

**MATTSON**  
**MASTER TERMS AND CONDITIONS OF PURCHASE**  
**(SUPPLIER-PROVIDED GOODS)**

CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT BETWEEN YOUR COMPANY ("You" or "Your") AND MATTSON TECHNOLOGY, INC., a Delaware corporation having its principal office address at 47131 Bayside Parkway, Fremont, CA 94538 ("Mattson"). References to "Mattson" herein shall include all subsidiary companies of Mattson Technology, Inc., whether directly or indirectly owned.

By shipping any of your products (each a "**Product**") described in any Mattson purchase order, you are agreeing to sell those Products to Mattson, and Mattson will agree to buy them, provided that these Master Terms and Conditions of Purchase (the "**Agreement**") shall be the only terms and conditions applicable to that sale and purchase.

Mattson's purchase orders can be accepted only on these terms and conditions.

If you do not agree to the terms of this Agreement, you shall not proceed with shipping any Products, or if you have already shipped the Products, you shall issue a refund of amounts paid by Mattson for the Products. Mattson's acceptance of Products shall not constitute its acceptance of any additional, inconsistent and/or conflicting provisions in any purchase order, release, acceptance or other written correspondence from you unless expressly agreed to in writing by Mattson, and Mattson shall not be bound by any such additional, inconsistent and/or conflicting provisions. Orders for Products shall each be deemed separate contracts for the purpose of these terms and conditions.

**1. Confidentially Obligations.**

1.1. Each party may be exposed to certain information concerning the other party's products and/or services which is confidential and proprietary information of such party (herein "**Confidential Information**"). Each party agrees to exercise at least reasonable care with respect to the other party's Confidential Information. Each party agrees not to disclose to any third party any Confidential Information of the other party. You further agree not to use Mattson's Confidential Information for any purpose not specified in this Agreement.

1.2. Any specifications, drawings, schematics, technical information, data, tools, dies, patterns, masks, gauges, test Product and other materials furnished to You by Mattson ("**Mattson-Supplied Materials**") shall (i) remain or become Mattson's property, (ii) be used by You exclusively to satisfy purchase orders made by Mattson, (iii) be clearly marked as Mattson's property, (iv) be segregated when not in use, and (v) be kept in good working condition at Your expense. You will treat any and all Mattson-Supplied Materials of whatever type furnished by Mattson to You as being Confidential Information and as incorporating Other IP Rights, each in accordance with this Agreement. You shall be liable for any loss of, or damage to, any Mattson-Supplied Materials while in Your possession or control, ordinary wear and tear excepted.

1.3. You will ensure that none of Your employees or contractors shall disclose to any of Your affiliates or any third party any Software or Other IP Rights (each as defined in Section 2 below). If any disclosure of Software or Other IP Rights is made to any of Your affiliates or other third party by You or by any of Your employees or contractors, You will pay to Mattson, without limiting the generality of remedies available to Mattson as a result of any such breach, as liquidated damages (and not as a penalty) an amount equal to the present value of the business of Mattson compromised by such breach or breaches.

1.4. The obligations of the parties hereunder shall not apply to any materials or information which the receiving party can demonstrate, through documented evidence: (i) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available; (ii) is known by the receiving party at the time of receiving such information as evidenced by its records; (iii) is

hereafter furnished to the receiving party by a third party, as a matter of right and without restriction on disclosure; or (iv) is the subject of a written permission to disclose provided by the disclosing party. Disclosures of Confidential Information shall not be precluded if such disclosure is (a) in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; provided, however, that the responding party shall first have given notice to the other party hereto in order that such other party may obtain a protective order requiring that the Confidential Information so disclosed be used only for which the order was issued and the responding party uses reasonable efforts to have such information be treated as confidential and under seal; (b) is otherwise required by law; or (c) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

1.5. Upon any expiration or termination of this Agreement, each party shall, within five (5) days, deliver to the other party all of that other party's Confidential Information and copies thereof in its possession, power, custody or control, or at the other party's option, destroy such and provide a certificate supporting such destruction. Without limiting the generality of the foregoing, You shall so return or destroy at Your cost all Mattson-Supplied materials.

## **2. Limitations of Licenses; no Sale to Mattson Customers or other Third Parties.**

2.1. Mattson hereby grants You a limited royalty-free license to practice all applicable patent, copyright, moral right, mask work, trade secret and other intellectual property rights (other than software, the "**Other IP Rights**") disclosed to You pursuant hereto, but only to the extent necessary to enable You to manufacture Products or Spare Parts for sale to Mattson in accordance herewith. All Other IP Rights are retained by Mattson hereunder. No license is granted You hereby to reproduce, perform or display publicly or sell or otherwise transfer (i) any Product or Spare Part to any Mattson customer, or (ii) any product or spare part embodying any Other IP Rights to any Mattson customer or any other person. Other IP Rights shall include without limitation of the foregoing all the contents of any engineering drawings supplied to You by or on behalf of Mattson. You may not sublicense Your contract manufacturers or other contractors to use any Other IP Rights, or otherwise disclose any Other IP Rights to any third party. You agree that You will not Yourself create, or cause or permit any third party to create, derivative works of Other IP Rights.

2.2. Mattson shall retain title to any software delivered to You or otherwise included in any Product or Spare Part ("**Software**"). Mattson hereby grants You a paid-up, non-exclusive, irrevocable license, with no right to sublicense to any third party, to Software, including copyrighted or patented software, solely to reproduce at Your facility in the manufacture of Products and Spare Parts by or on behalf of Mattson for sale to Mattson. No such Software license is granted You for sale or other transfer of Products or Spare Parts to any Mattson customer or any other third party. This Software license shall terminate if You terminate or materially breach this Agreement You agree that You will not Yourself disclose any Software to any third party or attempt to decompile, reverse engineer or disassemble Software incorporated in any Product or Spare Part or otherwise delivered pursuant hereto, or to create derivative works thereof.

2.3. Without Mattson's prior written consent, You agree that You will not accept any purchase order for any Product or Spare Part from any customer of Mattson or subsidiary, affiliate, officer or employee thereof, or any corporation or other entity owned or controlled by any of the foregoing. You will never sell or otherwise transfer any Product or Spare Part to any such entity. Without limiting the generality of the foregoing, this prohibition applies to consumables which are Spare Parts as well as Products which can only be manufactured using Software, Other IP Rights or Mattson's Confidential Information. You understand that any breach of this Section potentially allows a revenue stream of Mattson to be diverted to the benefit of third parties, including You. You agree that You will pay Mattson in the event of any breach of this Section 2 any and all costs or losses incurred by Mattson as a result, indirect or direct, of such breach, whether such breach contributed in part to such result or was exclusively responsible for such result. You

acknowledge that the costs to Mattson of any breach of this Section 2 by You include without limitation: (i) the loss of Mattson's margin on any Products or Spare Parts so sold; (ii) if applicable the cost to Mattson of the loss of any revenue stream that Mattson loses as a result of such breach, measured as the present value of such income stream; and (iii) the value of any trade secret of Mattson or other Confidential Information of Mattson lost because of such breach.

**3. Order Acceptance.** All purchase orders of Mattson shall be subject to acceptance by You. Such acceptance shall be deemed to occur if You (a) confirm acceptance of such purchase order in writing; (b) fail to reject Mattson's purchase order within five (5) days of receipt; or (c) ship any Product ordered.

**4. Prices.** Unless mutually agreed otherwise by the parties, the price of the Products, whether new or refurbished, and of spare parts for Products ("**Spare Parts**"), whether new or refurbished, shall be that set forth in Mattson's purchase order ("**PO**") in effect at the time it is accepted by You. All prices shall be in U.S. dollars. Unless Mattson's PO states otherwise, prices do not include freight, insurance or other similar charges. If not added to the applicable purchase order, Mattson will have no obligation to pay any such freight, insurance or other similar charges.

**5. Most Favorable Pricing.** Throughout the term of this Agreement, You warrant to Mattson that the prices set forth in this Agreement, in conjunction with the discounts offered herein for any similar item or equivalent service, are no higher than Your lowest price charged any customer for a comparable product or spare part regardless of any special terms, conditions, rebates or allowances of any nature. Nothing in this Section shall be interpreted as modifying Section 2 hereof by authorizing or permitting You to use any Other IP Rights (as defined in such Section) in the manufacture or sale of a comparable product or spare part or otherwise. If You sell any comparable product to any other customer at a price lower than the price set forth in this Agreement You shall adjust Mattson's price to achieve and maintain the lower price for all future invoices for such Product. In addition, Mattson may adjust its payment for any Product invoiced by You and unpaid by Mattson to achieve the lower price. In the event that You offer a lower price for any comparable product to any customer(s) for any reason, You shall immediately notify Mattson of each price change and adjust Mattson's price to meet and, if applicable, compensate for the new pricing structure. Mattson shall have the right upon reasonable request and advance written notice to You, not more than once annually, to have an independent third party auditor agreed to by both Mattson and You audit Your applicable books and records to the extent necessary to verify Your compliance with this Section 5. If such audit reveals an error of more than five percent (5%) of the amounts paid by Mattson in the aggregate, You shall pay the reasonable fees and expenses of such audit. The auditor will notify both Mattson and You in writing as to the comply/non-comply results of the audit, but will not provide Mattson with any of Your specific pricing data.

**6. Shipment of Products.** You agree that timely delivery of conforming Products and Spare Parts, in the full quantity specified in Mattson's purchase order, is of the essence to Mattson You shall exert every commercially reasonable effort, including overtime and premium shipment at Your expense, to meet the promised delivery date; provided, however, that failure to achieve timely delivery, despite use of such efforts, shall not relieve You of liability for failure to meet the designated delivery date. You agree to notify Mattson immediately if at any time it appears that the delivery schedule set forth in a purchase order may not be met. Such notification shall include the reasons for possible delays, steps being taken to remedy such problems and a proposed new delivery date. Unless otherwise stated in Mattson's PO, You may delay delivery less than thirty (30) days without penalty. If the actual delay in delivery is greater than thirty (30) days from the date of the notice, Mattson will have the option, in its sole discretion, to

either (i) extend time of delivery or performance, or (ii) terminate the uncompleted portion of that purchase order at no cost of any nature to Mattson. In either such case, You shall reimburse Mattson for any cost or expense that it suffers as a result of such delay, including without limitation any cost of accelerated shipping to Mattson's customer of a product incorporating the delayed Product.

**7. Delivery Terms.** Delivery of Products and Spare Parts shall be FCA Your facility specified in Mattson's PO. Mattson may revise shipping instructions as to any unshipped Products or Spare Parts upon written notice to You. Prior to shipment by You, Mattson may obtain at no charge to Mattson a change in the shipment date for Products or Spare Parts under a PO by submitting a written reschedule request to You. Title to the Products and Spare Parts and the risk of loss of or damage to the Products and Spare Parts ordered by Mattson will pass to Mattson upon delivery of the applicable Products or Spare Parts to Mattson's carrier at Your facility specified in the applicable PO. You shall pack and ship all Products and Spare Parts in compliance with the instructions set forth on Mattson's drawings for such Products or Spare Parts and all applicable transportation regulations, good commercial practice and in a manner adequate to ensure the safe arrival of the Products or Spare Parts to the named destination. You shall mark all containers with necessary lifting, handling, unpacking and shipping information, Mattson purchase order number, and an itemized packaging list for all contents contained in the applicable package.

**8. Product Inspection and Acceptance; Changes.**

8.1. Products and Spare Parts shall be subject to inspection and testing by Mattson and its customer to confirm that each Product or Spare Part: (i) conforms to the applicable specifications, as the same may have been furnished by Mattson to You from time to time prior to the applicable purchase order ("**Specifications**"); (ii) has no defects in material and workmanship; (iii) is new, and of the grade and quality specified; and (iv) has no other damage (collectively, the "**Product Acceptance Criteria**"). Such inspection may take up to sixty (60) days after delivery of such Product. Mattson shall advise You as soon as commercially practicable if a Product or Spare Part fails such inspection for any reason. If Mattson determines, in good faith, that a Product or Spare Part fails to substantially comply with its Product Acceptance Criteria (such Product or Spare Part manifesting a "Product Defect"), then Mattson will provide You with written notice thereof and such notice shall include a reasonably detailed description of the nature of the problem. You will correct the problem at the point of delivery of the Product or Spare Part (unless You shall pay for the Product or Spare Part to be returned to You) as soon as commercially practicable and promptly notify Mattson when the problem has been corrected. Mattson shall advise Supplier as soon as commercially practicable whether the Product or Spare Part substantially conforms to the Product Acceptance Criteria after such corrective action. The parties shall continue this process until such time that Mattson accepts the Product or Spare Part in accordance with this Section. Mattson shall be deemed to accept a Product or Spare Part only if it (a) confirms in writing its acceptance thereof or (b) fails to notify You of a problem therewith within sixty (60) days of receipt of the same.

8.2. Notwithstanding the foregoing, if, due to no fault of Mattson, a Product or Spare Part does not pass Acceptance Criteria within one hundred twenty (120) days of delivery, Mattson may give written notice to You of failure to meet such acceptance criteria on time. If the Product or Spare Part does not meet the Acceptance Criteria within fourteen (14) days of such notice, Mattson may, at Mattson's option; (a) return the Product or Spare Part to You (at your expense) for full credit, (b) accept such Product or Spare Part at an equitable reduction in price (as determined by Mattson in its sole discretion), or (c) have the Product or Spare Part replaced with a new one within one hundred twenty (120) days of Mattson's written election of such option.

8.3. Acceptance by Mattson shall in no event apply to latent defects and/or constitute a waiver of Mattson's rights and remedies with regard to any subsequently discovered defect or nonconformity. Any such

subsequently discovered defect or nonconformity shall also be included in the defined term "**Product Defect.**"

8.4.Changes to Product Specifications which are made by Mattson shall be implemented by You. You will inform Mattson if You believe that delivery periods and/or prices will be influenced by any such change, and the additional or reduced cost and additional delivery delay will be determined in each case by mutual agreement of the parties.

8.5. Changes to Product Specifications which You desire to make and which may have an unfavorable influence on the quality or reliability of the products, (e. g. production location, production processes, production sequences, handling, quality tests, etc) must be approved in advance in writing by Mattson. You will inform Mattson immediately of materials which have been discontinued by its vendors or suppliers. Mattson reserves the right to request initial samples from You before the corresponding change can be approved.

#### **9.Limited Warranty on Products and Spare Parts.**

9.1. You warrant to Mattson that each Product and Spare Part will have no Product Defects, as elaborated in Section 8 hereof. You further warrant that the Products and Spare Parts therefor will not infringe any third party's intellectual property rights. If a Product or Spare Part has a Product Defect and such defect is reported to You prior to the expiration of the warranty period, then You shall repair (which may include with Mattson's approval in writing a workaround for the applicable defect) or replace the Product or Spare Part or, in the event You determine in good faith that neither of the foregoing are commercially feasible, refund the purchase price and shipping and related charges paid for such Product or Spare Part. You shall perform required repairs until such time as the Product or Spare Part meets Acceptance Criteria. All of the warranties set forth in this Agreement, and all rights associated therewith, shall survive any delivery, inspection, acceptance, payment, relocation, resale, lease, or other transfer or reuse of the Products for the duration of the applicable warranty.

9.2.You will use the most expeditious manner possible to repair or replace, as specified by Mattson, including the use of overnight delivery services for shipment of Products and Spare Parts to and from Mattson. For any Product or Spare Part for which a repair or replacement timeline was identified in Mattson's purchase order therefor, You will repair or replace such Items within such timeline.

#### **10.Epidemic Failure.**

10.1. For the purposes of this Agreement, epidemic failure will be deemed to have occurred if, during the aforementioned warranty period, a substantially similar repetitive defect occurs in a number of instances of a particular Product indicating a common or systemic failure ("Epidemic Failure"). In the event of an Epidemic Failure, You and Mattson will cooperate to implement the following procedure: (i) the discovering party will promptly notify the other upon discovery of the failure; (ii) You and Mattson will jointly endeavor to immediately diagnose the problem, plan an initial work-around and effect a permanent solution. If necessary, Product changes will be implemented; and (iii) You and Mattson will mutually agree on a recovery plan which addresses customer notification and replacement scheduling, field removal, and return and reinstallation.

10.2. You will be responsible for the reimbursement of all reasonable, Direct Costs incurred by Mattson and/or Mattson contract manufacturers in rectifying any Epidemic Failure in a Product. "**Direct Costs**" shall mean: (i) all costs directly incurred in investigating the Epidemic Failure; (ii) all costs directly incurred in remedying the Epidemic Failure, such as retooling, recalibration, remanufacture and testing costs; (iii) all costs and expenses of defense in connection with lawsuits brought as a direct result of such Epidemic Failure; and (iv) all awards granted in connection with such lawsuits (to the extent such costs, expenses and awards relate to the Epidemic Failure). The parties agree that Your total aggregate liability per Epidemic Failure for Direct Costs shall be the greater of: (i) the total aggregate amount

paid by Mattson (and its contract manufacturers, if applicable) to You hereunder for the Product exhibiting the Epidemic Failure during the one-year period immediately preceding the Epidemic Failure; or (ii) one million dollars (\$1,000,000) ("**Epidemic Indemnity Amount**"). The aforementioned cap does not include the actual cost to You of replacement Products.

#### **11. Warranty Exceptions and Exclusions.**

11.1. The warranties set forth in Section 9 exclude any coverage for Products or Spare Parts that are defective because of: (a) any use not in material conformance with the Specifications and/or any accident, disaster, abuse, misuse, negligence, transportation damage or alteration caused by any party other than You or Your authorized representative; (b) failure of a Product caused by an ancillary product not recommended or otherwise authorized by You or in Product Acceptance Criteria; provided, however, in no event shall You be responsible for the proper operation, use and/or failure of a recommended product itself; or (c) failure to provide a suitable installation or operating environment, as such environment is set forth in the Specifications.

11.2. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCTS OR SPARE PARTS THEREFOR. ALL IMPLIED WARRANTIES AS TO SATISFACTORY QUALITY, PERFORMANCE, MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

**12. Limited Warranty on Services.** As to services, in addition to any express or implied warranties, You warrant that you possess the requisite expertise, facilities and equipment necessary and appropriate to perform the services, and that such services shall be performed in a safe and workmanlike manner. In addition to any other rights Mattson may have, if the services are found not to be performed as warranted within a period of one (1) year after the conclusion of Your performance of the services, You shall, at Mattson's option, either refund to Mattson the amount paid for the services, or perform the services again in a proper manner to the extent necessary to provide Mattson with the result originally contemplated by Mattson.

#### **13. Return Procedures.**

13.1. Products shall be returnable except as expressly provided in this Agreement. Mattson shall obtain a return material authorization ("**RMA**") from You prior to any return of a Product. Mattson shall return the Products with the RMA form to Your designated repair facility, with a written statement describing the Product Defect or other non-conformity. You shall not refuse to give Mattson a return material authorization absent good cause which shall be detailed in the refusal. You will be responsible for all shipping costs (which shall include any payment made by Mattson of duties, taxes or customs clearance) of repaired or replacement units of Product to Mattson and will bear the risk of loss of such Products while in transit and any other costs reasonably associated with the non-conforming Product, such as the cost to uninstall the Product.

13.2. Replacement Products will be warranted for the remaining warranty period of the original Product. If a Product is not eligible under warranty, any repair or replacement of such Product authorized by Mattson shall be deemed a Service and subject to the Services terms and conditions set forth in this Agreement. Notwithstanding the foregoing, in the event of any conflict between this Agreement and Your RMA process, as in effect from time to time, this Agreement shall control. Mattson will comply with Your RMA process in the form that it has been delivered to Mattson to the extent that there is no such conflict.

#### **14. Payment Terms.**

14.1. Mattson shall pay all invoices issued under this Agreement within forty-five (45) days from date of

invoice. Mattson may at any time set off any amount owed by Mattson to You against any amount owed by You or any of Your affiliated companies to Mattson. If Mattson is entitled to discount on amounts owed, such discount will be calculated from (i) the scheduled delivery date; (ii) the date of actual delivery or (iii) the date an acceptable invoice is received, whichever is the latest. For purposes of earning such advance payment discount, payment shall be deemed to be made on the date of mailing of Mattson's check.

14.2. All prices under this Agreement shall include all applicable taxes, including but not limited to sales/use taxes, transaction privilege taxes, gross receipts taxes, and other charges such as duties, customs, tariffs, imposts, and government imposed surcharges. Each such charge shall be stated separately on Your invoice. You shall remit all such charges to the appropriate tax authority unless Mattson provides sufficient proof of tax exemption. If any applicable law requires Mattson to withhold amounts from any payments to You under this Agreement, (i) Mattson shall effect such withholding, remit such amounts to the appropriate taxing authorities; and (ii) the sum payable by Mattson upon which the deduction or withholding is based shall be reduced by an amount equal to the amounts so withheld.

### **15. Cancellation.**

15.1. Mattson may, at no charge and for any reason, cancel an order or portion thereof, for standard Products or Spare Parts, upon written notice to You. Upon Your receipt of such notice, You shall, unless otherwise specified in such notice, immediately stop all work hereunder, give prompt written notice to and cause all of Your vendors or approved subcontractors to cease all related work as promptly as practicable. Except in the case of a Custom Product (as defined below) which includes Mattson intellectual property, You shall, wherever possible, place such products in process in its inventory, sell them to other customers or return them to its suppliers or vendors as promptly as practicable.

15.2. Mattson may for any reason cancel an order or portion thereof, upon written notice to You, if the order is for Products or Spare Parts which are custom engineered or otherwise incorporate Other IP Rights or Software (each a "Custom Product"), in which case the cancellation charge that Mattson shall pay shall be equal to the fees and expenses actually incurred by You in reliance on such order. Such fees and expenses shall not include: (i) the cost of Spare Parts which You can in the exercise of commercially reasonable efforts divert to other customers; (ii) any costs incurred by You to the extent that You did not Yourself stop all work on the Custom Product immediately upon receipt of Mattson's cancellation notice; (iii) any costs incurred by You to the extent that You did not cancel applicable orders from any of its suppliers or vendors within two business days after Mattson's cancellation; (iv) any costs incurred by You to the extent that any of Your suppliers or vendors did not itself stop all work on the Custom Product immediately upon receipt of Your cancellation notice; and (v) any costs incurred by You attributable to Your failure to use reasonable commercial efforts to otherwise reduce or mitigate such fees and expenses.

15.3. If the Custom Product includes Software or Other IP Rights, the parties shall mutually determine as promptly as practicable if the Custom Product can be modified, disassembled, or otherwise rendered so as to remove the Software or Other IP Rights in a commercially reasonable manner. If commercially reasonable, You shall as promptly as practicable perform such removal and place the remaining work in process in Your inventory for sale to its other customers. All portions of a Custom Product embodying Software or Other IP Rights shall be provided to Mattson and the parties shall mutually agree on reimbursement to be paid to You for such portions.

15.4. Any claim for Custom Product cancellation charges must be submitted to Mattson in writing, and such writing must include reasonable documentation supporting the fees and expenses that You seek to recover as aforesaid, along with a summary of all of Your mitigation efforts. You must submit such claim to Mattson no later than thirty (30) days after receipt of Mattson's cancellation notice for the Custom Products in question. You acknowledge and agree that the above cancellation charge, if applicable, shall be Your sole and exclusive remedy with respect to any cancelled purchase order for Custom Products. Upon payment of the

applicable cancellation fee, Mattson shall (if it shall so elect) be entitled to all work in progress and materials for which the cancellation charge applies. Notwithstanding anything to the contrary herein, You shall not be compensated in any way for any of Your indirect overhead and administrative charges or profit. In no event shall any cancellation charge exceed the original purchase price of the Custom Product.

**16. Discontinuation of Product; Spare Parts.**

16.1. You will notify Mattson in writing of the planned obsolescence of any Product and will make that Product available to Mattson for a minimum of one (1) year after the notice. During that one-year period, Mattson will have the option to place a final order for such Product for delivery up to 180 days after the end of that period. Mattson may return to You unused, obsolete Products within one-hundred eighty (180) days after written notification of revision or obsolescence, at no cost. You shall credit Mattson the full original purchase price within thirty (30) days of receipt of the returned Products. You shall reasonably assist Mattson in identifying alternative products or sources for the affected Products' functionality. If any warranty return claim is made for such discontinued Products, then such claims will be subject to the same warranty obligations as for non-discontinued Products.

16.2. You will make all Spare Parts for each Product available to Mattson for a minimum of seven (7) years after Mattson's purchase of the Product concerned. If at any time during such seven-year period, a Spare Part is not available from You for any such Product, You will ensure that comparable parts are available at a comparable or lesser price from an alternative supplier until such part is again available for Mattson from You. In any event, during and after the applicable seven-year period, You shall reasonably assist Mattson in identifying alternative sources for any and all Product Spare Parts.

16.3. You will make Spare Parts for Products available to Mattson as aforesaid upon the shortest practicable delay, and in any event no later than five business days after Mattson orders the Spare Parts; provided, however, that if Mattson notifies You that Mattson's customer shall suffer any production stoppage as a result of Mattson's need for any such Spare Part, then You shall use expedited delivery and otherwise use commercially reasonable efforts to ensure that the Spare Part is available at the customer's site within one business day after such notification.

**17. Right to Sell Products.** You warrant that You have, and will convey to Mattson, good and clear title to the Products and Spare Parts free of liens and encumbrances and otherwise in accordance with this Agreement. Without limiting the generality of the foregoing, In addition, each Product sold to Mattson hereunder will free from liability of royalties, mechanics' liens or other encumbrances. You further warrant that no law, rule or ordinance of the United States, a state or any other governmental agency has been or will be violated in supplying the Products or Spare Parts ordered under this Agreement. Without limiting the generality of the foregoing, You warrant that You have fully complied with any disclosure or certification required by any such law, rule or ordinance in connection with such supply. Mattson shall have the right upon reasonable request and advance written notice to You, not more than once annually, to audit itself, or to have an independent third party auditor agreed to by both Mattson and You audit, Your compliance with applicable laws, rules and ordinances to the extent necessary to verify Your compliance with this Section 17. In addition, no third party agreement in effect at the time of manufacture or sale of a particular Product or Spare Part will be violated in supplying it in accordance with this Agreement. On the date when each Product or Spare Part is shipped pursuant hereto, You shall not be aware of any infringement or claim of infringement of intellectual property rights naming any of the Products sold hereunder.

**18. Hazardous Materials.** If Products or Spare Parts provided hereunder include hazardous materials, You shall provide written notice thereof to Mattson, where such notice contains sufficient details to ensure

Mattson understands the nature of and hazards associated with the handling, transportation, and use of such hazardous materials. You shall provide to Mattson, at the time of initial shipment of any Product or Spare Part or upon Mattson's request, a completed Material Safety Data Sheet (OSHA Form 20 or equivalent) for any chemical substances sold hereunder as required by any law, ordinance, rule or regulation. Such sheet shall contain all the information necessary to comply with the Federal Hazard Communication Standard (29 CFR 1910-1200), all applicable state regulations and all applicable EU regulations, including without limitation European Directives 2002/95/EC and 2002/96/EC. You will promptly notify in writing any potential handler of such hazardous materials or chemical substances, and upon request will provide such handler with material safety data sheets and other documentation reasonably necessary for compliance with applicable laws and regulations. Notwithstanding the foregoing, You shall be fully responsible hereunder for any liability resulting from its actions in supplying or transporting hazardous materials or failing to comply with environmental laws and regulations.

#### **19. Indemnity Obligations.**

19.1. Your Indemnification Obligations. You shall indemnify and hold Mattson harmless from any and all costs, expenses (including reasonable attorneys' fees), losses, damages or liabilities (collectively, "Losses") actually incurred in any suit or proceeding brought against Mattson or any of its customers by a third party insofar as such suit or proceeding is based on (A) a claim that any Product or Spare Part infringes on any patent, copyright, trademark, maskwork or other intellectual property right of a third party or that You misappropriated any third-party trade secrets in the development or implementation thereof; or (B) to the extent that it results from Your breach of this Agreement or a defective Product or Spare Part (i) a claim for death or bodily injury to any person, destruction or damage to any property, (ii) contamination of or adverse effects on the environment and any clean up costs in connection therewith; or (iii) any violation of governmental law, regulation, or order. If an injunction issues as a result of any claim or action, You agree, at Your sole cost and expense, to either: (i) procure for Mattson the right to continue using Products; (ii) replace the Products or Spare Parts with non-infringing Products or Spare Parts; or (iii) modify the Products or Spare Parts so they become non-infringing. If You determine that the foregoing are neither commercially practicable nor feasible, Mattson may at its option return the Product (or Spare Part) at Your sole cost and expense, and You shall refund to Mattson the purchase price thereof. Your obligations under this Section shall not apply where: (i) Custom Products are manufactured to Mattson's detailed design and such design is the exclusive cause of the claim; or (ii) there is an addition to or modification of the Products by any party other than You after delivery of such Product to Mattson, where such addition or modification is the exclusive cause of the claim.

19.2. Mattson's Indemnification Obligations. Mattson shall indemnify and hold You harmless from any and all Losses actually incurred in any suit or proceeding brought against You by a third party insofar as such suit or proceeding is based on a claim that (i) Your compliance with or use of any designs, specifications and/or intellectual property Mattson provides to You under this Agreement caused such Losses; or (ii) items produced utilizing the Mattson-Supplied Materials furnished You under this Agreement caused such Losses.

19.3. Each party's indemnification obligations under this Section shall be subject to the indemnitee: (i) promptly informing the indemnitor of such suit or proceeding, and furnishing to the indemnitor a copy of each communication, notice or other action relating thereto; (ii) giving the indemnitor the sole right to control the defense of any such claim; (iii) giving the indemnitor reasonable assistance necessary to settle or litigate such suit or proceeding, at the indemnitor's expense; and (iv) not settling, or agreeing to settle, any such suit or proceeding without the prior written consent of the indemnitor.

19.4. The obligations set forth in this Section state each party's sole and exclusive remedies, as an indemnitee, and each party's sole and exclusive liabilities, as an indemnitor, with respect to those the third party claims expressly set forth in this Section .

**20. Limitation of Liability.** Except in the event of an Epidemic Failure or in connection with a breach of Section 1 or 2 hereof or with fulfilling a party's obligations arising under Section 19, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS AND LOST SAVINGS, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. YOU SHALL BE LIABLE FOR ALL LOST PROFITS AND INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF SECTION 7 OR 19. MATTSON'S TOTAL LIABILITY TO YOU ARISING FROM OR IN RELATION TO THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNTS PAID BY MATTSON TO YOU UNDER THIS AGREEMENT DURING THE CALENDAR YEAR BEFORE SUCH LIABILITY WAS DETERMINED BY AGREEMENT OF THE PARTIES OR BY THE COURT.

**21. Term and Termination.**

21.1. This Agreement shall continue in force unless terminated in accordance with this Section. Either party may terminate this Agreement at any time upon (i) the other party's bankruptcy, insolvency or receivership; or (ii) any material default by the other party of this Agreement not cured within thirty (30) days after such party receives written notice thereof.

21.2. Upon any expiration or termination of this Agreement, any and all payment obligations will immediately become due in accordance with the original payment terms set forth in this Agreement, and Mattson shall be entitled to (a) cancel all or part of any orders received by You from Mattson after notice, but prior to the effective date, of termination; (b) cancel the shipment of any Products ordered by Mattson that have not yet been shipped by You at the time of such notice; and/or (c) require Your performance of any outstanding orders in accordance with all terms applicable to the sale of the Product to Mattson, notwithstanding the fact that delivery dates for such orders may extend beyond the effective date of termination.

21.3. Sections 1, 2, 19, 20, 21 and 22 shall survive any termination of this Agreement.

**22. General Provisions.**

22.1. **Import/Export Compliance.** You agree to comply strictly and fully with all import and export controls and regulations imposed on the Products by the US and any country or organization or nations within whose jurisdiction You operate or do business.

22.2. **Independent Contractor.** You are and at all times shall be an independent contractor in all matters relating to this Agreement. You shall not enter into any agreement, contract or arrangement with any government or government representative or with any other person, firm, corporation, entity or enterprise imposing any legal obligation or liability of any kind on Mattson.

22.3. **Assignment; Subcontractors.** You shall not assign this Agreement or transfer any of the rights or obligations arising under this Agreement without the prior written consent of Mattson. Without limiting the generality of the foregoing, You may not engage or otherwise use any subcontractor to perform any of Your obligations hereunder unless You shall obtain the advance written approval of Mattson to each such engagement or use. This Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties.

22.4. **Publicity.** You shall not make any news release, advertisement or other public disclosure or announcement related to the sale of the Products to Mattson, or which shall confirm or deny the existence of this Agreement, without the prior written approval of Mattson.

22.5. **Governing Law; Dispute Resolution.** This Agreement will be governed by and be construed according to the laws of California, without regard to that body of law controlling conflicts of law. The parties agree that the United Nations Convention on Contracts for the International Sales of Goods is specifically

excluded from application to this Agreement. Except as expressly agreed to otherwise by the parties in writing, in the event of any dispute or claim arising out of this Agreement, the parties hereby submit to the personal and exclusive jurisdiction of the federal and state courts having jurisdiction over businesses located in Alameda County, California, and waive any objection to venue in any such court.

22.6. **Waiver; Severability**. No waiver will be implied from conduct or failure to enforce rights, and no waiver will be effective unless in writing signed on behalf of the party against whom the waiver is asserted. If any part of this Agreement is found invalid or unenforceable that part will be enforced to the maximum extent permitted by law and the remainder of this Agreement will remain in full force.

22.7. **Force Majeure**. Neither party shall be responsible for its failure to perform due to causes beyond its reasonable control such as acts of God, fire, theft, war, riot, embargoes or acts of civil or military authorities. Neither unavailability nor delay in delivery of raw materials nor unavailability of appropriately skilled personnel for reasons other than the above is beyond Your reasonable control. If delivery of Products is to be delayed by any such contingency, You shall immediately notify Mattson in writing.

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