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Revision	Date	Notation of Changes	Modified By
A	03/18	Release In Intellect	Mike Braun
B	07/16/19	Updated Terms and Conditions of Purchaser to be aligned with PLA, (Private Label Agreement), as well as Supplier Quality Manual. Updated Document Format	Scott Bollig/Bruce Yolken/Mike Braun

**1. General Provisions**

- 1.1. These Terms and Conditions (Ts & Cs) apply to the requests for offers, the formation, the contents of, and the compliance with any agreement and/or purchase contract in the performance of which goods are supplied to Infinite Electronics.
- 1.2. Acceptance of the Agreement. The Terms and Conditions shall be deemed an offer by Infinite Electronics. Supplier accepts the Ts & Cs upon its written acceptance or upon commencement of any required work or service. Supplier's acceptance shall be limited to the express written terms of the agreement. Supplier agrees that the general terms of sale of the Supplier shall not apply to any purchase contract – not even in addition to these terms, that the applicability of such general terms of sale is hereby expressly excluded.
- 1.3. Each party may have a need to disclose to the other party confidential information relating to its business and affairs ("Confidential Information"). Neither party will disclose Confidential Information of the other to any third party without the express written consent of the originating party, nor disclose or make use of any Confidential Information other than in the performance of this Agreement. Each party shall use at least the same degree of care to avoid disclosure of Confidential Information as it uses with respect to its own Confidential Information and will procure from any third party to whom Confidential Information is authorized an agreement containing provisions substantially similar to those set out in this Section. Either party may seek injunctive relief to enforce its rights under this Section.
- 1.4. Intellectual Property. Infinite Electronics remains the owner of confidential information and any drawings, models, patterns, tools, dies, jigs, specifications of delivery or other documents (collectively "intellectual property") that buyer provides. Without Infinite Electronics' written consent, such intellectual property may only be used for the purpose of the delivery of materials to Infinite Electronics. Infinite Electronics may request at any time that such intellectual property be returned.
- 1.5. The following shall be considered confidential information of Infinite Electronics: (i) any written specifications for the material and processing of the material; (ii) any other business or technical information, including without limitation, all oral or written information relating to the materials, or information relating to buyer's customers, suppliers, business practices, products, designs, inventions, or research and development; and (iii) the terms and conditions of the Ts & Cs.
- 1.6. If any provision of this Agreement is determined to be invalid or unenforceable, the provision shall be deemed to be severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.
- 1.7. Suppliers shall at all times conform to the Infinite Electronics Supplier Quality Manual located at <https://www.infiniteelectronics.com/suppliers/>

**2. Delivery**

- 2.1. The ship date shall be the date designated by Infinite Electronics in a purchase order (designated as "promise date"), blanket release, or other writing. If the purchase order designates a "delivery by" date, then the Supplier is required to assign a ship date that ensures delivery to the required facility by the delivery by date. The parties agree that in the event the Supplier fails to ship any order for material on the required ship date, the buyer, in addition to other rights or remedies it may have, shall be entitled, at its option, to cancel the order/release for the material which was not timely shipped without any obligation or liability to Supplier and to purchase such material from a third party.
- 2.2. Delivery terms are referenced on the purchase order. If no other delivery terms are specified in the purchase order, the supplier shall deliver the material to Infinite Electronics Delivered Duty Paid Incoterms 2010 (DDP).

- 2.3. Infinite Electronics accepts no liability for goods which have been delivered in excess of written purchase order or release and such goods can be returned, shipping charges collect, to the supplier at its expense.
- 2.4. If delivery is not completed pursuant to Infinite Electronics purchase order or delivery schedule, Infinite Electronics may take such actions as it deems necessary to meet schedules, including expedited shipping and routing at the Supplier's cost and expense. The supplier shall immediately report any event, occurred or anticipated which may reasonably affect shipping on time.
- 2.5. Order acknowledgement and confirmation of shipping dates are required for all purchase orders.

### **3. Conformance**

- 3.1. The Supplier will deliver only goods that conform in all respects to the requirements described or referred to in the purchase order (and/or print) and are of the quantity, quality, and description required by the purchase contract.
- 3.2. The supplier shall maintain the proper identification and revision status specifications, drawings, process requirements, inspection/verification instructions, and other relevant technical data.
- 3.3. Infinite Electronics reserves the right to designate requirements for test specimens for design approval, inspection/verification, investigation or auditing.
- 3.4. Conforming goods are goods which satisfy each and every of the following (but not limited to):
  - 3.4.1. Are new and of new materials;
  - 3.4.2. Comply with any national and/or international laws, legal rules, regulations, directives, and other governmental provisions regarding the goods and the products which do or shall contain the goods;
  - 3.4.3. Do not breach any requirements and warranties contained hereunder or otherwise given by the supplier.
- 3.5. Infinite Electronics reserves the right of final approval of product, procedures, processes and equipment.
- 3.6. All suppliers providing calibration services must be certified to ISO17025 (or equivalent). All calibration certificates must identify standards used and must be traceable to NIST (National Institute of Standards Technology).
- 3.7. Supplier agrees to participate in all Infinite Electronics quality and development programs and implement recommended outcomes.

### **4. Price and Payment**

- 4.1. Payments for goods will in no event be due before invoice with details of goods itemized and specified in accordance with instructions. Supplier shall not invoice prior to delivery. Supplier shall invoice buyer upon shipment of the order.
- 4.2. Infinite Electronics shall make payment for conforming material at the price and payment terms stated in the purchase order. Unless otherwise stated, all payments are in US Dollars and include all storage, handling, packing, taxes, and any other charge.
- 4.3. Supplier expressly assumes the risk of any event or cause (whether or not foreseen) affecting such prices, including any foreign exchange rate changes, increases in raw material costs, inflation, increases in labor, and other manufacturing costs.

**5. Force Majeure**

- 5.1. Neither party shall be liable for failure to perform or delay in performance hereunder if such failure or delay is due to fire, storm, flood, war, embargo, or any act of God or other cause or contingency beyond such party's reasonable control; provided that, if any act or event described in this section prevents or will prevent the Supplier from performing its obligations under the Ts & Cs, the buyer shall have the right, without obligation or liability to Supplier to purchase material from another supplier until Supplier is able to resume performance of its obligations.

**6. Warranty**

- 6.1. The Supplier shall warrant with a signed Certificate of Conformance to be provided with each shipment that the product(s) and material(s):
- 6.1.1. Will conform to drawings, materials, descriptions, and specifications designated by Infinite Electronics and with all samples approved;
  - 6.1.2. Will be of merchantable quality and fit and sufficient for the particular purposes intended, new, best available technology, safe, of first-class materials and workmanship and free from defects and contamination;
  - 6.1.3. Will be marked to specifications and requirements;
  - 6.1.4. Shall handle and package product to preclude damage during processing and shipping. If material is received in a damaged condition, it will be treated as nonconforming material;
  - 6.1.5. Will not infringe any patents, copyrights, or other proprietary rights;
  - 6.1.6. Will be free from all liens and encumbrances.
- 6.2. The Supplier commits that upon any breach of above warranty stated in 6.1, the Supplier will be liable for up to and including:
- 6.2.1. The costs of repair, modification, cover or replacement of these goods;
  - 6.2.2. All loss, damage, costs, and expenses arising therein;
  - 6.2.3. All incidental, strict, and consequential damages arising therein;
  - 6.2.4. All liabilities, damages, charges, costs, and expenses that Infinite Electronics is required to pay or perform to or on behalf of any direct or indirect customer.
- 6.3. The Warranty period shall be the longest of: four years from the date Infinite Electronics accepts the materials or the warranty period provided by applicable law.

**7. Compliance**

- 7.1. Supplier agrees that:
- 7.1.1. In the manufacture and sale of goods to Infinite Electronics, supplier shall comply with all applicable federal, state, and local laws, orders, conventions, standards and regulations of all jurisdictions, including all countries of origin or delivery, ("Laws") relating to the goods, their manufacture, use, sale, importation, exportation, labeling, or otherwise, including without limitation, any laws relating to equal employment opportunity, veterans rights and jobs listing provisions, child labor, wages and hours, affirmative action, and all laws and regulations relating to occupational safety and health.
  - 7.1.2. The goods sold by supplier shall conform to the requirements of all laws
  - 7.1.3. The purchase contract shall be deemed to incorporate by reference all the clauses required by the provisions of said laws, orders and regulations binding upon supplier.
  - 7.1.4. All materials used in manufacturing shall satisfy current government and safety constraints on restricted, toxic and hazardous materials, as well as environmental, electrical, and electromagnetic considerations applicable to the country of manufacture and sale.

- 7.1.5. Supplier shall have a process to assure that governmental and safety constraints on restricted, toxic, and hazardous substances are complied with relative to the goods, the manufacturing process, and sub suppliers.
- 7.2. Trademark Protection: Infinite Electronics may require Supplier to place trademarks (MARKS) on material purchased. If such a request is made, Infinite Electronics grants to Supplier a limited, revocable, nonexclusive royalty free license for the term of the Ts & Cs to use the MARKS on products and packaging for materials in connection with the sale of material to Infinite Electronics only.
- 7.3. All suppliers are required to maintain appropriate record retention related to the product for a minimum of 5 years.
- 7.4. Infinite Electronics may have key characteristics, special quality, material, process or other controls imposed on this Purchase Order. Supplier shall flow down these requirements to any and all subcontractors.

## **8. Indemnity**

- 8.1. Supplier will defend or, at its option, settle, any claim, action or proceeding brought against Infinite based upon a claim that Products infringe, violate, or misappropriate a United States or foreign copyright, patent, or trade secret, and shall indemnify and hold Infinite harmless from and against all claims, damages and costs finally awarded by a court of competent jurisdiction against Infinite in any such action or proceeding. Infinite shall (i) promptly notify Supplier of any such claim in writing, (ii) give Supplier sole control of defense of such claim and all negotiations for the compromise or settlement thereof, and (iii) provide Supplier with all reasonable cooperation, information and assistance in connection with the claim unless their handling of the claim puts Infinite at risk.
- 8.2. Supplier shall have no liability for an infringement claim to the extent based upon (a) a combination of Products with other products not furnished by Supplier, or (b) any addition to or modification of Products by any person other than Supplier. If Products or any parts become or, in Supplier's opinion are likely to become, the subject of a valid claim of infringement or the like, Supplier shall have the right, at its option and expense, to (i) obtain for Infinite a license permitting continued use of Products or such parts, (ii) replace or modify Products or parts so that they become non-infringing, or (iii) refund the amount paid by Infinite for Products or infringing parts. Supplier shall have no liability for any costs incurred or settlement entered into without its prior written consent.
- 8.3. Each of Infinite and Supplier agree to indemnify and hold the other party, and their respective officers, directors, employees, successors, and assigns harmless against all losses, damages, or expenses of whatever form or nature, including attorneys' fees and other costs of legal defense, whether direct or indirect, that the indemnified party may sustain or incur as a result of any acts or omissions of the indemnifying party, arising out of or in connection with third-party claims including, but not limited to, (i) trademarks and other intellectual property of the indemnifying party supplied hereunder that infringe any patent or valid copyright of a third party, (ii) breach of any of the provisions of this Agreement by the indemnifying party, (iii) negligence or other tortious conduct by the indemnifying party, (iv) breach of the indemnifying party's representations or warranties, or (v) violation by the indemnifying party of any applicable law or regulation. The indemnified party shall (a) promptly notify such indemnifying party of any claim in writing, (b) give such indemnifying party sole control of defense of such claim and all negotiations for the compromise or settlement thereof, and (c) provide such indemnifying party with all reasonable cooperation, information and assistance in connection with the claim.
- 8.4. EXCEPT AS SET FORTH IN SECTION 6, THE PROVISIONS OF THIS SECTION 8 STATE THE EXCLUSIVE LIABILITY OF THE PARTIES WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF PRODUCTS OR USE

THEREOF, AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF NON-INFRINGEMENT, AND INDEMNITIES WITH RESPECT THERETO.

**9. Governing Law; Venue**

- 9.1. All matters arising out of or relating to this agreement, or a breach thereof, are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.
- 9.2. Any legal suit, action or proceeding arising out of or relating to this agreement, or a breach thereof, will be instituted in the federal or State courts located in the city of Irvine, California or its closest California venue. Each party irrevocably submits to the exclusive jurisdiction of the courts in any legal suit, action or proceeding.