

Microbridge Technologies Canada Inc. and Microbridge Technologies Corp. ("Microbridge") Terms and Conditions

1. SCOPE AND DEFINITIONS

- 1.1 These Terms and Conditions ("T&C") apply to all quotations made and to sales or supply agreements entered into by Microbridge with a Buyer for Microbridge's products. Acceptance of Buyer's purchase order is made only on the express understanding and condition that the purchase order is governed by the T&C.
- 1.2 Any changes in the T&C must specifically be agreed to in writing by Microbridge before becoming binding. These T&C shall be applicable whether or not they are enclosed with the products sold by Microbridge to Buyer.
- 1.3 Notwithstanding any other provision herein, none of the provisions of the T&C shall apply to the transfer, disposition or sale of prototype (sometimes described as "pre-production") product under a Statement of Work or separate agreement.

2. PRICES, ADJUSTMENTS AND TAXES

- 2.1 Quoted prices are open for acceptance by Buyer within thirty (30) days from the date of quotation.
- 2.2 All prices are quoted in U.S. Dollars and are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions which are not a part of the original price quotation.
- 2.3 Prices published in catalogs, bulletins, or price lists are not offers to sell and are subject to change without notice.
- 2.4 Prices are exclusive of all federal, state, municipal or other government excise, sales, added value, use, occupational or like taxes, tariffs, customs, duties and importing fees on the products. Prices are consequently subject to increase by the amount of any such tax, tariff, duty or fee which Microbridge pays or is required to pay or collect upon sale or delivery of the products. Any certificate of exemption or similar document or proceeding acceptable to the taxing authorities to exempt the sale of products from sales or use tax liability shall be obtained by Buyer, at its expenses.

3. ORDERS, RESCHEDULING AND CANCELLATION

- 3.1 All of Buyer's purchase orders are subject to acceptance by Microbridge, and Microbridge reserves the right to accept or reject any purchase order from Buyer, in whole or in part. Microbridge reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery and Microbridge shall have no liability to Buyer for any costs, losses or damages of any kind whatsoever arising as a result of such suspension or cancellation.
- 3.2 Microbridge will accept blanket orders for annual quantity pricing, provided they are firm orders for a stated quantity and delivery is accepted by Buyer within one year after the date of blanket order entry.
- 3.3 Any request for order cancellation, rescheduling, return, or modification must be made in writing and such action must be approved in writing by an authorized agent of Microbridge at its principal office. Microbridge, at its option, may accept or reject any request by Buyer to

return product for credit. Buyer shall not return any products for any reason without the prior authorization of Microbridge and issuance of a Return Material Authorization (RMA) number.

- 3.4 Microbridge will not accept requests for order delivery date changes unless received thirty (30) or more days prior to scheduled delivery date. Notwithstanding the foregoing, Buyer must accept all deliveries within twelve (12) months of receipt of Buyer's originally scheduled initial ship date against its purchase order.
- 3.5 Requests for order cancellations received within thirty (30) days or less of the scheduled delivery date will not be accepted.
- 3.6 In the event that Microbridge in its sole discretion elects to accept a request for cancellation, Buyer undertakes to indemnify Microbridge against all losses, including cost of all labor, materials, overhead, damages, charges and expenses arising out of the order and its cancellation.
- 3.7 Notwithstanding the provisions of the T&C, Buyer may not cancel, reschedule or return any product which is designated by Microbridge as "Noncancellable, Nonreschedulable, or Nonreturnable".

4. TERMS OF PAYMENT

- 4.1 Terms of payment are cash upon delivery of the products, except where satisfactory open account credit is established, in which case invoices are due and payable thirty (30) days from the date of invoice. Microbridge reserves the right at any time to revoke any credit extended to Buyer for any risk deemed good and sufficient by Microbridge or in the case where Microbridge deems that Buyer's financial condition does not justify such credit. If Buyer's credit is revoked, Microbridge may cancel any unfilled orders unless Buyer, upon written notice, immediately pays for any product delivered or pays in advance for all product ordered but not delivered, at Microbridge's option.
- 4.2 Microbridge will issue invoices on delivery of products. If deliveries are authorized in installments, each shipment shall be invoiced and paid when due without regard to other scheduled deliveries.
- 4.3 Overdue payments shall be subject to finance charges computed at a periodic rate (to the extent permitted by law) of 1.5% per month (18% per year). Buyer agrees to pay to Microbridge its legal and other costs associated with the collection of the amounts owing under unpaid invoices.
- 4.4 Amounts owed by Buyer with respect to which there is no dispute shall be paid without set-off for any amounts which Buyer may claim are owed by Microbridge and regardless of any other controversies which may exist.
- 4.5 Buyer does hereby grant to Microbridge a movable hypothec in the products as security for the performance by Buyer of all its obligations hereunder.

5. DELIVERY

- 5.1 All products will be shipped FCA Montréal (INCOTERMS, 2000) or as otherwise designated by Microbridge in a notice to Buyer. Therefore, ownership of, and risk of loss with respect to, the products shall pass to Buyer upon delivery thereof by Microbridge to Buyer or to a carrier for shipment to Buyer, whichever is earlier, regardless of

whether Microbridge will install or supervise the installment of the products.

5.2 The products held or stored by Microbridge for Buyer shall be at the sole risk of Buyer, and Buyer shall be liable for the expense to Microbridge of holding or storing products at Buyer's request.

5.3 Microbridge reserves the right to make shipments when product is available and shall invoice shipments as made.

5.4 Microbridge will make commercially reasonable efforts to ship orders within the times quoted. The times quoted for shipment will date from receipt by Microbridge of Buyer's order accompanied by all necessary information enabling work to commence, together with any import license or permits which may be necessary. Microbridge will confirm in writing, and amend as appropriate, the shipment schedule. In no event will Microbridge be liable for any costs, losses or damages including without limitations re-procurement costs arising out of or caused by delay in delivery or for non-delivery of products.

6. SHIPMENT

6.1 Unless specific instructions to the contrary are supplied by Buyer, Microbridge will select the carrier and ship the products to Buyer's address indicated on Buyer's purchase order. Microbridge will not assume any liability in connection with the shipment nor constitute any carrier as its agent. Buyer shall be responsible for making all claims with carriers, insurers, warehouses and others for non-delivery, loss, damage or delay. All claims for damages to the product or shortages must be made within thirty (30) days of shipment.

7. ADDITIONAL CONDITIONS

7.1 Microbridge agrees to sell and deliver the products in accordance with the terms and conditions hereof. THE SALE IS LIMITED BY THE T&C HEREOF AND ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE HEREBY OBJECTED TO AND REJECTED UNLESS EXPRESSLY ASSENTED TO IN WRITING BY MICROBRIDGE.

8. WARRANTY

8.1 Microbridge warrants that each product will be free from defects in material and will comply with Microbridge's normal standard of workmanship for a period of twelve (12) months commencing on the date of shipment. Microbridge shall incur no liability under the foregoing warranty unless: (a) the allegedly defective products are returned to Microbridge within fifteen (15) days of the discovery of the alleged defect in accordance with Microbridge's then current repair procedures; and (b) Microbridge's tests disclose that alleged defect is due solely to defects in material or workmanship. The product returned to Microbridge for warranty service will be shipped to Microbridge at Buyer's expense and will be returned to Buyer at Microbridge's expense. The warranty of replacement products shall terminate with the warranty of the product.

8.2 The liability of Microbridge under this warranty shall, in any event, be limited at Microbridge's option to either repair, or replacement of, the defective product at its own expense or to reimburse Buyer its price paid to

Microbridge for the defective product. In no event shall Microbridge be responsible for defects due to physical damages suffered to the product as a result of improper handling during or after shipment, misuse, mistreatment, neglect, improper installation or operation, repair, alterations, accident, or for any other cause not attributable to defects of material or workmanship on the part of Microbridge.

8.3 IN NO EVENT SHALL THE DAMAGES FOR WHICH MICROBRIDGE IS LIABLE TO BUYER FOR BREACH OF ANY OF THE FOREGOING WARRANTIES EXCEED THE AMOUNT PAID BY BUYER FOR THE DEFECTIVE PRODUCT. THESE EXPRESS WARRANTIES SET OUT IN THIS SECTION 8 ARE IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING FROM STATUTE OR USAGE OF TRADE. BUYER SHALL NOT MAKE ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES OF ANY KIND WHATSOEVER RELATING TO THE PRODUCTS OR TO MICROBRIDGE.

9. INDEMNIFICATION AND LIABILITY

9.1 Buyer shall indemnify and hold Microbridge harmless against any expense or loss resulting from any claims for actual or alleged infringement of patents, copyright, trade marks, trade secrets or other industrial or intellectual property rights arising from compliance by Microbridge with Buyer's designs, specifications or instructions, including the provisions of the *Integrated Circuit Topography Act* (Québec).

9.2 The sale of product by Microbridge does not convey any license by implication, estoppel, or otherwise, under patent, copyright, trade secret, trade mark or other intellectual property right covering combinations of said product with other devices or elements unless otherwise provided for by a separate agreement between the parties.

9.3 Subject to the foregoing, and to the conditions herein, Microbridge will defend any action brought against Buyer, to the extent that it is based on a claim that the product supplied by Microbridge infringes a Canadian or U.S. patent. Microbridge will indemnify Buyer against the costs and damages finally awarded in any action arising directly out of a claim of infringement of a Canadian or U.S. patent. Microbridge's agreement to defend and indemnify is conditional on the following: (a) that Microbridge shall be notified in writing by Buyer within ten (10) days of the receipt by Buyer of any notice of such claim; (b) that Microbridge shall have sole control of the defense of any action and all negotiations for its settlement or compromise, and Buyer shall cooperate with Microbridge and take all required action to assist Microbridge in such defense; (c) that the claim relates directly to the use of the product in a manner or for a purpose expressly specified by Microbridge; and (d) that Buyer shall not have made and shall not make any admissions in respect of such alleged infringement.

9.4 In the event that the product or any part thereof becomes, the subject of a claim or infringement of a

- Canadian or U.S. patent, or the use of the product or any part thereof is enjoined in an infringement suit based on a Canadian or U.S. patent, Buyer's sole remedy shall be as specified herein: Microbridge will at its option and expense, either procure for Buyer the right to continue using said product, replace or modify the product so that it becomes non-infringing, or remove said product and refund the purchase price and the transportation costs thereof less a reasonable amount for depreciation.
- 9.5 THE FOREGOING STATES THE ENTIRE LIABILITY OF MICROBRIDGE WITH RESPECT TO ANY INFRINGEMENT OR CLAIM OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, MASK WORK OR OTHER INDUSTRIAL OR INTELLECTUAL PROPERTY RIGHT.
- 10. LIMITATION OF LIABILITY**
- 10.1 IN NO EVENT WHATSOEVER, REGARDLESS OF THE NATURE OR NUMBER OF CLAIMS, SHALL MICROBRIDGE, ITS EMPLOYEES', DIRECTORS', OFFICERS' AND AGENTS' (collectively the "REPRESENTATIVES") TOTAL COLLECTIVE LIABILITY TO BUYER FOR ANY CLAIM EXCEED THE AMOUNT PAID FOR THE SPECIFIC ITEM OR PRODUCT THAT IS THE SUBJECT MATTER OF OR THAT IS DIRECTLY RELATED TO CLAIM; PROVIDED THAT IN NO EVENT SHALL THE TOTAL COLLECTIVE CUMULATIVE LIABILITY OF MICROBRIDGE, ITS REPRESENTATIVES FOR ALL CLAIMS ARISING UNDER OR RELATED TO THE PURCHASE ORDER REFERRED TO IN THIS DOCUMENT EXCEED THE AMOUNT PAID BY BUYER FOR THE PRODUCTS REFERRED TO IN SUCH PURCHASE ORDER.
- 10.2 NEITHER MICROBRIDGE NOR ITS REPRESENTATIVES SHALL BE LIABLE IN ANY WAY WHATSOEVER, FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOST PROFITS OR LOST BUSINESS REVENUE, LOST BUSINESS, FAILURE TO REALIZE EXPECTED SAVINGS, OR OTHER COMMERCIAL, OR ECONOMIC LOSS OF ANY KIND WHATSOEVER, OR FOR ANY DAMAGES, DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL, ARISING OUT OF ANY CLAIM AGAINST BUYER BY ANY PERSON WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT MICROBRIDGE OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.3 The above limitations or exclusions may not apply to the liability of Microbridge or its representatives for: (a) material damages caused to Buyer by an intentional fault of Microbridge or its representatives or a fault which shows gross recklessness, carelessness or negligence; or (b) bodily or moral injury caused to Buyer by Microbridge or its representatives.
- 11. GENERAL PROVISIONS**
- 11.1 **Entire Agreement:** These T&C together with the sales or supply agreement constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements, oral or written, and all other communications relating to the subject matter of these T&C. Any terms to the contrary contained in purchase orders, invoices, acknowledgments, shipping instructions, or other forms shall be void and of no effect.
- 11.2 **No Assignment:** Buyer shall not assign Buyer's order or any interest therein or any right thereunder without the prior written consent of Microbridge, which consent may be unreasonably withheld.
- 11.3 **Governing Law:** These T&C shall be governed by the domestic laws of the Province of Québec, Canada without regard to the laws pertaining to conflict of laws. The parties expressly exclude the effect of all of the provisions of the U.N. Convention on Contracts for the International Sale of Product. Buyer and Microbridge agree that the Courts of Québec shall have exclusive jurisdiction to hear any action arising out of this Agreement.
- 11.4 **Notice:** All notices required under this Agreement shall be deemed effective when received, and sent by either: (i) registered mail, (ii) certified mail, return receipt requested, or (iii) overnight mail, addressed and sent to the attention of Customer Service.
- 11.5 **Force Majeure:** Neither party shall be held liable for failure to fulfill its obligations hereunder other than payment obligations, if the failure is caused by flood, extreme weather, or other acts of God or natural calamity, fire, theft, war, riot, embargo, earthquake, acts of governmental agency or military authority, or similar causes beyond the control of such party.
- 11.6 **Waiver:** The failure of either party to enforce at any time any of the provisions of these T&C shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of either party to enforce each and every such provision thereafter.
- 11.7 **Export:** Buyer certifies that it will not export or re-export the products furnished hereunder unless it complies fully with all laws and regulations of Canada and the United States relating to such export or re-export.
- 11.8 **Use in life support applications:** Buyer certifies to Microbridge that the products sold by Microbridge will not be used in life support and/or safety equipment. If Buyer uses or sells such products for use in life support and/or safety applications, it will be at Buyer's own risk. Buyer agrees to defend, indemnify and hold harmless Microbridge from any and all damages, claims, suits or expense resulting from such use.