

**1. CONTRACT OFFER AND ACCEPTANCE:** ANY PROVISION OF AN ORDER FROM CUSTOMER WHICH IS IN ANY WAY INCONSISTENT WITH OR IN ADDITION TO THESE TERMS SHALL NOT BE BINDING UPON ELECTRONIC SERVICE PROVIDER, INC. ("ESP"). IF CUSTOMER OBJECTS TO ANY TERMS HEREIN, SUCH OBJECTION MUST BE IN WRITING AND RECEIVED BY ESP PRIOR TO COMMENCEMENT OF PERFORMANCE BY ESP. CUSTOMER'S CONSENT TO ESP'S COMMENCEMENT OF PERFORMANCE SHALL BE DEEMED ACCEPTANCE OF THE TERMS HEREOF.

**2. PRODUCT; PRICES; CHANGES.** A product may be the item(s) of hardware resulting from ESP's performance ("Equipment"), software, layout, or design work (collectively referred to as "Product") delivered by ESP hereunder. The prices for Product shall be ESP's quoted prices in effect at the time ESP accepts Customer's order. Prices are exclusive of all taxes and are subject to an increase equal in amount to any tax ESP may be required to collect or pay. Pricing is based on continuous production and linear delivery of the quoted volume. Any change notices ("CN") made by Customer may affect both the price and delivery schedule of Equipment or Product unless otherwise specified as one-time production. Customer agrees to pay any additional charges resulting from CN's at ESP's standard rates.

**3. FREIGHT; TITLE; DELIVERY; INSPECTION.** Products shall be delivered F.O.B. ESP'S point of shipment. Shipments will be freight collect. Title to Equipment and liability for loss or damage to the Products shall pass to Customer upon ESP'S tender of the Products to a carrier for shipment to Customer. ESP may deliver the Products in installments. Shipping dates are approximate only. Delivery may be affected by Customer's delay in the timely provision of consigned parts, test equipment or procedures, production drawings, documentation, approvals, interruption of production, or other Customer acts or omissions. In the event ESP's scheduled production is interrupted due to Customer's act or omissions, Customer is responsible for any increased costs. Customer shall have a reasonable time, not to exceed ten (10) working days from date of receipt, to inspect the Products. Customer will notify ESP in writing of particular deficiencies of the Products during the inspection period. Failure to give notice or particularize the deficiencies will result in Customer's acceptance of the Products.

**4. DEFERMENTS AND CANCELLATIONS.** ESP may accept buyer's deferments or cancellations. In the event that ESP consents to such deferment or cancellations, Customer may be subject to additional charges, including, but not limited to, payment for finished goods, work-in-process, material inventory, material on-order, labor, design and engineering services, and other charges incurred in connection with or in reasonable anticipation of performance hereunder.

**5. TERMS OF PAYMENT.** Unless otherwise agreed, terms of payment are net fifteen (15) days from date of invoice, subject to credit approval. Terms of Sale for customers on open account are due thirty days following the material purchases and work performed and Customer agrees to pay a monthly late fee of 2% per month on any unpaid amount not paid when due. In the event it becomes necessary for Electronic Service Provider, Inc. to incur collection costs or commence suit to collect any amount due under this agreement, Customer agrees to pay all collection fees and costs, including attorney's fees incurred by Electronic Service Provider, Inc. or others on behalf of Electronic Service Provider, Inc. In the event that amounts owing are not paid as agreed, Customer hereby grants ESP a Mechanics, Workmen's or

Chattel Lien on the said Equipment to Electronic service Provider, Inc.

#### **6. WARRANTIES:**

**BY ESP:** ESP warrants the Equipment against faulty workmanship for ninety (90) days from the date of shipment.

ESP MAKES NO WARRANTY FOR SOFTWARE, (IN WHATEVER FORM), AND DOCUMENTATION PROVIDED BY CUSTOMER (IF ANY), WHICH ARE PROVIDED SOLELY ON AN "AS-IS" BASIS. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 6, ESP MAKES NO CONDITIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF INFRINGEMENT, OR IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**BY CUSTOMER:** Customer warrants that items to be produced by ESP do not infringe any patent, trademark, or copyright. Customer warrants that it has the right to grant the licenses required for ESP'S performance hereunder and the right to provide all information, material and parts furnished hereunder.

Customer warrants that all materials supplied by Customer, including but not limited to, all Customer supplied artwork, screens, stencils, solder masks, tooling, components, software, specifications, bills of material, information, jigs and fixtures, shall be free from shortages, discrepancies, defects and other faults.

**7. REMEDIES, LIMITATION OF LIABILITY.** THE FOLLOWING STATES ESP'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY. During the applicable warranty period, at its option, ESP will (i) repair, (ii) replace (with new or functionally operative parts) any defective Equipment parts due to faulty workmanship, or (iii) credit Customer's account for the Equipment. These remedies are provided on condition that: (i) ESP is promptly notified in writing of the particular defects in Equipment as delivered by ESP; (ii) ESP'S examination of such Equipment discloses that such alleged deficiencies actually existed within the warranty period; and (iii) Customer delivers the Equipment or otherwise provides it to ESP, at ESP'S designated location, at Customer's risk and expense.

ESP'S LIABILITY TO CUSTOMER FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE GREATER OF \$100,000 OR THE PURCHASE PRICE FOR THE PARTICULAR ITEMS OF PRODUCT INVOLVED.

IN NO EVENT SHALL ESP OR ITS LICENSORS BE LIABLE FOR INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF USE OR DATA, OR INTERRUPTION OF BUSINESS, WHETHER SUCH ALLEGED DAMAGES ARE LABELED IN TORT, CONTRACT, OR INDEMNITY, EVEN IF ESP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ESP IS PERFORMING WORK PER SPECIFICATIONS PROVIDED BY CUSTOMER. THEREFORE, ESP SHALL NOT BE LIABLE FOR SAFETY OR REGULATORY COMPLIANCE OF THE PRODUCT(S), INCLUDING BUT NOT LIMITED TO ENSURING THAT PRODUCTS MEET APPLICABLE GOVERNMENT OR RESPONSIBLE AGENCY REGULATIONS.

#### **7. INDEMNIFICATION**

**BY ESP:** ESP will defend at its expense any action brought against Customer which alleges that ESP's

manufacturing process, except if specified by Customer, used to produce the Equipment supplied hereunder infringes a United States patent or copyright. ESP shall pay all damages and costs finally awarded against Customer that are caused by such infringement, provided that ESP is promptly informed in writing and furnished a copy of each communication, notice or other action relating to the alleged ESP Infringement and is given authority, information and assistance (at ESP'S expense) necessary to defend or settle such claim. ESP shall have no liability for costs and damages for any infringement that arises out of compliance with Customer's specifications, or from a combination with or an addition to products not manufactured and developed by ESP, or a modification of the Products after delivery by ESP, or the use of such Products in the practice of a process.

**BY CUSTOMER:** Customer will defend, at its expense, any action brought against ESP: (i) which alleges that Products developed, manufactured or supplied hereunder infringe a United States patent or copyright, or misuse of another's trade secret; or (ii) resulting from ESP'S compliance with customer's specifications; and shall pay all damages and costs attributable to such action. ESP agrees to provide prompt notice in writing and furnish a copy of each communication, notice or other action relating to the alleged action. ESP will provide reasonable assistance necessary to defend or settle such claim.

Nothing contained herein shall be construed as granting or implying any rights by license, estoppels or otherwise.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE RIGHTS AND LIABILITIES OF THE PARTIES HERETO FOR PATENT AND COPYRIGHT INFRINGEMENT AND IS IN LIEU OF ALL CONDITIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO.

**9. GENERAL.** ESP is not liable for nonperformance or a delay in performance due to force majeure or causes beyond the reasonable control of ESP. Each shipment made hereunder shall be considered a separate transaction. In the event of any default by Customer, ESP may decline to make further shipments. ESP'S actions shall not constitute a waiver of any default by Customer or in any way affect ESP'S legal remedies for any such default.

This Agreement shall not be assigned or transferred by Customer without the prior written consent of ESP. Any attempted assignment or transfer of any of the rights, duties or obligations of this Agreement without the prior consent of ESP shall be void. If consent is given, this Agreement shall be binding upon and inure to the benefit of the assigns. If any provision of this Agreement is held invalid, the other provisions shall not be affected.

THIS AGREEMENT CONSTITUTES THE FINAL AND COMPLETE EXPRESSION OF ALL THE TERMS OF THE AGREEMENT BETWEEN THE PARTIES. IT SUPERSEDES ALL UNDERSTANDINGS AND NEGOTIATIONS CONCERNING THE MATTERS SPECIFIED HEREIN. ANY REPRESENTATIONS, ORAL STATEMENTS, PROMISES OR WARRANTIES MADE BY EITHER PARTY THAT DIFFER IN ANY WAY FROM THE TERMS OF THIS AGREEMENT SHALL BE GIVEN NO FORCE OR EFFECT. NO ADDITION TO OR MODIFICATION OF ANY PROVISION OF THIS AGREEMENT SHALL BE BINDING UPON EITHER PARTY UNLESS MADE IN WRITING AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF BOTH PARTIES.