



## TERMS AND CONDITIONS FOR SALE REV K

The sale of material and/or services by M C Test Service, Inc. d/b/a MC Assembly or any of its subsidiaries, including without limitation, MC Assembly, LLC ("Seller") will be made solely under the terms and conditions set forth herein. No other terms or conditions, whether contradictory or in addition to those set forth herein, and whether dated before or after the date hereof, shall be applicable or enforceable unless other such terms and conditions are in writing and signed by a duly authorized representative of M C Test Service, Inc., d/b/a MC Assembly, or any of its subsidiaries, including without limitation, MC Assembly LLC.

1. **SHIPMENT, TITLE, AND RISK OF LOSS:** All shipments are made F.O.B. Seller's factory. Title and risk of loss transfer to Buyer upon shipment from Seller's factory.
2. **PATENTS:** All work done under these terms by Seller is done in accordance with Buyer's design and specification and Seller shall have no liability for any claims of patent or other intellectual property infringement claims, and Buyer shall indemnify Seller with respect to any such claims. Buyer represents and warrants to Seller that the specifications, drawings or other information provided by Buyer to Seller for use in connection with this agreement are the sole and exclusive property of Buyer and that Buyer has full legal right to provide such information to Seller for use by Seller in connection therewith.
3. **PAYMENT:** Subject to approval by Seller's Credit Department, all invoices are due and payable in United States Dollars in thirty (30) days from the date of invoice. Unless otherwise specified, prices do not include applicable taxes, excises, duties, quotation fees or other governmental impositions that Seller may be required to pay or collect under any existing or future law and any such additional charge shall be paid by and/or for the account of and reimbursed by Buyer. Buyer agrees to provide financial statements to MC Assembly upon request. MC Assembly reserves the right to change credit terms at any time, based on payment history, information from customer financial statements, credit references, Dun & Bradstreet reports, or other credit sources. MC Assembly may charge interest on any past due balance at the maximum rate allowed by law with said interest being calculated from the date of default. In the event that the account is placed with a third party for collection, Buyer will pay all costs including reasonable attorney fees, court costs and finance charges.
4. **LAW:** This agreement shall be governed by, subject to, and construed according to the laws of the State of Florida, without regard to principles of conflicts of law.
5. **PURCHASE ORDER CANCELLATION/FORECAST CANCELLATION/TERMINATION/END OF LIFE PRODUCT:** Buyer may cancel an order/forecast or defer delivery only upon the written prior consent of Seller and only upon the condition that Buyer assumes immediate liability and makes payment as requested to Seller for all work completed at the unit price.

Upon notice of cancellation, Seller will provide Buyer with documented cancellation charges related to accepted Orders/Forecasts. Buyer agrees to provide Seller a purchase order for the cancellation costs and/or purchase order for build-out quantities to reduce raw material buyback within fifteen (15) days after Buyer acceptance of cancellation charges.

**A) EXCESS, OBSOLETE MATERIAL LIABILITY:** Buyer agrees to assume full liability for components that are purchased to MOQ min/mul and at standard lead times, including NCNR and custom items. Components with no demand within three (3) months are defined as slow moving or excess. Seller will identify and justify no-demand and slow moving inventory quarterly. Buyer agrees to purchase the excess or slow moving material after three (3) months. The raw material sell-back will be valued at component standards plus material burden (standard cost multiplied by quantity multiplied by burden). Seller will use commercially reasonable efforts to move broken industry package inventory to other Seller's customers.

6. **ATTORNEY FEES:** In the event that either party resorts to legal action to enforce or interpret the terms and provisions of this agreement, the prevailing party shall be entitled to recover from the other party the costs of such action so incurred, including, but not limited to, reasonable attorney's fees.

7. **WARRANTY:** Seller warrants to Buyer that items assembled or manufactured by Seller will conform to the mutually agreed upon specifications and be free from defects in workmanship upon shipment from Seller's factory. Seller's obligation under this warranty is limited to replacing or repairing at Seller's option, without charge, any of said items subject to the following:

- A) Mutual agreement that said items have manufacturing defect.
- B) Product is returned within twelve (12) months of manufacture.

**THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND COMPRISE SELLER'S SOLE AND ENTIRE WARRANTY OBLIGATIONS AND LIABILITY TO BUYER, ITS CUSTOMERS AND ASSIGN. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. NO AFFIRMATIONS BY SELLER, BY WORDS OR ACTIONS, OTHER THAN AS SET FORTH IN THIS SECTION SHALL CONSTITUTE A WARRANTY.**

8. **LIMITATION OF LIABILITY:** SELLER IS NOT LIABLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND RESULTING, DIRECTLY OR INDIRECTLY, FROM THE DESIGN, DELIVERY, MATERIAL, WORKMANSHIP, OPERATION OR INSTALLATION OF THE ITEMS BEING ASSEMBLED UNDER THIS ORDER, AND SELLER DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN. BUYER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES, SELLER IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY BUYER FOR SUCH PRODUCTS OR SERVICES.

9. **FORCE MAJUERE:** Seller shall not be responsible for any failure or delay, in whole or in part, to perform any of its obligations hereunder, to the extent and for the length of time, that performance is rendered impossible due to an event or occurrence beyond the reasonable

control of Seller, including acts of God, actions by any government authority (whether valid or invalid), riots, public insurrections, wars, sabotage, terrorism, floods, fire, windstorms, hurricanes, natural disasters, explosions, failure or interruptions in transportation, telecommunications or data transmission systems, and other circumstances of substantially similar character beyond the control of, and not reasonably foreseeable by, Seller.

10. **MISCELLANEOUS.** Buyer may not transfer or assign (by operation of law or otherwise), these terms and conditions, the related order or any of the rights, interests or obligations thereunder without the prior written approval of Seller. Any waiver, modification, supplement, amendment, consent or acquiescence with respect to any provision of these terms and conditions, the related order, or the transactions contemplated hereunder shall be in a written instrument executed on behalf of both Buyer and Seller. No waiver of any of the provisions of these terms and conditions or the related order by any party should be deemed or shall constitute a waiver of any other provision, nor shall any such waiver constitute a continuing waiver.
11. **MANDATORY ARBITRATION:** Any dispute, controversy or claim arising out of or relating to these terms and conditions, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules. Each party understands that neither party will be able to bring a lawsuit concerning any dispute, controversy or claim arising out of or relating to these terms and conditions, except in connection with the enforcement of the decision of the arbitrator pursuant to this provision.

The arbitration shall take place before a single AAA arbitrator in Melbourne, Florida. If the parties are unable to agree upon a mutually acceptable arbitrator, each party will submit a list of three potential arbitrators to the AAA at its office in or closest to Melbourne, Florida, which arbitrators must be AAA arbitrators, and AAA will appoint the arbitrator from the list(s) received. The arbitrator shall be entitled to grant any relief permitted by law or equity, including injunctive relief. The award rendered by an arbitration proceeding shall be final and binding and judgment may be entered upon the award in accordance with applicable law in any court having jurisdiction over the applicable party.

All fees and expenses of the arbitration relating to the arbitrator, including the costs of secretarial or other assistance, rental of space and other direct expenses (as determined by the arbitrator), will be paid by the parties in equal shares (the “Direct Arbitration Costs”). Other fees and expenses of the arbitration (including attorneys’ or other experts’) will be paid by the party incurring them, provided, however, the party prevailing on substantially all of its claims shall be entitled to recover such fees and expenses together with its share of the Direct Arbitration Costs from the other party.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be duly executed and delivered, effective as of the date set forth below, by their officers, duly authorized.

Each party agrees that the electronic signatures of the parties included in this agreement are intended to authenticate this writing and to have the same force and effect as original signatures and each party agrees to be bound by the electronic copy of this agreement. The exchange of copies of this agreement and of signature pages by facsimile transmission, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means, or by combination of such means, shall constitute effective execution and delivery of this agreement as to the parties and may be used in lieu of the original agreement for all purposes