

STANDARD TERMS AND CONDITIONS OF SALE

1) **GOVERNING PROVISIONS; ACCEPTANCE.** These terms and conditions of sale (these “**Terms**”) are the only terms that govern the sale of the goods (the “**Goods**”) specified on the face of the document to which these Terms are attached (the “**Sale Confirmation**”) by Niche Operating Company, LLC d/b/a Niche Electronics, LLC, an Iowa limited liability company (“**Buyer**”), to the party named on the face of the Sale Confirmation. These Terms, together with the terms and conditions on the face of the Sale Confirmation, constitute the “**Agreement**”. This Agreement, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Agreement, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Agreement. The Agreement expressly limits Buyer’s acceptance to the terms of the Agreement. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Buyer’s general terms and conditions of purchase or any other document issued by Buyer in connection with this Agreement. These Terms apply to any replacement Goods provided by Seller hereunder. Seller is not obligated to any minimum sale or future sale obligations under this Agreement. This Agreement is not binding on Seller until Buyer accepts the Agreement in writing. Seller may withdraw the Agreement at any time before it is accepted by Buyer.

2) **PRICES.** The price of the Goods is the price stated in the Agreement (the “**Price**”). If no price is included in the Agreement, the Price shall be the price set out in Seller’s published price in list in force as of the date of the Agreement. If the Price should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer or, if Buyer collects the Goods from Seller’s facility, upon handover to Buyer, then these Terms shall be construed as if the increased price was originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased price. Unless otherwise specified in the Agreement, the Price is exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, personnel, or real or personal property or other assets.

3) **ACCEPTANCE OF PRODUCTS.** Buyer shall inspect the Goods upon receipt (the “**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. “**Nonconforming Goods**” means only the following: (i) product shipped is different than identified in Buyer’s purchase order; or (ii) product’s label or packaging incorrectly identifies its contents. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s facility identified in the Sales Confirmation. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Goods to the Delivery Location. If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

4) **PAYMENT.** Buyer shall pay all invoiced amounts due to Seller net forty-five (45) days after the date of invoice. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for 5 days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy, or otherwise.

5) **DELIVERY.** The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to the availability of finished Goods. Goods shall be delivered to the address specified in the Sales Confirmation (the “**Delivery Location**”). Seller shall not be liable for any delays, loss, or damage in transit. The Goods will be packaged using Seller’s standard methods for packaging. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

6) **RISK OF LOSS.** Title and risk of loss pass to Buyer upon delivery of the Goods to the carrier commissioned by Seller to deliver the Goods or, if Buyer collects the Goods from Seller’s facility, upon handover to Buyer. As collateral security for the payment of the Price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Iowa Uniform Commercial Code.

7) **COMPLIANCE WITH LAWS.** Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer.

8) **LIMITED WARRANTY.**

- a) Seller warrants to Buyer that for a period of one (1) year from the date of delivery of the Goods (the “**Warranty Period**”), that such Goods will materially conform to Buyer’s specifications (as provided to Seller) and will be free from material defects in workmanship. First articles, prototypes, pre-production units, or test units of a Good are not covered by the warranty in this Section 8(a).
- b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 8(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD

PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

- c) Products manufactured by a third party (“**Third Party Product**”) may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 8(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
- d) Seller shall not be liable for a breach of the warranty set forth in Section 8(a) unless Buyer gives written notice of the defect, reasonably described as to permit Seller to isolate the defect, to Seller within thirty (30) days of Seller’s delivery of the Goods. Upon such notice, Seller will provide Buyer instructions on returning the Goods to Seller. Upon receipt of the returned Goods, Seller shall inspect the Goods in accordance with the applicable IPC-A-610 Workmanship Standard. If Seller determines that the defect is not due to nonconformity with Seller’s specifications or the applicable IPC-A-610 Workmanship Standard, or if Seller is unable to isolate or otherwise reasonably verify any defect or malfunction in the Goods, then (i) Seller shall not be liable for a breach of the warranty set forth in Section 8(a) unless Buyer, at Buyer’s sole cost and expense, isolates the defect or malfunction, and (ii) Seller shall request instructions from Buyer on whether Seller will return the Goods to Buyer or dispose of the Goods.
- e) Seller shall not be liable for a breach of the warranty set forth in Section 8(a) if: (i) Buyer or a third party makes any further use of such Goods after giving Seller written notice of the defect; (ii) the defect arises because Buyer or a third party failed to follow Seller’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; (iii) Buyer or a third party alters or repairs such Goods, including combining such Goods with non-Seller components, without the prior written consent of Seller; or (iv) the Goods have been subjected to misuse, abnormal use or neglect.
- f) Subject to Section 8(d) and Section 8(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part), or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller’s expense, return such Goods to Seller.
- g) THE REMEDIES SET FORTH IN SECTION 8(F) SHALL BE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8(A).
- h) Seller will not be liable for damage to Goods occurring during Buyer-contracted re-work.

9) **TERMINATION; SURVIVAL.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. The provisions of this Agreement that by their nature extend beyond termination or expiration of this Agreement (including provisions relating to warranties, indemnification, insurance, compliance with laws, and confidentiality) will survive such termination or expiration and shall continue in full force and effect.

10) **LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS ACTUALLY PAID TO SELLER BY BUYER FOR THE GOODS SOLD PURSUANT TO THIS AGREEMENT. Buyer acknowledges and agrees that the parties entered into the Agreement in reliance upon the limitations of liability set forth in this Section 10, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

11) **PROPRIETARY INFORMATION.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

12) **GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL.** All matters arising out of relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Iowa (other than any choice of law provisions that would result in the application of the laws of another jurisdiction). Any proceeding relating to this Agreement must be brought exclusively in the Iowa District Court in and for Polk County or the United States District Court for the Southern District of Iowa, Central Division, sitting in Polk County,

Iowa. Buyer and Seller hereby expressly acknowledge and consent to personal jurisdiction therein. EACH PARTY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY DISPUTE. The prevailing party in any litigation arising hereunder will be entitled to recover its reasonable costs thereof, including without limitation, attorneys' fees and expenses.

13) **ASSIGNMENT.** Buyer shall not assign, transfer, delegate, or subcontract any of its rights or obligations under the Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section 13 shall be null and void. No assignment or delegation by Buyer shall relieve Buyer of any of its obligations hereunder.

14) **MODIFICATION.** No change to this Agreement is binding on Seller unless it is in writing, specifically states that it amends this Agreement, and is signed by an authorized representative of Seller.

15) **FORCE MAJEURE.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's (the "**Impacted Party**") control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 5 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 10 days following written notice given by it under this Section 15, Seller may thereafter terminate this Agreement upon 10 days' written notice.

16) **INSURANCE.** During the term of this Agreement and for a period of 2 years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2 million per occurrence and \$4 million in the annual aggregate with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

17) **INDEMNIFICATION.** Buyer shall indemnify, defend, and hold harmless Seller, Seller's parent, subsidiaries and affiliates, and the members, officers, directors and employees of the foregoing entities (collectively the "**Seller Indemnitees**"), from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively "**Losses**") suffered, incurred or sustained by the Seller Indemnitees or to which the Seller Indemnitees become subject, resulting from, arising out of or relating to any claim arising out of Buyer's negligence, intentional misconduct, or breach of these Terms. Further, if the Goods are manufactured to Buyer's specifications, Buyer shall indemnify, defend, and hold harmless the Seller Indemnitees from and against any and all Losses suffered, incurred or sustained by the Seller Indemnitees or to which the Seller Indemnitees become subject, resulting from, arising out of or relating to any claim: (i) that the Goods infringe upon the proprietary or other rights of any third party (except as may have been caused by an unauthorized modification by Seller); and (ii) of loss or damage resulting from the Goods and the use thereof.

18) **NOTICE.** All notices, request, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of this Agreement or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 18.

19) **MISCELLANEOUS.** The Terms stated herein shall not be varied, supplemented, qualified, or interpreted by any prior course of dealings between the parties or by custom or usage of trade. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. The headings in this Agreement are for convenience only. No waiver by any party of any of the provisions of the Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. If for any reason any provision contained in this Agreement should be illegal, invalid or unenforceable in any jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, validity, or enforceability of the remaining terms and provisions hereof or the legality, validity, or enforceability of such provision in any other jurisdiction. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms except that the parties hereby designate the Seller Indemnitees as third-party beneficiaries of Section 17 of this Agreement having the right to enforce Section 17.