

\*\*\*\* With regard to custom parts, Tech-Etch, Inc. does not do business on standard terms and conditions that are posted or sent routinely by customers. We attempt to inform customers, by separate email or acknowledgement, of certain conditions which we do not accept, such as unit price, quantity or delivery date; however, THE FOLLOWING PROVISIONS SHALL APPLY IN EXPRESS DEVIATION OF THE TERMS STATED IN ANY PURCHASE ORDER, ANY TERMS INCORPORATED THEREIN OR ANY OTHER SOURCING AGREEMENT, RELEASE OR WEB SITE POSTING BY CUSTOMER AND TECH-ETCH EXPRESSLY OBJECTS TO AND EXPRESSLY REJECTS ANY PROVISIONS ADDITIONAL TO OR DIFFERENT THAN THE FOLLOWING PROVISIONS. \*\*\*\*

## Tech-Etch Manufacturing Services Standard Terms and Conditions

These **Tech-Etch Manufacturing Services Standard Terms and Conditions (the "Agreement")** shall apply to and govern all purchase orders submitted to Tech-Etch for the provision of parts and related manufacturing services by Tech-Etch and shall prevail over any other terms or conditions included or referenced in any purchase order or other documentation or communication by Customer. **"Customer"** means any individual, partnership, company or organization that from time to time purchases Products (as defined below) from Tech-Etch. **"Tech-Etch"** means Tech-Etch, Inc. a Massachusetts corporation having its principal place of business at 45 Aldrin Road, Plymouth, Massachusetts 02360. Customer and Tech-Etch may individually or collectively hereinafter be referred to as **"party"** or **"parties."**

1. DEFINITIONS. Capitalized terms shall have the meanings set forth in this Section 1 or elsewhere in the Agreement.

**"Affiliate"** means an entity directly or indirectly controlling, being controlled by, or under common control with a party to this Agreement

**"Approved Vendor List" or "AVL"** shall mean the list of suppliers currently approved to provide the Materials specified in the bill of materials for a Product.

**"Customer Controlled Materials"** shall mean those Materials provided by Customer or by suppliers with whom Customer has a commercial contractual or non-contractual relationship.

**"Effective Date"** shall mean the date Tech-Etch accepts Customer's purchase order.

**"Inventory"** shall mean any Materials that are used to manufacture Products that are ordered pursuant to a purchase order from Customer.

**"Lead Time(s)"** shall mean the Materials Procurement Lead Time plus the manufacturing cycle time required from the delivery of the Materials at Tech-Etch's facility to the completion of the manufacture, assembly, test and packaging processes.

**"Materials"** shall mean components, parts and subassemblies that comprise the Product and that appear on the bill of materials for the Product.

**"Materials Procurement Lead Time"** shall mean with respect to any particular item of Materials, the longer of (a) lead time to obtain such Materials as recorded on Tech-Etch's MRP system or (b) the actual lead time, if a supplier has increased the lead time but Tech-Etch has not yet updated its MRP system.

**"Minimum Order Inventory"** shall mean Materials purchased by Tech-Etch in excess of requirements for purchase orders because of minimum lot sizes available from the supplier.

**"Production Materials"** shall mean materials that are consumed in the production processes to manufacture Products such as solder, epoxy, cleaner solvent, labels, flux, and glue. Production Materials do not include any such production materials that have been specified by the Customer or any Customer Controlled Materials.

**"Product(s)"** shall have the meaning set forth in Section 2.1.

**"Specifications"** shall have the meaning set forth in Section 2.1.

**"Work"** shall have the meaning set forth in Section 2.1.

## 2. MANUFACTURING SERVICES

2.1. Work. Upon Tech-Etch's acceptance of Customer's purchase order as set forth in Section 3.3 below, Customer engages Tech-Etch to perform the Work. "Work" shall mean to procure Materials and to manufacture, assemble, and test products (hereinafter "Product(s)") pursuant to detailed written Specifications. The "Specifications" for each Product or revision thereof, means the applicable Product specifications, descriptions, samples, drawings, directives, instructions and testing and quality control criteria, bill of materials, designs, schematics, assembly drawings, process documentation, revision numbers, procedures and Approved Vendor List provided by Customer to Tech-Etch. In case of any conflict between the Specifications and this Agreement, this Agreement shall prevail.

2.2. Engineering Changes. Customer may request that Tech-Etch incorporate engineering changes into the Product by providing Tech-Etch with a description of the proposed engineering change sufficient to permit Tech-Etch to evaluate its feasibility and cost. Tech-Etch will proceed with engineering changes when the parties have agreed upon the changes to the Specifications, delivery schedule and Product pricing and the Customer has issued a purchase order for the implementation costs.

2.3. Tooling; Non-Recurring Expenses; Software. Customer shall pay for (or obtain and consign to Tech-Etch) any Product-specific tooling, equipment or software and other reasonably necessary non-recurring expenses, to be set forth in Tech-Etch's quotation. Tech-Etch shall have the right, in its sole discretion, to dispose of Product-specific tooling and equipment after three (3) consecutive years of non-use. All software that Customer provides to Tech-Etch is and shall remain the property of Customer.

2.4. Approval of Changes. Tech-Etch will obtain Customer's prior written approval before implementing any changes to the Product design, Customer information, or Product-specific tooling.

## 3. MINIMUM ORDER VALUE; ORDERS; FEES; PAYMENT

3.1. Minimum Order Values; Low Volume Products. Each Tech-Etch product category (flexible circuits, shielding, custom, etch-form) has minimum order value requirements. Customer orders for Product must be equal to or greater than the minimum order value indicated in Tech-Etch's quotation. Unless otherwise approved by Tech-Etch in writing, minimum order values of \$5,000 or less may not be split (i.e. the entire order must be shipped in a single shipment). With regard to low volume Products, Tech-Etch reserves the right to (a) schedule production of low volume Products at its discretion in order to maximize factory efficiency, including producing such low volume Products in single batches with single shipments and/or split-shipments, depending on manufacturing and Material availability, and (b) ship low volume Products as they become available, which may be earlier than Customer's requested delivery date.

3.2. Purchase Orders; Precedence. Customer may use its standard purchase order form for any purchase notice hereunder if such purchase orders reference this Agreement and the applicable Specifications. Each purchase order will specify the Products to be purchased, quantity, delivery schedule (subject to Section 3.1 above), total price and any special terms that apply to the transaction as are identified in this Agreement, provided in each case that such terms are consistent with the terms of this Agreement. Each purchase order issued under this Agreement shall be deemed to incorporate by this reference the terms of this Agreement. The parties agree that the terms and conditions contained in this Agreement shall prevail over any terms and conditions pre-printed on or referenced in any Customer purchase order, acknowledgment form or other instrument and such other terms are hereby rejected and will be given no effect whatsoever.

3.3. Purchase Order Acceptance. Purchase orders shall normally be deemed accepted by Tech-Etch five (5) business days after receipt, provided however that Tech-Etch may reject any purchase order: (a) if the fees/prices reflected in the purchase order are inconsistent with the parties' agreement with respect to the fees/prices; (b) if the purchase order does not meet the minimum order value(s) and requirements as set forth in Section 3.1 above; (c) if Materials required to fulfill the purchase order are unavailable; (d) if the delivery dates requested in the purchase order are sooner than Product availability based on Lead Time; or (e) if a purchase order would extend Tech-Etch's liability beyond Customer's approved credit line. Tech-Etch shall notify Customer of rejection of any purchase order within five (5) business days of receipt of such purchase order.

### 3.4. Pricing; Fees; Changes; Taxes.

(a) The initial pricing and other fees will be agreed by the parties and will be indicated on the purchase orders issued by Customer and accepted by Tech-Etch in accordance with the terms of this Agreement.

(b) Customer is responsible for additional fees and costs due to: (i) changes to the Specifications; (ii) additional Product, process or regulatory requirements submitted by Customer after initial pricing has been agreed; (iii) regulatory

requirements that arise after initial pricing has been agreed; and (iv) any pre-approved expediting charges reasonably necessary because of a change in Customer's requirements.

(c) Once the initial Product prices have been determined, the prices shall remain fixed for the duration of six (6) months. Prices may be increased more frequently if the market price of fuels, Materials, equipment, labor and other production costs increase beyond normal variations in pricing or currency exchange rates as demonstrated by Tech-Etch.

(d) All prices are exclusive of federal, state and local excise, sales, use, VAT, and similar transfer taxes, and any duties, and Customer shall be responsible for all such items. Customer will reimburse Tech-Etch for all sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties that Tech-Etch is permitted or required to collect from Customer, which taxes or duties Tech-Etch will use commercially reasonable efforts to identify on each invoice. However, each party will be responsible for taxes based on its own net income, employment taxes with respect to its own employees, and for taxes on any property it owns or leases.

3.5. Payment Terms. Customer agrees to pay all invoices in U.S. Dollars within thirty (30) days of the date of the invoice. Late payment of undisputed amounts will be subject to a late charge of 1.5% of the amount due per month. If Customer is late with payments, or Tech-Etch has reasonable cause to believe Customer may not be able to pay, Tech-Etch may (a) stop all Work under this Agreement until such assurances of payment satisfactory to Tech-Etch are received or payment is received; (b) demand prepayment for purchase orders; and (c) delay shipments. Customer agrees to provide all necessary financial information required by Tech-Etch from time to time in order to make a proper assessment of the creditworthiness of Customer.

3.6. Orders by Customer Affiliates. If clearly identified and authorized by Customer in writing in advance and agreed to by Tech-Etch, Tech-Etch will accept purchase orders for the same Products from Customer's Affiliate(s), provided that (a) such Affiliate first executes an adoption agreement; and (b) all such purchases adhere to and are subject to and governed by all of the terms and conditions of this Agreement, as well as any pricing and minimum order values set forth in Tech-Etch's quotation to Customer. Customer hereby guarantees to Tech-Etch the performance by Customer of the obligations of all of its Affiliates under this Agreement, and, in the event of default by any such Affiliate of any such obligations, Customer agrees to indemnify and hold harmless Tech-Etch from any loss, costs or damages arising out of any failure of its Affiliates to perform any such obligations (subject to any limitations which would apply under this Agreement). Tech-Etch may reject any Affiliate purchase order that is not consistent with the terms of this Agreement and Tech-Etch's quotation. The terms and conditions contained in this Agreement shall prevail over any terms and conditions pre-printed on or referenced in any Affiliate purchase order, acknowledgment form or other instrument and such other terms are hereby rejected and will be given no effect whatsoever, even in the event such Affiliate has not yet signed an adoption agreement.

3.7. Orders by Third-Party Contract Manufacturers. Tech-Etch will accept purchase orders from Third-Party Contract Manufacturers provided: (a) that each such Third-Party Contract Manufacturer first executes a separate Third-Party Purchaser Agreement in form and substance satisfactory to Tech-Etch; (b) that Customer has not and does not disclose to such Third-Party Contract Manufacturer the terms and conditions of this Agreement, other than that Customer has the right to identify, designate, or propose Third-Party Contract Manufacturers to Tech-Etch; and (c) that no refusal by Tech-Etch to do business with a Third-Party Contract Manufacturer, whether for any reason or no reason, shall be deemed by Customer to breach any term or condition of this Agreement. "Third-Party Contract Manufacturer" shall mean any business or entity identified, designated, or proposed in writing by Customer to purchase Product from Tech-Etch for inclusion in any Customer item or items.

#### 4. MATERIALS PROCUREMENT; CUSTOMER RESPONSIBILITY FOR MATERIALS

4.1. Authorization to Procure Materials, Inventory and Minimum Order Inventory. Customer's accepted purchase orders will constitute authorization for Tech-Etch to procure, without Customer's prior approval, (a) Inventory to manufacture the Products covered by such purchase orders based on the Lead Time and (b) certain Minimum Order Inventory based on Customer's purchase orders as required by the supplier.

4.2. Customer Controlled Materials. Customer acknowledges that the Customer Controlled Materials supplier terms and conditions may directly impact Tech-Etch's ability to perform under this Agreement and to provide Customer with the flexibility Customer may request pursuant to the terms of this Agreement.

4.3. Approved Vendor List. In the event that Customer provides to Tech-Etch an Approved Vendor List ("AVL"), Tech-Etch shall endeavor to purchase from vendors on the current AVL the Materials required to manufacture the Product.

4.4. Customer Responsibility for Inventory and Minimum Order Inventory. Customer is responsible under the conditions provided in this Agreement for all Materials, Inventory and Minimum Order Inventory purchased by Tech-Etch under this Section 4.

## 5. DELIVERY AND SHIPMENT; SCHEDULE CHANGES, DELAY AND CANCELLATIONS, EXPORT/IMPORT

5.1. Delivery and Shipment. All Products delivered pursuant to the terms of this Agreement shall be suitably packed for shipment in accordance with the Specifications and marked for shipment to Customer's destination specified in the applicable purchase order. Shipments will be made either EXW (Ex works, Incoterms 2020) Tech-Etch's facility, or FOB Origin, at which time risk of loss and title will pass to Customer. All freight, insurance and other shipping expenses, as well as any special packing expenses not included in the original quotation for the Products, will be paid by Customer. In the event Customer designates a freight carrier to be utilized by Tech-Etch, Customer agrees to designate only freight carriers that are currently in compliance with all applicable laws relating to anti-terrorism security measures and to adhere to the C-TPAT (Customs-Trade Partnership Against Terrorism) security recommendations and guidelines as outlined by the United States Bureau of Customs and Border Protection and to prohibit the freight carriage to be sub-contracted to any carrier that is not in compliance with the C-TPAT guidelines.

### 5.2. Purchase Order Changes.

(a) Purchase orders with delivery dates beyond 180 days from the date of the purchase order may be accepted or rejected by Tech-Etch in its sole discretion. After purchase order acceptance, Customer may not modify the quantities and delivery schedules of Product except with the prior written approval of Tech-Etch. Quantity increases are subject to Materials availability. Any decrease in quantity of an accepted purchase order is considered a cancellation and subject to cancellation charges. Quantity cancellations are governed by the terms of Section 5.3 below.

(b) Any delays in the normal production or interruption in the workflow process caused by Customer's changes to the Specifications or failure to provide sufficient quantities or a reasonable quality level of Customer Controlled Materials where applicable to sustain the production schedule, will be considered a reschedule of any affected purchase orders for purposes of this Section 5.2 for the period of such delay.

### 5.3. Cancellation of Orders and Customer Responsibility for Inventory.

If Customer does cancel all or any portion of Product quantity of an accepted purchase order, then Customer will promptly pay Tech-Etch (a) for any finished Product, work in process and Inventory in Tech-Etch's possession as of the effective date of such cancellation, (b) for any Minimum Order Inventory purchased or ordered by Tech-Etch to support the PO delivery dates or other delivery dates as determined by Tech-Etch in accordance with Section 3.1 above, (c) any cancellation charges assessed by Tech-Etch, (d) any remediation or disposal costs associated with Materials, and (e) any price difference between Product quantity ordered and final quantity shipped.

5.4. No Waiver. For the avoidance of doubt, Tech-Etch's failure to invoice Customer for any of the charges set forth in this Section 5 does not constitute a waiver of Tech-Etch's right to charge Customer for the same event or other similar events in the future.

### 5.5. Exportation/Importation of Product.

(a) Exportation of Product - Customer understands that all commodities, software, and technology, and the Products manufactured for and/or provided to the Customer by Tech-Etch, may be subject to the export control laws and regulations of the United States, including but not limited to the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), and sanction regimes of the U.S. Department of Treasury, Office of Foreign Assets Controls Foreign Assets Control Regulations (FACR). Customer shall comply with these laws and regulations when applicable and shall notify Tech-Etch if Products are subject to EAR or ITAR. Customer further agrees to comply with any and all export controls of the applicable country of export.

(b) Additional Customer Assurance. Customer shall not, without prior U.S. Government authorization, export, reexport, or transfer any Product, either directly or indirectly, to any country subject to a U.S. trade embargo or sanction (including but not limited to Crimea region of Ukraine, Cuba, N. Korea, Iran, and Syria) or to any resident or national of said countries, or to any person, organization, or entity on any of the restricted parties lists maintained by the U.S. Department of State, Treasury, or Commerce. In addition, Product may not be exported, reexported, or transferred to any end-user engagement in activities, or for

any end-use, directly or indirectly related to the design, development, production, use, or stockpiling of weapons of mass-destruction, e.g. nuclear, chemical, or biological weapons, and the missile technology to deliver them.

(c) Exporter of Record. The INCOTERM for provision of Product to Customer shall be EXW Tech-**Etch's facility**; Customer will be the exporter of record. In the event the Customer designates a freight forward, carrier, or other agent to facilitate the **export on the Customer's behalf, the Customer agrees to accept responsibility for all U.S. export and re-export controls**, including export classification and license determination.

(d) Importation of Product - To the extent that Products are imported into any country, the Customer or its designated Affiliate will act as the importer.

(e) Supply Chain Security – In the event Customer designates a supplier (including but not limited to Materials suppliers, transporters, warehouse, freight forwarders, and brokers) to be used by Tech-Etch, Customer agrees to designate only suppliers that 1) are currently in compliance with all applicable laws relating to anti-terrorism security measures and 2) adhere to the C-TPAT (Customs-Trade Partnership Against Terrorism) minimum security requirements as set out by the United States Bureau of Customs and Border Protection. Customer shall prohibit any such suppliers from sub-contracting to any other suppliers that are not in compliance with the aforementioned laws and minimum security requirements. Customer shall support Tech-Etch in determining supplier compliance with the requirements of this subsection (e) including requiring suppliers designated by Customer to complete a Tech-Etch questionnaire and to undergo periodic on-site audits. Such audits will be conducted by a provider designated by Tech-Etch and paid for by the Customer.

## 6. PRODUCT ACCEPTANCE AND EXPRESS LIMITED WARRANTY

6.1. Product Acceptance. The Products delivered by Tech-Etch will be inspected and tested as required by Customer within fifteen (15) **days of receipt at the "ship to" location on the applicable purchase order**. If Products do not comply with the express limited warranty set forth in Section 6.2 below, Customer has the right to reject such Products during said period. Products not rejected during said period will be deemed accepted. Customer may return defective Products, freight collect, after obtaining a return material authorization number from Tech-Etch to be displayed on the shipping container and completing a failure report. Rejected Products will be promptly repaired or replaced, at Tech-**Etch's option, and returned freight pre-paid**. Customer shall bear all of the risk, and all costs and expenses, associated with Products that have been returned to Tech-Etch for which there is no defect found.

6.2. Express Limited Warranty. This Section 6.2 sets forth Tech-Etch's **sole and exclusive warranty and Customer's sole and exclusive remedies with respect to a breach by** Tech-Etch of such warranty.

(a) Tech-Etch warrants that the Products will have been manufactured in accordance with the applicable Specifications and will be free from defects in workmanship for a period of one (1) year from the date of shipment.

(b) Notwithstanding anything else in this Agreement, this express limited warranty does not apply to, and Tech-Etch makes no representations or warranties whatsoever with respect to: (i) Materials and/or Customer Controlled Materials; (ii) defects resulting from the Specifications or the design of the Products; (iii) Product that has been abused, damaged, altered or misused by any person or entity after arrival at the ship to location or after title passes to Customer, **Customer's Affiliate**, or a Third-Party Contract Manufacturer; (iv) first articles, prototypes, pre-production units, test units or other similar Products; or (v) defects resulting from tooling, designs or instructions produced or supplied by Customer. Customer shall be liable for costs or expenses incurred by Tech-Etch related to the foregoing exclusions to Tech-Etch's **express limited warranty**.

(c) Upon any failure of a Product to comply with this express limited warranty, Tech-Etch's **sole obligation, and Customer's sole remedy**, is for Tech-Etch, at its option, to promptly repair or replace such unit and return it to Customer freight prepaid. Customer shall return Products covered by this warranty freight prepaid after completing a failure report and obtaining a return material authorization number from Tech-Etch to be displayed on the shipping container. Customer shall bear all of the risk, and all costs and expenses, associated with Products that have been returned to Tech-Etch for which there is no defect found.

(d) Customer will provide its own warranties directly to any of its end users or other third parties. Customer will not pass through to end users or other third parties the warranties made by Tech-Etch under this Agreement. Furthermore, Customer will not make any representations to end users or other third parties on behalf of Tech-Etch, and Customer will expressly indicate

that the end users and third parties must look solely to Customer in connection with any problems, warranty claim or other matters concerning the Product.

6.3. No Representations or Other Warranties. TECH-ETCH MAKES NO REPRESENTATIONS AND NO OTHER WARRANTIES OR CONDITIONS ON THE PERFORMANCE OF THE WORK, OR THE PRODUCTS, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR COMMUNICATION WITH CUSTOMER, AND TECH-ETCH SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

6.4. Compliance With Laws. Each party will comply in all material respects with the requirements of all laws, rules, regulations, and orders applicable to it or to its property, noncompliance with which could materially adversely affect its business or condition, financial or otherwise, except non-compliance being contested in good faith through appropriate proceedings. Without limiting the foregoing, each party represents and warrants to the other party that it and its owners, officers, directors, employees and agents have not and will not pay, offer or promise to pay, or authorize the payment directly or indirectly, or any monies or anything of value to any government official or employee or any political party or candidate for political office (or any official or employee of any private entities that are owned or managed by government or quasi-government agencies) for the purpose of influencing any act or decision of such official of the government (or any private entities that are owned or managed by government or quasi-government agencies) to obtain or retain business, or direct business to any person.

## 7. INTELLECTUAL PROPERTY LICENSES

7.1. Licenses. Customer hereby grants Tech-Etch a non-exclusive license during the term of this Agreement to use Customer's patents, trade secrets and other intellectual property as necessary to perform Tech-**Etch's obligations under this Agreement.**

7.2. No Other Licenses. Except as otherwise specifically provided in this Agreement, each party acknowledges and agrees that no licenses or rights under any of the intellectual property rights of the other party are given or intended to be given to such other party.

## 8. TERM AND TERMINATION

8.1. Term. The term of this Agreement shall commence on the Effective Date and shall continue thereafter until expiration of the purchase order to which it pertains or until terminated as provided in Section 8.2 (Termination).

8.2. Termination. This Agreement may be terminated by Tech-Etch for convenience upon one hundred twenty (120) days written notice to the Customer. This Agreement may be terminated by either party (a) if the other party defaults in any payment to the terminating party and such default continues without a cure for a period of fifteen (15) days after the delivery of written notice thereof by the terminating party to the other party, (b) if the other party defaults in the performance of any other material term or condition of this Agreement and such default continues unremedied for a period of thirty (30) days after the delivery of written notice thereof by the terminating party to the other party, or (c) pursuant to Section 10.8 (Force Majeure).

8.3. Effect of Expiration or Termination. Expiration or termination of this Agreement under any of the foregoing provisions: (a) shall not affect the amounts due under this Agreement by either party that exist as of the date of expiration or termination, and (b) as of such date the provisions of Sections 5.2 and 5.3 shall apply with respect to payment and shipment to Customer of finished Products, work in process, Inventory, and Minimum Order Inventory in existence as of such date, and (c) shall not affect Tech-**Etch's express limited warranty in Section 6.2 above.** **Termination of this Agreement, settling of accounts in the manner set forth in the foregoing sentence shall be the exclusive remedy of the parties for breach of this Agreement, except for breaches of Section 6.2, 9.1, 9.2, or 10.1.** Sections 1, 3.5, 3.6, 4, 5.2, 5.3, 6.2, 6.3, 7, 8, 9, and 10 shall be the only terms that shall survive any termination or expiration of this Agreement.

## 9. INDEMNIFICATION; LIABILITY LIMITATION

9.1. Indemnification by Tech-Etch. Tech-Etch agrees to defend, indemnify and hold harmless Customer and its directors, officers, employees, and agents from and against all claims, actions, losses, expenses, damages or other liabilities, **including reasonable attorneys' fees (collectively, "Losses") incurred by or assessed against** the foregoing, but solely to the extent the same arise out of third-party claims relating to:

(a) any actual or threatened injury or damage to any person or property caused, or alleged to be caused, by a Product sold by Tech-Etch to Customer hereunder, but solely to the extent such injury or damage has been caused by the breach by

Tech-Etch of its express limited warranties related to Tech-Etch's workmanship and manufacture in accordance with the Specifications only as further set forth in Section 6.2; or

(b) any infringement of the intellectual property rights of any third party but solely to the extent that such infringement is caused by a process that Tech-Etch uses to manufacture, assemble and/or test the Products, other than a process required by the Specifications.

9.2. Indemnification by Customer. Customer agrees to defend, indemnify and hold harmless, Tech-Etch and its directors, officers, employees and agents from and against all Losses incurred by or assessed against any of the foregoing to the extent the same arise out of, are in connection with, are caused by or are related to claims by any person other than Customer relating to:

(a) any failure of any Product (and Materials contained therein) sold or supplied by Tech-Etch to Customer, a Customer Affiliate, or a Third-Party Contract Manufacturer to comply with any safety standards and/or environmental regulations to the extent that such failure has not been caused by Tech-Etch's breach of its express limited warranties set forth in Section 6.2 hereof;

(b) any actual or threatened injury or damage to any person or property caused, or alleged to be caused, by a Product, but only to the extent such injury or damage has not been caused by Tech-Etch's breach of its express limited warranties related to Tech-Etch's workmanship and manufacture in accordance with the Specifications as further set forth in Section 6.2 hereof;

(c) any infringement of the intellectual property rights of any third party by any Product except to the extent such infringement is the responsibility of Tech-Etch pursuant to Section 9.1(b) above; or

(d) a failure by Customer to carry out its responsibilities under Section 5.5, including, but not limited to, failure to import or export in compliance with applicable laws, failure to obtain all required reviews, licenses and/or permits, and/or provision of false, incomplete, inaccurate or misleading information to Tech-Etch.

9.3. Procedures for Indemnification. With respect to any third-party claims, either party shall give the other party prompt notice of any third-party claim and cooperate with the indemnifying party at its expense. The indemnifying party shall have the right to assume the defense (at its own expense) of any such claim through counsel of its own choosing by so notifying the party seeking indemnification within thirty (30) calendar days of the first receipt of such notice. The party seeking indemnification shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the indemnifying party. The indemnifying party shall not, without the prior written consent of the indemnified party, agree to the settlement, compromise or discharge of such third-party claim.

9.4. Sale of Products Enjoined. Should the use of any Products be enjoined for a cause stated in Section 9.1(b) or 9.2(c) above, or in the event the indemnifying party desires to minimize its liabilities under this Section 9, in addition to its indemnification obligations set forth in this Section 9, the indemnifying party's sole responsibility is to either substitute a fully equivalent Product or process (as applicable) not subject to such injunction, modify such Product or process (as applicable) so that it no longer is subject to such injunction, or obtain the right to continue using the enjoined process or Product (as applicable). In the event that any of the foregoing remedies cannot be effected on commercially reasonable terms, then, all accepted purchase orders will be considered cancelled and Customer shall purchase all Products, Inventory and Minimum Order Inventory as provided in Section 5.3 hereof.

9.5. No Other Liability. EXCEPT WITH REGARD TO INDEMNIFICATION OBLIGATIONS IN SECTIONS 9.1 AND 9.2 ABOVE OR BREACHES OF SECTION 10.1 BELOW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY "COVER" DAMAGES (INCLUDING INTERNAL COVER DAMAGES WHICH THE PARTIES AGREE MAY NOT BE CONSIDERED "DIRECT" DAMAGES), OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE ARISING OUT OF THIS AGREEMENT OR THE SALE OF PRODUCTS, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING THE POSSIBILITY OF NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE PARTY HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

9.6. Limitation of Liability. Tech-Etch's total liability to Customer hereunder shall be subject to a cap (the "Cap") in accordance with the following: (a) during the first 12 months following the Effective Date, Tech-Etch's maximum aggregate liability with respect to any event(s) giving rise to a related set of claims for damages will in no event exceed an amount equal to the lesser of \$250,000 or 5% of the total gross amounts paid to Tech-Etch by Customer, Customer's Affiliates, and Customer's Third-Party Contract Manufacturers hereunder; and (b) thereafter, Tech-Etch's maximum aggregate liability with

respect to any event(s) giving rise to a related set of claims for damages will in no event exceed an amount equal to 5% of the total gross amounts paid to Tech-Etch by Customer, **Customer's Affiliates, and Customer's Third-Party Contract Manufacturers** during the 12 months immediately preceding the event(s) giving rise to such liability.

## 10. MISCELLANEOUS

10.1. **Confidentiality.** Each party shall refrain from using any and all Confidential Information of the disclosing party for any purposes or activities other than those specifically authorized in this Agreement. Except as otherwise specifically permitted herein or pursuant to written permission of the party to this Agreement owning the Confidential Information, no party shall disclose or facilitate disclosure of Confidential Information of the disclosing party to anyone without the prior written consent of the disclosing party, except to its employees, consultants, parent company, and subsidiaries of its parent company who need to know such information for carrying out the activities contemplated by this Agreement and who have agreed in writing to be bound by confidentiality terms that are no less restrictive than the requirements of this Section. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party pursuant to a subpoena or other court process only (i) **after having given the disclosing party prompt notice of the receiving party's receipt of such subpoena or other process and** (ii) after the receiving party has given the disclosing party a reasonable opportunity to oppose such subpoena or other process or to obtain a protective order. Confidential Information of the disclosing party in the custody or control of the receiving party shall be promptly returned or destroyed upon the earlier of (i) the disclosing party's written request or (ii) termination of this Agreement. Confidential Information disclosed pursuant to this Agreement shall be maintained confidential for a period of three (3) years after the disclosure thereof. Trade secrets and the existence and terms of this Agreement shall be confidential in perpetuity. "Confidential Information" **shall mean (a) the existence and terms of this Agreement and all information concerning the unit number and fees for Products and Inventory/Minimum Order Inventory and (b) any other information that is marked or identified as confidential or proprietary at the time of disclosure.** Confidential Information does not include information that (i) the receiving party can prove it already knew at the time of receipt from the disclosing party; or (ii) has come into the public domain without breach of confidence by the receiving party; (iii) was received from a third party without restrictions on its use; (iv) the receiving party can prove it independently developed without use of or reference to the disclosing party's data or information; or (v) the disclosing party agrees in writing is free of such restrictions.

10.2. **Entire Agreement; Severability.** This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties relating to such transactions. If the scope of any of the provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law.

10.3. **Amendments; Waiver.** No amendment, modification or change of this Agreement will be valid unless it is in writing and signed by an authorized representative of both parties. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Neither party will be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by a duly authorized representative of the party against which such waiver is asserted.

10.4. **Independent Contractor.** Neither party shall, for any purpose, be deemed to be an agent of the other party and the relationship between the parties shall only be that of independent contractors. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

10.5. **Insurance.** Tech-Etch and Customer agree to maintain appropriate insurance to cover their respective risks under this Agreement with coverage amounts commensurate with levels in their respective markets. Customer specifically agrees to maintain insurance coverage for any finished Products or Materials the title and risk of loss of which have passed to Customer pursuant to this Agreement and for any Products or Materials that are stored on the premises of Customer for any reason prior to the passing of title.

10.6. **Force Majeure.** In the event that either party is prevented, hindered, or delayed from performing or is unable to perform any of its obligations under this Agreement (other than a payment obligation) due to any act of God, acts or decrees of governmental or military bodies, fire, casualty, flood, earthquake, tornado, hurricane, war, strike, lockout, pandemic, epidemic, viral outbreak, destruction of production facilities, riot, insurrection, Materials unavailability, governmental orders restricting travel, movement, or large gatherings, acts of terrorism or any other cause beyond the reasonable control of the party invoking this **section (collectively, a "Force Majeure"), and if such party shall have used its commercially reasonable efforts to mitigate its**



effects, such party shall give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences. Regardless of the excuse of Force Majeure, if such party is not able to perform within one hundred twenty (120) days after such event, the other party may terminate the Agreement.

10.7. Successors, Assignment; Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives. Neither party shall have the right to assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the other party, not to be unreasonably withheld. Nothing in this Agreement, express or implied, is intended to make any person or entity that is not a Party to the Agreement a third-party beneficiary of any right created by this Agreement or operation of law. The provisions of this Agreement are for the exclusive benefit of the Parties and any Affiliate that has executed an Adoption Agreement, and no other person or entity, including but not limited to any Third-Party Contract Manufacturer, shall have any right or claim against any Party by reason of these provisions or be entitled to enforce any of these provisions against any Party.

10.8. Notices. All notices required or permitted under this Agreement will be in writing and will be deemed received: (a) when delivered personally; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one (1) day after deposit with a commercial overnight carrier. All communications will be sent to the addresses set forth above or in the signature block below or to such other address as may be designated by a party by giving written notice to the other party pursuant to this section

10.9. Governing Law and Venue. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Delaware, without regard to its conflicts of laws provisions. For the purposes of litigating any dispute that arises under this Agreement, the parties hereto submit to and consent to the jurisdiction of the State of Delaware and agree that such litigation shall be conducted in the courts of New Castle County, Delaware, or the federal courts for the United States for the District of Delaware.

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