



## **Terms and Conditions of EMS Sale**

### **1 Controlling Terms and Conditions:**

These Terms and Conditions apply to all Electronic Manufacturing Sales ("EMS"). All quotations and sales by Sagrad, Inc (hereinafter "Seller or Sagrad") are subject to these terms and conditions. Seller objects to and is not bound by any terms or conditions on Buyer's order which is different from or in addition to Seller's terms and conditions. Buyer and customer are hereinafter used interchangeably in these Terms and Conditions.

### **2 Payment Terms and Title:**

Terms of payment are as stated on each Sagrad Quote. Prices are based on FOB Sagrad's facility and do not include any taxes, freight, handling, duty or other similar charges. Sagrad reserves the right to modify the terms prior to shipment, require advance payment, or delay or cancel any shipment by reason of customer's creditworthiness or its failure to fulfill any obligation when due. Title to and right of possession of the items remains in Sagrad until the purchase price is paid in full. Sagrad reserves the right to assign accounts receivable to a Sagrad affiliate. Any credit balance or other sum owed to customer which remains unclaimed by customer for a period of eighteen (18) months will become the property of Sagrad. In the event that Customer fails to make any payment to Sagrad when due, Customer's entire account(s) with Sagrad shall become immediately due and payable without notice or demand. In addition, payment may be requested in advance of shipment for quantities not yet delivered, or the balance of the order may be cancelled by Sagrad without liability to it. Past due invoices will accrue interest at the rate of 0.5 percent per week compounded. Reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due. All transactions are governed by the State of Florida.

### **3 Taxes and Duties:**

Seller shall have the right to add to the price all taxes, excise or other charges imposed by law on or incident to the production, sale, transportation, or use of the goods sold under this contract that Seller may be required to pay to or collect on behalf of any federal, state or local governmental agency. Buyer must provide tax exempt use certificate prior to purchase of all goods to Seller if applicable.

### **4 Customer Furnished Materials:**

Customer assumes all responsibility for Customer furnished materials. Customer furnished materials will not be accepted by Sellers without a purchase order from Customer, a detailed packing list and a minimum of 48 hours notice prior to delivery. Seller assumes no liability for the transportation, storage, quality and finished product when using Customer furnished materials. All Customer furnished materials will be manufactured on a best effort basis. In the event that the Customer furnished material is determined, at the sole discretion of the Seller, to be non-conforming, Seller shall not be held liable for any costs incurred as a result of non-conforming materials provided by Customer. Customer shall be solely responsible for all such cost. In addition, Seller shall not be responsible for any delays in manufacturing that may occur as a result of non-conforming Customer furnished materials. All Customer furnished materials, including finished good, unused and/or non-conforming material will be returned to the Customer upon completion.

### **5. Packaging and Shipping:**

Unless otherwise specified, product shall be shipped in standard commercial packaging. Special packaging, if required or requested, will be separately invoiced. Prices are exclusive of shipping charges. If required or requested, shipping charges will be separately invoiced and may be based on standard carrier tariffs in lieu of actual transportation costs. Unless otherwise specified, the FOB point is Sagrad's originating shipping point. Unless otherwise specified within the order, Sagrad may choose a carrier. Responsibility for loss or damage passes to customer upon delivery of product to carrier, customer, or customer's agent (including any test house, value-added service provider, or other such agent) whichever occurs first. If products are stored at Sagrad's facility upon customer request or due to changes in instructions or delivery requirements, customer may be liable for storage charges at the sole discretion of Sagrad. Delay in delivery at the request of the customer may give rise to a price adjustment by Sagrad prior to shipment.

### **6. Warranty:**

Sagrad warrants the items assembled or customized by it against defects caused by faulty assembly or customization for one year from the date of shipment, or the date of installation if installed by Sagrad, whichever occurs later. Sagrad warrants to the original purchaser that each Custom assembly completed by Sagrad, but not the components therein, delivered to Customer shall be free from defects in workmanship, and that each Custom assembly delivered will meet the contractually agreed upon specifications, at the time of delivery. For boards assembled by Sagrad, Sagrad has no liability for boards or components damaged as a result of Customer design error(s). Sagrad also does not take responsibility for defective or mismarked components, however Sagrad will, upon request, present proof of purchase from reputable component sources. In the event of assembly error by Sagrad and Customer's request for repair, Customer must first prepare the boards for repair. Sagrad's obligation under the Warranty contained herein is limited to repairing, replacing or refunding, at its option, any Custom assembly that does not meet this Warranty, provided that upon Sagrad's examination,



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the Custom assembly, when tested within the specified ratings and in accordance with good engineering practice, does not meet the Warranty contained herein.

Additionally, in the event of non-conformance, prior to repairing, replacing or refunding Sagrad reserves the right to require Customer to show that the parts are non-functional in their intended application. No repair or replacement will extend the applicable warranty period.

All other products, and the components and materials utilized in any customized or assembled products, are covered by, and subject to, the terms and conditions, including limitations, of the manufacturer's standard warranty. This standard warranty is expressly in lieu of any other warranty, expressed or implied, of or by Sagrad or the manufacturer. Sagrad reserves the right to correct any defects at no charge, at its option, by (a) repair, (b) replacement, or (c) refund of customer's purchase price. These actions may be taken at Sagrad's option either (a) FOB Sagrad's shipping point, or (b) service in the field.

***In no event shall Sagrad's liability under this Warranty for repair or replacing such defective item(s) exceed the original price of the products being repaired or replaced. Under no circumstances shall Sagrad be liable to customer or third parties claiming under customer for special, incidental, indirect or consequential damages. Specifically excluded from this warranty are (a) defects or nonconformance caused by and resulting from improper operation, maintenance, or storage of the item(s), and (b) items of characteristically indeterminate life, or subject to normal wear and tear.***

***Customer acknowledges that except as specifically set forth or referenced herein, there are no representations or warranties of any kind (including, without limitation, in advertising materials, brochures, or other descriptive literature) by Sagrad or any other person, expressed or implied, as to the condition or performance of any products, their merchantability, or fitness for a particular purpose.***

Sagrad assumes no responsibility or liability whatsoever for manufacturer's product specifications or the performance or adequacy of any design or specification provided to Sagrad by or on behalf of the customer. Use of the customer's part number on this document or on any products is for convenience only and does not constitute any representation by Sagrad with respect to the performance, specifications, or fitness of any such part for any purpose.

### **7 Acceptance of Assembled Product:**

Products are deemed accepted by customer unless customer notifies Sagrad in writing within 10 days of delivery of product shortages, damage or defect. Customer's written notice must set forth with particularity the manner in which Customer believes that the delivered Custom Parts do not comply with Customer's order or these Terms and Conditions. Failure to give Sagrad timely notice constitutes and demonstrates your approval and acceptance of the Custom Parts, in the quantity and quality delivered.

### **8. Return Material Authorization (RMA):**

No returns may be made for any reason without a Return Authorization Form issued by Sagrad. Sagrad retains the right to reject any incoming shipments from customer which do not have a RMA number. If customer refuses to accept tender or delivery of any products, or returns any products without authorization from Sagrad, such products will be held by Sagrad awaiting customer's compliance and instructions for a period of 20 days, after which the products may be deemed abandoned and Sagrad may dispose of them at its discretion, without crediting customer's account. When any products are returned for examination and inspection, Customer assumes responsibility for damage resulting from improper packaging and damage or loss in transit. Customer must return all allegedly defective Custom Parts, together with all packaging, manuals, and items included in the original box, along with a detailed explanation of the defect, within thirty (30) calendar days.

### **9 Limitation of Liability:**

***Notwithstanding any other provision of this order, under no circumstances shall Sagrad be liable to customer or third parties claiming under customer for special, incidental, indirect or consequential damages as a result of any breach of this order.***



## Terms and Conditions of EMS Sale

### 10 Cancellation and Changes:

In the event Customer desires to terminate any part or all of the work to be done hereunder; or reduce the quantity of goods ordered, or reschedule the delivery of any goods, Seller shall be entitled to fair compensation for any costs incurred up to the point of termination including any increased costs by reason of revisions and changes in delivery schedule or any loss of anticipated profits. In addition, Seller shall be entitled to compensation as per the contract for articles which have been completed as of the time of termination and any cost incurred by Seller in making settlement hereunder. Cancellation, reconfiguration of the items and rescheduling of this order must be submitted in writing at least thirty (30) days prior to the shipping date last agreed upon by the Seller for the order or the portion thereof being cancelled and such

Written notice will be accepted only with the express written approval of Sagrad. Delay in delivery of required customer furnished items (test equipment, property, special tooling) will be subject to a price and delivery adjustment. Prices are subject to change in response to Sagrad's suppliers' price increases. Upon written notification from Sagrad of such a price increase, customer may cancel the undelivered portion of this order by written notice provided that notice is transmitted within 10 days of its receipt of notice of the price increase. Sagrad will be entitled to all material acquisition costs, labor, associated overheads and profit for the work performed on the cancelled items.

### 11 U.S. Government Contracts:

If the goods or services to be furnished under this order are to be used in the performance of a U.S. Government contract or subcontract and a U.S. Government contract number is identified in customer's order, those clauses of the applicable U.S. Government procurement regulation whose inclusion in U.S. Government subcontracts is mandatory under Federal Statute or Regulation shall be incorporated herein, provided that Sagrad has been given notice of such clauses, with the exception that U.S. Government Cost Accounting Standards are not applicable to any order.

### 12 Technical Data:

Unless specifically identified and/or priced in this order as a separate line item or items to be delivered by Sagrad (and in that event, except to the extent so identified and priced), the sale of goods hereunder confers no right in, license under, access to, or entitlement of any kind to any of Sagrad's or the manufacturer's technical data, including, but not limited to design, process technology, software, drawings, or to Sagrad's or manufacturer's inventions (whether or not patentable), irrespective of whether any such technical data or invention or any portion thereof arose out of work performed under the course of this order, and irrespective of whether customer has paid or is obligated to pay Sagrad for any part of the design and/or development of the goods. Sagrad shall have no obligation to safeguard or hold confidential any data furnished by customer for Sagrad's or its manufacturer's performance of the work under this order unless the parties have entered into a written confidential agreement.

### 13 Software:

Any software included in or relating to products is supplied by the manufacturer. Sagrad makes no representation or warranty with respect thereto and will have no liability in connection therewith. Customer agrees to comply with the manufacturer's or other requirements with regard to proprietary and similar rights in and to such software (including any requirement to enter into a separate license agreement and/or prohibitions against duplication or disclosure), even if the seal on the "shrink wrapped" software has been broken by Sagrad, and indemnify and hold harmless Sagrad from any and all liability, cost or expense arising from a breach or purported breach of such requirements.

### 14 Excusable Delay:

Sagrad will endeavor to discharge its obligations under this order, but shall be excused from performance and not be liable for any delay in performance or non-performance attributable in whole or in part to any cause beyond its reasonable control, including but not limited to actions or inactions of the government whether in its sovereign or contractual capacity, judicial action, war, civil disturbance insurrection, sabotage, act of a public enemy, labor difficulties or disputes, failure or delay in delivery by Sagrad's suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labor or equipment, accident, fire, flood, storm or other act of God, or customer's fault or negligence. In the event of an excusable delay, Sagrad reserves the right to revise the delivery schedule on no less than a day-for day basis, allocate production and deliveries among its customers or potential customers, or cancel this order if shipment is delayed for more than 30 days. If the excusable delay is customer caused, Sagrad will be entitled to an equitable adjustment in the price of this order.

### 15 Indemnification:

Customer agrees to promptly notify Sagrad in writing of any notice, suit, or other action against Buyer based upon a claim that the Product infringes a U.S. patent, copyright, trademark or trade secret of a third party. Sagrad will defend at its own expense any such action, except as excluded below, and shall have full control of such defense, including all appeals and negotiations. **Sagrad shall not be liable to customer for special, incidental, indirect or consequential damages.** In the event of such notice, Sagrad reserves the right to procure at its expense for the customer the right to continue using the Product, or modify the Product to render such non-infringing, or accept return of Product and refund or credit the customer the original purchase price, less a reasonable charge for depreciation and damage.



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The preceding agreement by Sagrad in this section shall not apply to any Product or portion thereof manufactured to specifications furnished by or on behalf of the customer, or any infringement arising out of the use of the Product in combination with other equipment or software not furnished by Sagrad, or due to use in a manner not normally intended, or to any patent, copyright, trademark, or trade secret in which customer, or subsidiary or affiliate thereof, has a direct or indirect interest, or if customer has not provided Sagrad with prompt notice, authority, information or assistance necessary to defend the action. Customer also acknowledges that unless otherwise specifically agreed in writing by Sagrad, the Products sold by Sagrad are not intended for and will not be used in life support systems, human implantation, nuclear facilities, or systems or any other application where product failure could lead to loss of life or catastrophic property damage. Customer will indemnify and hold Sagrad harmless from any loss, cost or damage resulting from customer's breach of these provisions.

### **16 Value Added Services:**

The performance of any value-added services may void the manufacturer's warranty and render products non-returnable. Orders incorporating such services are, accordingly, non-cancelable and the products non-returnable. Any third party value-added service provider is deemed to be an agent of the customer.

### **17 Regulations Governing International Transactions:**

In the event that the customer is purchasing products under this order for use outside the U.S., customer hereby acknowledges that such products may be subject to export or resale restriction or regulation, and that it will comply with all such regulations and restrictions. In the event that any of Sagrad's products or portions thereof is imported under this order, Sagrad will provide to customer country of origin information as provided by Sagrad's suppliers, which may reside on the products themselves or within the supplier's packaging.

### **18 No Additional Liability:**

***Except where specified in the warranty clause (paragraph 6) above, neither Sagrad nor its suppliers will have any liability or obligation to customer or any other person for any claim, loss, damage, or expense caused in whole or in part, directly or indirectly, by the inadequacy of any products for any purpose, by any deficiency or defect in any product (whether or not covered by any warranty), by the use or performance of any products or by any failure or delay in Sagrad's performance hereunder, or for any special, direct, indirect, incidental, consequential, exemplary or punitive damages, however caused, including, without limitation, personal injury or loss of business or profit, whether or not customer will have informed Sagrad of the possibility or likelihood of any such damages. Customer hereby indemnifies Sagrad against all loss or liability from claims by customer or third party arising out of or relating to the erection, operation, or use of the product, whether on account of negligence or otherwise, except those asserted by Sagrad's employees.***

### **19 Assignment:**

Customer may not assign any interest or rights in this order without the prior written consent of Sagrad. Sagrad reserves the right to assign this order to its affiliates, subsidiaries, or successors in interest.

### **20 Entire Agreement:**

All quotations and sales are made only upon these terms and conditions and those supplemental documents attached hereto (the "Order"). Customer, by signing this order, accepting products, making any payments or ordering any products after receipt of these terms and conditions shall be deemed to have accepted these terms and conditions. This order supersedes all previous communications, transactions, and understandings, whether oral or written, and constitutes the entire agreement between the parties pertaining to the subject matter hereof. These terms and conditions represent the parties' entire agreement and no modifications, alterations, or changes are binding upon Sagrad unless made in writing and signed by a duly authorized officer or authorized contracts representative of Sagrad. Failure of Sagrad to promptly enforce any right or remedy to which Sagrad is entitled shall not constitute a waiver of that right or remedy.