

Terms and Conditions

Power Design Services ("PDS") shall perform the work herein described in Section 1 ("Work") upon the following terms and conditions:

1. **Work and Deliverables.** For the purposes of these terms and conditions, "Work" shall be defined as the design, layout and develop a circuit board for the customer as more fully described in the foregoing Quotation or in the alternative, described in the Purchase Order attached hereto. "Deliverable" shall be defined as the completed tangible circuit board which is the subject of the Work.

2. **Effort.** Subject to the terms and conditions of this Agreement, PDS shall use its commercially reasonable efforts to perform the Work and deliver the Deliverable in accordance with the specifications of the customer.

3. **Specification Changes.** Customer recognizes that, as they develop the Work, it may be necessary or desirable to change the specification. Either Party may propose to the other changes to the specification. All changes to the specifications will be subject to written approval by the Customer. If the Customer desires to change the Work PDS shall estimate the cost and the delay in making the requested changes. Unless the Customer gives notice within five (5) business days of its disapproval of the proposed changes, the changes to the Work will become part of the Agreement.

4. **Delivery and Acceptance.** Upon each PDS' completion of the Work, it shall deliver to the Customer the Deliverables. The Customer shall evaluate the Work within ten (10) business days (the "Acceptance Period") of the Customer's receipt of the Work from PDS. Promptly following the completion of the Evaluation, the Customer shall deliver to PDS the Customer's written acceptance or rejection of the Work, including a statement of defects, if any, to be corrected by PDS. *If no written acceptance or rejection of the Work is received by PDS within 15 days after delivery to the Customer of the Deliverables, the Work shall be deemed accepted.* If within the Acceptance Period the Customer delivers to PDS written notice of rejection, PDS shall use its commercially reasonable efforts to correct such defects, if any, and return the corrected Work for retesting and reevaluation. The Customer shall, within the Acceptance Period of such redelivery, provide the PDS with written acceptance or rejection thereof. If, after [three (3)] Evaluations of the Deliverables, the PDS has failed to correct defects in the relevant Deliverables, then the Customer may, upon ten (10) days' written notice to the PDS, elect to terminate this Agreement immediately for default, without further opportunity to cure. Until such election to terminate by the Customer, if any, the PDS shall continue to use its commercially reasonable efforts to correct such defects and provide the relevant conforming Deliverable.

5. **Ownership of Technology and Confidential Information.** Each shall own all rights, title and interest in and to its respective Intellectual Property. "Confidential Information" means any information: (i) disclosed by one Party (the "Disclosing Party") to the other (the "Receiving Party"), which, if in written, graphic, machine-readable or other tangible form is marked as "Confidential" or "Proprietary", or which, if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and reduced to writing and marked "Confidential" within thirty (30) days of such disclosure; or (ii) which is otherwise deemed to be confidential by the terms of this Agreement. Confidential Information shall exclude information that the Receiving Party can demonstrate: (i) was independently developed by the Receiving Party without any use of the Disclosing Party's Confidential Information or by the Receiving Party's employees or other agents (or independent contractors hired by the Receiving Party) who have not been exposed to the Disclosing Party's Confidential Information; (ii) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of this Agreement and that had a right to disclose it; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Receiving Party; (iv) was rightfully known to the Receiving Party, without restriction, at the time of disclosure; or (v) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the Receiving Party shall provide prompt notice thereof to the Disclosing Party and shall use its best efforts to obtain a protective order or otherwise prevent public disclosure of such information.

6. **Customer Indemnity.** Customer shall indemnify and hold PDS and its employees, directors, distributors, agents, customers, licensees, successors and assigns harmless from and against all cost, liability, loss, damage, expense or judgment resulting from, arising out of, or in connection with (i) any breach of any warranty made by PDS hereunder, and (ii) any claim, action or proceeding, in a court or otherwise (a "Claim") alleging that the Work infringes or misappropriates any third party's Intellectual Property Rights. Customer shall settle or defend, at PDS' option, all Claims at Customer's sole cost and expense.

7. **Disclaimer of Warranty and Limitation of Liability.** PDS DISCLAIMS ALL WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. PDS' TOTAL LIABILITY TO THE CUSTOMER FOR ANY KIND OF LOSS, DAMAGE OR LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, SHALL NOT EXCEED THE AMOUNT PAID TO PDS TO PERFORM THE WORK. IN NO EVENT SHALL PDS BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT PDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE LIMITATIONS SPECIFIED IN THIS PARAGRAPH SHALL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

8. **Term.** This Agreement shall commence on the Effective Date and continue in full force and effect until the Work is delivered and accepted pursuant to Section 4, unless earlier terminated in accordance with the express provisions of this Agreement; provided, however, that Section 5, 6 and 7, and all rights and obligations thereunder, shall survive the expiration or any termination of this Agreement and shall continue in perpetuity, unless such provisions expire or terminate by their terms.

9. **Default and Insolvency.** If either Party materially defaults in the performance of its obligations hereunder, the defaulting Party shall use its best efforts to correct such default within thirty (30) days after written notice thereof from the non-defaulting Party. If any such default cannot be, or is not, corrected within thirty (30)-day period, then non-defaulting Party shall have the right, in addition to any other remedies it may have, to terminate this Agreement and all rights and licenses granted hereunder by giving written notice to the defaulting Party. Either Party may terminate this Agreement if a Bankruptcy Event occurs with respect to the other Party; provided, however, that all rights and licenses granted by either Party hereunder to the other Party hereunder shall survive such termination.

10. **Miscellaneous.** THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REFERENCE TO CONFLICT OF LAWS PRINCIPLES. EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

No alteration, amendment, waiver, cancellation or any other change in any term or condition of this Agreement shall be valid or binding on either party unless mutually assented to in writing by both parties.

The failure of either party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision thereafter. The express waiver by either party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

The terms and conditions herein contained and the referenced Exhibits which are incorporated herein by this reference, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all previous and contemporaneous agreements and understandings, whether oral or written, including, but not limited to any terms and conditions or Purchase Order presented by the Customer, between the parties hereto with respect to the subject matter hereof.

