



## EI MICROCIRCUITS' TERMS AND CONDITIONS

THE SALE OF PRODUCTS ("PRODUCTS") BY EI MICROCIRCUITS, INC. AND ITS DIVISIONS AND AFFILIATES ("EI MICROCIRCUITS") ARE SUBJECT TO THESE TERMS AND CONDITIONS ("AGREEMENT") AND SPECIFICALLY EXCLUDE ANY OTHER OR ADDITIONAL TERMS OR CONDITIONS THAT CONFLICT, CONTRADICT OR ARE IN ADDITION TO THESE TERMS AND CONDITIONS, WHETHER CONTAINED IN A PURCHASE ORDER, CONFIRMATION, ELECTRONIC (EDI) TRANSMISSION, CUSTOMER PORTAL, DOCUMENT, PREPRINTED TERMS AND CONDITIONS OR ANY OTHER COMMUNICATION (COLLECTIVELY, THE "CUSTOMER TERMS") FROM ANY CUSTOMER ("CUSTOMER"). THE CUSTOMER TERMS ARE HEREBY WAIVED BY CUSTOMER AND SHALL BE DEEMED OBJECTED TO BY EI MICROCIRCUITS WITHOUT NEED OF FURTHER NOTICE OR OBJECTION AND NO SUCH TERMS WILL UNDER ANY CIRCUMSTANCES BE BINDING UPON EI MICROCIRCUITS UNLESS ACCEPTED BY EI MICROCIRCUITS IN WRITING.

- 1. ORDERS.** All orders are subject to acceptance by EI Microcircuits. All orders for Products are considered custom and therefore are noncancelable and non-returnable. The Customer may not cancel or reschedule Orders without EI Microcircuits' prior written consent, subject to the following limitations:
  - a Push Out:** Customer requests for pushing out Product delivery dates need prior written approval by EI Microcircuits. For an order scheduled for delivery in the current, next, or following month (e.g., 1-90 days,) orders may only be moved to the end of the calendar month in which delivery was originally scheduled for delivery (e.g., if the originally scheduled delivery date was September 5, the max extension for this delivery is to September 30). If the Customer is requesting to push out an order due in 90+ days, the order may be moved out no more than 6 months from the originally scheduled delivery date.
  - b Cancellation/Reduction:** Customer requests for order cancellations or order quantity reductions will be evaluated by EI Microcircuits, and must be approved by EI Microcircuits. Any such approval will require at a minimum that the Customer be responsible for any Excess Material on hand or ordered by EI Microcircuits, as described in Section 2 below, as well as the total cost of Work in Process (e.g. Product currently in production) and Finished Products at the time of the approval of order cancellation/reduction.
- 2. EXCESS MATERIAL.** Any excess material due to minimum buys, minimum package quantity, order reductions, or order cancellations ("Excess Material") will be the sole responsibility of the Customer. EI Microcircuits will make every effort to use any Excess Material for other builds if requirements exist or to try to return material to EI Microcircuits vendor for a refund. All applicable re-stocking fees will also be the responsibility of the Customer. Customer agrees to pay for Excess Material upon receiving a list of said material along with its associated costs, payable Net 10 days from invoice date.
- 3. PRICES.** EI Microcircuits quoted prices apply for 60 days or as otherwise expressly stated in its quote. EI Microcircuits may increase prices if EI Microcircuits' costs increase or in the event of other circumstances beyond EI Microcircuits' reasonable control. Prices are for Products only and do not include taxes, impositions and any other charges, fees, shipping charges and duties imposed by any government authority. Customer is responsible for any additional fees and taxes.
- 4. TERMS OF PAYMENT.** Payment of the total invoice amount, without offset or deduction, is due Net 30 days from the invoice date or per prior established credit terms. On any past due invoice, EI Microcircuits is entitled to charge interest at 1.5% per month (or if lower, the highest rate permitted by applicable law) from the payment due date to the date of payment, plus reasonable attorney fees and collection costs. EI Microcircuits may change Customer credit terms at any time. EI Microcircuits may apply payments to payments of interests first, and then to principal amounts owing, or allocate to any of Customer's accounts at EI Microcircuits' discretion.
- 5. DELIVERY AND TITLE.** Customer is responsible for all shipping costs and any applicable surcharges, including, without limitation, fuel surcharges. Title and risk of loss pass to Customer upon delivery of the Products to the carrier. EI Microcircuits' delivery dates are estimates only and EI Microcircuits is not liable for delays in delivery. EI Microcircuits reserves the right to make partial

shipments and Customer will accept delivery and pay for the Products delivered. A delayed delivery of any part of an Order does not entitle Customer to cancel other deliveries.

- 6. ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS.** Customer must notify EI Microcircuits in writing of any damage, shortage, or other discrepancy to Products within 10 days after the applicable delivery date. After the 10th day, Customer is deemed to have accepted the Products and may not revoke acceptance. Customer cannot return Products without a return material authorization ("RMA") number issued by EI Microcircuits. Returned Products must be in original manufacturer's shipping cartons or equivalent. Customer must return all Products, freight prepaid, as specified in the RMA at EI Microcircuits' discretion, EI Microcircuits will return all Products not eligible for return to Customer freight collect or hold Products for Customer's account at Customer's expense.
- 7. EI MICROCIRCUITS LIMITED WARRANTY.** For a period of one (1) year from the date of delivery to Customer, Value-added work performed by EI Microcircuits on Products will conform to Customer's written specifications accepted by EI Microcircuits prior to commencing such work ("Customer's Specifications"). For components procured by EI Microcircuits from third parties for incorporation into Products, EI Microcircuits makes no warranties regarding such components, and EI Microcircuits sole responsibility will be to transfer to Customer any component warranties and indemnities authorized by the manufacturer of such components, including any transferrable warranties and indemnities for intellectual property infringement. EI MICROCIRCUITS MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITATION, EI MICROCIRCUITS MAKES NO WARRANTY OF NON-INFRINGEMENT. If value-added work in Products supplied by EI Microcircuits does not meet Customer's Specifications, the Products will be, at EI Microcircuits election: (1) repaired at no cost to Customer, (2) replaced at no cost to Customer; or (3) Customer's purchase price for such non-compliant Products will be refunded. Customer must make a claim for any breach of Warranty and must return Products to EI Microcircuits within such one (1) year warranty period, freight charges prepaid.
- 8. LIMITATION OF LIABILITY.** EI MICROCIRCUITS IS NOT LIABLE FOR AND CUSTOMER IS NOT ENTITLED TO ANY LOST PROFIT DAMAGES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY FOR SUCH DAMAGES. EXCLUDED DAMAGE SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, LOSS OF USE, REWORK, MANUFACTURING EXPENSE, INJURY TO REPUTATION, OR LOSS OF CUSTOMERS. CUSTOMER'S RECOVERY FROM EI MICROCIRCUITS FOR ANY DIRECT DAMAGES WILL NOT EXCEED THE PRICE OF THE PRODUCT AT ISSUE. CUSTOMER WILL INDEMNIFY, DEFEND AND HOLD EI MICROCIRCUITS HARMLESS FROM AND AGAINST ANY CLAIMS BASED ON OR ARISING OUT OF; (i) EI MICROCIRCUITS' COMPLIANCE WITH CUSTOMER'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS, (ii) MODIFICATION OF ANY PRODUCTS BY ANYONE OTHER THAN EI MICROCIRCUITS, OR (iii) USE IN COMBINATION WITH OTHER PRODUCTS.
- 9. FORCES BEYOND EI MICROCIRCUITS' CONTROL.** EI Microcircuits is not liable for failure to fulfill its obligations for any accepted Order or for delays in delivery due to causes beyond its reasonable control, (for example and without limitation: acts of God, acts or omissions of the Customer, man-made or natural disasters, epidemic medical crises, pandemics, materials shortages, strikes, acts of terrorism, delays in transportation, or inability to obtain labor or materials through its regular sources).
- 10. USE OF PRODUCTS.** Products supplied by EI Microcircuits are not authorized for use in critical safety or other applications where a failure may reasonably be expected to result in personal injury, loss of life, or catastrophic property damage. If Customer uses or sells the Products for use in any such applications, Customer acknowledges that such use or sale is at Customer's sole risk. Customer will indemnify, defend and hold EI Microcircuits, including its affiliates, agents, employees, and vendors harmless, from and against any and all claims, costs, liabilities and expenses (including reasonable attorney's fees and costs) arising out of or in connection with such use or sale.
- 11. EXPORT/IMPORT.** Certain Products sold by EI Microcircuits and other related technology and documentation may be subject to export control laws, regulations and orders of the United States and the export or import control laws and regulations of other countries. Customer will not directly or indirectly export or divert any Products and other related technology and documentation to any third party or country where such export or transmission is restricted or prohibited. Customer agrees it is responsible to obtain any license to export, re-export, or import as may be required.



**12. PRODUCT INFORMATION.** In the course of producing Products for Customer, EI Microcircuits may be asked, agree to supply or obtain from its suppliers or other sources, technical or other information related to a Customer's Product specifications, replacement components to be used in the production of Products, export/import control classifications, uses or conformance with legal or other requirements, or other advice and guidance. Such information is provided by EI Microcircuits to Customer on an "AS IS" basis. EI Microcircuits makes no representation as to the accuracy or completeness of the Product information, nor is EI Microcircuits responsible for the use by Customer of any other Product information and DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND LIABILITIES UNDER ANY THEORY WITH RESPECT TO THE PRODUCT INFORMATION, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. EI Microcircuits recommends Customer validate any Product information before using or acting on such information. All Product information is subject to change without notice. EI Microcircuits is not responsible for typographical or other errors or omissions in Product information.

**13. ELECTRONIC ORDERS.** In the event that any part of the purchase and sale of Products utilizes electronic data interchange, internal or third party portal, or any other electronic means ("Electronic Purchase Order"), this Agreement will continue to apply to the purchase and sale of Products between Customer and EI Microcircuits.

**14. GENERAL.**

- a. The laws of the State of Minnesota will exclusively govern any dispute between EI Microcircuits and Customer arising out of or otherwise related to EI Microcircuit's supply of Products to Customer. EI Microcircuits and the Customer agree that the federal and state courts in the state of Minnesota shall be the exclusive venue for any and all claims related to the supply of Products to Customer and/or arising out of this Agreement, and each party waives any objection thereto. The United Nations Convention for the International Sale of Goods shall not apply.
- b. Customer may not assign this Agreement without the prior written consent of EI Microcircuits. EI Microcircuits or its affiliates may perform the obligations under this Agreement. This Agreement is binding each party as well as its successors and assigns.
- c. This Agreement can only be modified in a writing signed by authorized representatives of both EI Microcircuits and Customer.
- d. EI Microcircuits and Customer are independent contractors and agree that this Agreement does not establish a joint venture or partnership.
- e. EI Microcircuits' failure to object to any document, communication, or act of Customer will not be deemed a waiver of any terms and conditions in this Agreement.
- f. The unenforceability of any of the terms or conditions of this Agreement will not affect the remainder of the terms or conditions.
- g. Products, including software or other intellectual property, are subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses.
- h. Customer and EI Microcircuits will comply with applicable laws and regulations.
- i. The prevailing party to any dispute arising out the supply of Products to Customer or otherwise arising out of related to this Agreement is entitled to its reasonable attorneys' fees and courts costs.