

**Endicott Interconnect Technologies, Inc.**  
**Sales Terms and Conditions**  
**June 01, 2009**

- 1) Endicott Interconnect's Internet Terms and Conditions URL Location  
Endicott Interconnect Technology's Inc. (Endicott Interconnect) Sales Terms and Conditions can also be found on Endicott Interconnect's Internet at the following URL: [http://www.endicottinterconnect.com/AboutEI\\_index.php](http://www.endicottinterconnect.com/AboutEI_index.php). Copies of Endicott Interconnect Sales Terms and Conditions can also be obtained by calling 866-820-4820.
- 2) Acceptance  
Acceptance of Buyer's order is expressly limited to and made conditional upon these Sales Terms and Conditions. Any of Buyers terms and conditions which are in addition to or different from these Sales Terms and Conditions offered by the Buyer at any time, whether or not such terms or conditions materially alter these Sales Terms and Conditions and irrespective of Endicott Interconnect's acceptance of payment, which are not separately agreed to in writing by a representative of Endicott Interconnect's Account Services or Contract Administration are hereby objected to and shall be of no effect.
- 3) DELIVERY
  - a) Customer shall take delivery of products as set forth herein ("Agreement"). Any order stating a different delivery schedule shall not become part of this agreement unless specifically agreed to by Endicott Interconnect in writing.
  - b) All non-USML product shipments shall be INCOTERMS: EXW Endicott NY. Title and risk of loss for products pass to the customer upon tender to the carrier for shipment. Customer will be deemed to have accepted the product within ten (10) days after the tender to carrier.
  - c) Buyer is responsible for insurance against damage to the product being shipped.
  - d) The product will be shipped in standard commercial packaging unless otherwise specified. Cost of any special packaging requirements will be the responsibility of the buyer.
- 4) PRICES
  - a) Prices may be quoted in U.S. dollars or Euros with U.S. Dollars taking precedence. Prices are firm for Thirty (30) days from the date of quotation. After such period prices are subject to change by Endicott Interconnect.
  - b) Endicott Interconnect production prices will be based on a mutually agreed to forecasted volume for the 12-month period at issue. Endicott Interconnect will perform quarterly assessments of purchase volume rates against annual volume rates. In the event that the actual purchase volume rate is below the forecasted volume rate and upon written notice to the Customer, pricing may be adjusted accordingly. Prototype prices are based on quoted quantities.
  - c) Endicott Interconnect shall have the right to revise prices in the event of (a) any variation of market prices of components, parts and raw materials. (b) changes in specifications, or (c) changes in the volume upon which such prices were quoted.
- 5) CUSTOMER RESPONSIBILITIES
  - a) Customer represents and warrants that:
    - i) The customer assumes all responsibility for any higher level assemblies incorporating Endicott Interconnect products.
    - ii) Customer will not: (1) make any representations or warranties about Endicott Interconnect or the products other than those Endicott Interconnect specifically authorizes in writing; or (2) take any action or make any commitment in Endicott Interconnect's name with out prior authorization in writing.
- 6) PAYMENT  
Endicott Interconnect shall invoice customer after the products have been shipped. Customer shall pay the full amount of the invoice within thirty (30) days of the invoice date, provided however, that Endicott Interconnect shall have the right to require payment before shipment or payment via letter of credit. Endicott Interconnect may stop shipments to a customer if the customer does not comply with applicable credit terms or limits of this agreement. Late payment of invoices may be assessed a charge of 2.0 % of the balance due per month or the statutorily allowed maximum rate of interest in accordance with the laws of the State of New York. Note: Any fees incurred for currency conversion are the customer's responsibility.
- 7) CANCELLATION AND RESCHEDULING
  - a) Canceling any portion of an order for products within thirty (30) days of the acknowledged ship date will result in a cancellation fee equal to the full price of the portion of the order affected. Cancellation requests prior to (30) days of the acknowledged ship date will require a cancellation fee to the customer based on components, materials, and work-in-process equal to the same proportion of the quoted price as the degree of completion bears to full completion.
  - b) Customer may reschedule any portion of an order for Endicott Interconnect products and services one-time only to a date not more than sixty (60) days after the acknowledged ship date by sending Endicott Interconnect written notice at least fifteen (15) days prior to the acknowledged ship date. Any additional rescheduling will require Endicott Interconnect approval and will result in a rescheduling fee.
- 8) CHANGES
  - a) In the event that Endicott Interconnect's ability to supply product becomes constrained, Endicott Interconnect may, as Endicott Interconnect deems reasonable, reduce quantities or delay shipments, with advance notice.
  - b) Endicott Interconnect retains the right to discontinue or end of life any product with prior notification to the customer.
  - c) Endicott Interconnect will have the right to change the Endicott Interconnect specifications of any product/process.
  - d) Customer initiated engineering changes will be subject to an administration fee. In addition all charges related to the implementation of the change will be passed to the customer. Endicott Interconnect retains the right to adjust product pricing based on any engineering change.
- 9) TAXES
  - a) The customer is responsible for all taxes related to products and services except for taxes based on Endicott Interconnect's net income.

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10) LIMITED WARRANTY

- a) Endicott Interconnect warrants printed circuit board, circuit board assembly products and chip carrier substrates (except prototypes) to be free from defects in material and workmanship for one (1) year from date of shipment with the exception to circuit board assembly components in which the manufacturer's warranty shall apply.
- b) Endicott Interconnect's sole liability and the customer's sole remedy for breach of warranty shall be limited as stated in this section 10 and section 12.
- c) If Customer claims that any products are nonconforming, customer shall (1) promptly notify Endicott Interconnect in writing of the basis of such nonconformity; (2) follow Endicott Interconnect's instructions for return of the products; and (3) at Endicott Interconnect's request, return the products freight collect to the Endicott Interconnect designated location. Endicott Interconnect has the sole discretion to apply minimum return quantities.
- d) If Endicott Interconnect determines such products do meet warranty, Endicott Interconnect will, at Endicott Interconnect's option, repair or replace the products, or issue a credit at the most recent price. If Endicott Interconnect replaces the products, the returned products become Endicott Interconnect's property. This warranty does not cover products that are defective because of accident, abuse, misuse, negligence, modification, improper handling, next level assembly processing, maintenance, removal or alteration of labels by customer or a third party, failure caused by a product which Endicott Interconnect did not provide or for which Endicott Interconnect is not responsible, for use or storage in other than Endicott Interconnect's specified operating environment.
- e) If Endicott Interconnect determines that such products are conforming or not under warranty Endicott Interconnect will notify the customer:
  - i) Endicott Interconnect will return the products to the customer at the customer's expense. Additionally the customer will be responsible for the original returned product's freight charges to Endicott Interconnect.
  - ii) Upon a joint agreement between Endicott Interconnect and the customer, Endicott Interconnect will repair or replace the products.
- f) This warranty is not transferable. Endicott Interconnect does not warrant: (1) uninterrupted or error free operation or functionality of the products, (2) that Endicott Interconnect will correct all defects, or (3) services. No course of dealing, course of performance, usage of trade, or description of products or services shall be deemed to establish a warranty, express or implied.
- g) All prototypes are provided "as is" without warranty or indemnification of any kind by Endicott Interconnect.
- h) THE FOREGOING WARRANTIES ARE THE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR TERMS, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OR TERMS OF MERCHANTABILITY, FITNESS OR USE FOR A PARTICULAR PURPOSE, AND SATISFACTORY QUALITY.

11) PATENTS AND COPYRIGHTS

- a) Endicott Interconnect shall have no obligation regarding any claim based on any of the following:

- i) anything customer provides which is incorporated into a product or service including, but not limited to, specifications, designs, documents, reports, or data;
- ii) customer's modification of a product or service;
  - (1) the combination, operation, use of a product/service with any product, data, or apparatus that Endicott Interconnect did not provide; or
  - (2) Infringement by a non-Endicott Interconnect product alone, as opposed to its combination with products Endicott Interconnect provides to customer as a system.
- b) If a third party claims that a product or service Endicott Interconnect provides to customer infringes on that party's patent or copyright, and such claim is based upon any of the factors which constitute grounds for Endicott Interconnect to have no obligation to indemnify customer pursuant to the provisions of Section 11.0, paragraph a, Customer will defend Endicott Interconnect against that claim at customer's expense and pay all costs, damages, and attorney's fees that a court finally awards.
- c) No license, immunity or other right is granted herein by either party to the other party, whether directly or by implication, estoppel, or otherwise, with respect to any patent, trademark, copyright, mask work, trade secret, or other intellectual property rights.
- d) Nothing in this agreement grants either party any rights to use the other party's trademarks or trade names, directly or indirectly, in connection with any product, service, promotion, publication or publicity without prior written approval of the trademark owner.

12) LIMITATION OF LIABILITY

- a) Endicott Interconnect is only liable for the value of the Endicott Interconnect product, minus the value of any salvageable components, regardless to the customer's usage.
- b) Under no circumstances is Endicott Interconnect, or its subcontractors, liable for any of the following:
  - i) Third-party claims against customer for damages.
  - ii) Loss of, or damage to, customer's records or data, or
  - iii) Special, incidental, or indirect damages or for any economic consequential damages (including lost opportunities, profits and savings), even if Endicott Interconnect is informed of their possibility.

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13) EXPORT REGULATIONS

- a) Regardless of any disclosure made by customer to Endicott Interconnect of an ultimate destination of products, customer will not export either directly or indirectly any product, or any system incorporating said product, without first obtaining all required licenses and authorizations from all relevant U.S. Government agencies and departments. Customer must disclose to Endicott Interconnect in writing any intention to export any products and ultimate destination at time of order. In addition, Customer: (1) recognizes that Endicott Interconnect may not know or have reason to know the intended function, or ultimate end-use of the customer's products and technical data and must rely on Customer to provide correct information for export and import of custom products and technical data, (2) agrees to provide all information necessary to determine all relevant export authorizations to export and import products and technical data, including as applicable the Export Classification Control Number (ECCN) and respective subheadings under the Export Administration Regulations (EAR), and the United States Munitions List (USML) Category with Paragraph under the International Traffic in Arms Regulations (ITAR), (3) agrees to assist with obtaining any required licenses and authorizations for export and import of products and technical data and with making any required filings. Customer shall be fully responsible for the correctness of information provided by Customer and any use of it to comply with applicable export regulations.

- g) No delay or failure by either party to act in the event of a breach or default hereunder shall be construed as a waiver of that or any subsequent breach or default of any provision of this agreement.
- h) If any part, term or provision of this agreement is declared unlawful or unenforceable by a court of competent jurisdiction, the remainder of this agreement shall remain in full force and effect.
- i) In the event of a conflict or any ambiguity between the terms of the Sales Acknowledgment section of this agreement and the Standard Sales Terms and Conditions of this agreement, except for sections 3.0, 4.0, 6.0, 7.0 10.0, paragraph a) of the Standard Sales Terms and Conditions will prevail.

14) GENERAL

- a) No information exchanged between the parties shall be considered confidential. Any exchange of confidential information must be made under a separate confidentiality agreement signed by the parties. Customer shall not disclose the terms or conditions of this agreement without Endicott Interconnect's prior written approval.
- b) This agreement may not be amended or modified except by a written amendment signed by both parties.
- c) Each party shall comply, at its own expense, with all applicable United States (local, state and federal), European Economic Union, and any other country or country group laws and regulations, and shall procure all licenses and pay all fees and other charges required thereby.
- d) Except for customer's obligation to pay, neither party will be responsible for failing to perform under this agreement for acts of God, natural disasters, or other similar causes beyond its reasonable control.
- e) The validity, construction and performance of this agreement will be governed by the substantive laws of the State of New York, United States as though this agreement were executed in and fully performed within the State of New York. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement. Neither party will bring a legal action against the other more than one (1) year after the cause of action arose, except for actions for nonpayment or to enforce intellectual property rights. Both parties waive the right to a jury trial in any dispute arising out of this agreement. Both parties agree that any action concerning this agreement shall be brought in a court of competent jurisdiction in the State of New York and hereby consent to the exclusive personal jurisdiction of any such court.
- f) The Customer may not assign or delegate this Agreement or any rights and obligations hereunder to