

BEMA ELECTRONICS – TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale (“Agreement”) are applicable to any order placed with and accepted by BEMA (Seller).

1. Prices. Prices are based on the specifications and quoted quantities. Prices exclude shipping and taxes. Prices shall remain fixed for the term of the Agreement, subject to BEMA’s right to revise Prices (i) to account for any variations on the market prices of components, parts and raw material (collectively “Components”), including any such variations resulting from shortages and (ii) in the event of a change in the specifications or quantities ordered.
2. Payment Terms. Payment terms are net thirty (30) days after date of invoice, unless another agreed upon terms is approved by BEMA. On any invoice not paid by maturity date, CUSTOMER shall pay interest from maturity to date of payment at the rate of 1.5% per month.
3. Orders:
 - a. Long Lead Time Items; Minimum/Multiple Buys. CUSTOMER acknowledges that BEMA often must place orders for Components well in advance of the CUSTOMER’s delivery date. At CUSTOMER’s request, BEMA will provide to CUSTOMER a list of Components with lead times in excess of ninety days (“Long Lead Time Components”). CUSTOMER acknowledges that Vendor lead times are subject to change, and agrees to be financially responsible for all Long Lead Time Components purchased in accordance with the Vendor’s then-current lead times. CUSTOMER further acknowledges that BEMA will be required to order Components in accordance with the various minimum buy quantities, tape and reel quantities, and multiples of packaging quantities required by the Vendor, and agrees that it shall be financially responsible for all such Components.
 - b. Reschedules. CUSTOMER may reschedule all or part of a scheduled delivery one time per quarter (for a maximum of two quarters) for a period not to exceed forty-five (45) days. At the end of this forty-five day period, CUSTOMER shall either accept delivery of rescheduled finished units and/or pay BEMA’s Delivered Component Cost (BEMA’s quoted cost of Components as stated on the bill of materials plus a materials margin equal to 15%) associated with rescheduled units not yet built.
 - c. Excess and Obsolete Components. Within a reasonable time after the end of each calendar quarter, BEMA shall advise CUSTOMER in writing of any excess/obsolete Components in its inventory and the Delivered Cost of such Components. CUSTOMER shall pay for all Components which it agrees are excess/ obsolete. In the event CUSTOMER does not agree that a Component is excess/obsolete, it shall only be required to pay for the Component in the event said Component remains excess/obsolete at the end of the following quarter.
 - d. Liability. CUSTOMER acknowledges that it shall be financially liable for all Components ordered in accordance with this Section. CUSTOMER’s Component Liability shall be equal to BEMA’s Delivered Cost of all Components ordered in support of any Order or Forecast, less the actual cost of those Components which are returnable to Vendor (less any cancellation or restocking charges). BEMA shall use commercially reasonable efforts to minimize CUSTOMER’S Component Liability by attempting to return Components to the Vendor; provided, however, that BEMA shall not be obligated to attempt to return to Vendor Components which are, in the aggregate (e.g., per line item), worth less than \$1,000.
4. Delivery/Acceptance. All Product shipments shall be F.O.B. BEMA’s facility of manufacture; freight charges are Prepaid & Add, unless otherwise specified; title to and risk of loss or damage to the Product shall pass to CUSTOMER upon BEMA’s tender of the Product to carrier. In the absence of shipping instructions from CUSTOMER, BEMA will ship by the method it deems most advantageous. Freight, any taxes, handling or other similar charges will be the sole responsibility of the CUSTOMER. Unless otherwise indicated, CUSTOMER is obligated to obtain own insurance against damage to the product being shipped. Unless



otherwise specified, the product will be shipped in standard commercial packaging. Any claims for shortages or damaged upon receipt of product, need to be made within five (5) days from delivery. Acceptance of the Product shall occur no later than fifteen (15) days after shipment, and shall be based solely on whether the Product passes a mutually agreeable Acceptance Test Procedure or Inspection designed to demonstrate compliance with the Specifications. Product cannot be rejected based on criteria that were unknown to BEMA or based on test procedures that BEMA does not conduct. Product shall be deemed accepted if not rejected within this fifteen-day period.

5. Warranty. BEMA's warranty period is for one year from date of manufacture and is limited to correction of defects in BEMA workmanship. For the purpose of this Section, "workmanship" shall mean manufacture in accordance with (i) the most recent version of IPC-A-610 Class II or (ii) the CUSTOMER's workmanship standards set forth in the specifications and approved by BEMA. BEMA shall, at its option and at its expense, rework, replace or issue a credit for product found defective during the warranty period. In addition, BEMA will pass on to CUSTOMER all manufacturers' Component warranties to the extent that they are transferable, but will not independently warrant any Components. All warranty returns shall be done in accordance with BEMA's authorized returned material policy. BEMA's warranty does not include products that have defects or failures resulting from CUSTOMER's design of the Products; accident, disaster, neglect, abuse, misuse, improper handling; alterations, modifications or repairs by CUSTOMER or third parties; or defective CUSTOMER-provided test equipment or test software. CUSTOMER bears all design responsibility for the Product. THE SOLE REMEDY UNDER THIS WARRANTY SHALL BE THE REWORK, REPLACEMENT OR CREDIT FOR DEFECTIVE PARTS AS STATED ABOVE. THIS WARRANTY IS IN LIEU OF ANY OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
6. Termination. In the event an Order is cancelled or this Agreement is terminated for any reason (including a breach by BEMA or a Force Majeure Event), CUSTOMER shall pay BEMA, termination charges (collectively, the "Termination Charges") equal to (1) the contract price for all finished product existing at the time of termination; (2) BEMA's cost for all work in process; and (3) BEMA's Delivered Cost of Components ordered in support of CUSTOMER's Orders or Forecast.
7. Indemnification. Each party will indemnify the other party for all claims resulting from such party's breach of this Agreement or negligence. In addition, BEMA will indemnify CUSTOMER against any losses (as adjudicated by a court of law) in connection with any third party infringement claim based on BEMA's manufacturing process; CUSTOMER will indemnify BEMA against any losses incurred in connection with any third party infringement claim based on anything other than the manufacturing process (including but not limited to the design).
8. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION SET FORTH IN THIS SECTION SHALL APPLY WHERE THE DAMAGES ARISE OUT OF OR RELATE TO THIS AGREEMENT. For the purpose of this Section, both lost profits and damages resulting from value added to the Product by CUSTOMER shall be considered consequential damages, but amounts required to be paid to a third party as a royalty or license fee shall not be considered consequential damages. IN NO EVENT SHALL BEMA'S LIABILITY UNDER THIS AGREEMENT FOR ANY PRODUCT (WHETHER ASSERTED AS A TORT CLAIM OR CONTRACT CLAIM) EXCEED THE AMOUNTS PAID TO BEMA FOR SUCH PRODUCT HEREUNDER. IN NO EVENT WILL BEMA BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY CUSTOMER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
9. Changes. CUSTOMER may upon sufficient notice make changes to the product, including but not limited to changes in (1) drawings, plans, designs, procedures, specifications, test specifications or BOM, (2) methods of packaging and shipment, or (3) delivery schedule. All changes other than changes in delivery dates shall be requested pursuant to an Engineering Change Notice ("ECN") and, if accepted by CUSTOMER, finalized in an Engineering Change Order ("ECO"). If any such change causes either an increase or decrease in BEMA's cost or the time required for performance of any part of the work under



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this Agreement (whether changed or not changed by any ECO) the prices and/or delivery schedules shall be adjusted in a manner which would adequately compensate BEMA for such change. BEMA reserves the right to charge an administrative fee for all ECN's in an amount not to exceed \$1,000 per ECN. Any changes to the Product or specifications shall be done through BEMA's standard ECO process. Each party will agree to maintain the confidentiality of the other party's confidential information. This Agreement shall be governed in accordance with the laws of California, and the state or federal courts in Alameda County, California shall have exclusive jurisdiction over this Agreement.

10. Miscellaneous. The terms and conditions set forth herein constitute the entire agreement of the parties, superseding all previous agreements covering the subject matter. This agreement shall not be changed or modified except by written agreement, specifically amending, modifying and changing this agreement, signed by a corporate officer of BEMA and an authorized representative of the CUSTOMER. CUSTOMER hereby acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein. The failure by BEMA to enforce at any time any of the provisions of this agreement, to exercise any election or option provided herein, or to require at any time the performance by CUSTOMER of any of the provisions herein will not in any way be construed as a waiver of such provisions. In the event the parties cannot resolve a dispute, the parties acknowledge and agree that the state courts of Alameda County, California and the federal courts located in the Northern District of the State of California shall have exclusive jurisdiction and venue to adjudicate any and all disputes arising out of or in connection with this agreement. The parties consent to the exercise by such courts of personal jurisdiction over them and each party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. This agreement shall be construed in accordance with the substantive laws of the State of California (excluding its conflicts of laws principles). Reasonable attorney's fees and costs will be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of this agreement.