordance with the laws of the state of Arizona. The Parties acknowledge and agree that the state courts of Maricopa County, Arizona and the US District Court for the District of Arizona ("**Courts**") shall have exclusive jurisdiction and venue to adjudicate any and all disputes arising out of or in connection with these Terms. Buyer and Benchmark specifically exclude from application to these Terms the United Nations Convention on Contracts for the International Sale of Goods. Each Party irrevocably submits to the jurisdiction of the Courts, and waives any inconvenient forum or improper venue arguments. Each Party shall bear their respective attorneys' fees and costs.

20) Survival/Waiver. If any provision of these Terms is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. Sections of these Terms which by their nature govern rights and obligations of the Parties after the expiration or termination of these Terms shall survive. Any waiver of breach will not waive any subsequent breach.

21) Business Ethics and Compliance. Benchmark is committed to industry best practices in business ethics, worker safety and fairness, environmental responsibility, integrity and efficiency, and requires the same of all of its business partners. In the event that Buyer has cause to believe that Benchmark or any employee or agent of Benchmark has acted improperly or unethically under these Terms, Buyer should report such conduct to Benchmark at www.bench.ethicspoint.com.

22) Integration. These Terms set forth the entire understanding and agreement of the Parties and supersede any and all oral or written agreements or understandings between the Parties as to the subject matter of these Terms, and may be changed only by a writing signed by both Parties. Any purported oral modification of these Terms shall be void. This Agreement is intended for the sole and exclusive benefit of the Parties and is not intended to benefit any third party. A person who is not a Party to these Terms may not enforce any of its terms.