

## **Contract Manufacturing Agreement**

This Agreement, by and between \_\_\_\_\_ ("Buyer") a [Corporation], with its principal place of business at (Address), and Surface Mount Technology Corporation, a Wisconsin corporation, with a principal place of business located at 5660 Technology Circle, Appleton, WI 54914, fax number (920) 954-8325 ("SMT"), sets forth the terms and conditions under which SMT will perform contract manufacturing on behalf of the Buyer.

### **1.0 ENTIRE AGREEMENT**

This Agreement (together with the quotation issued by SMT and the provisions of Buyer's purchase orders which specify the products, the shipping instructions and the price, as more particularly required by Section 5.0 below) sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof and merges all prior discussions and negotiations between them. There are no oral representations or inducements pertaining there to which are not contained herein; and neither of the parties hereto shall be bound by any conditions, warranties, understandings to representations with respect to such subject matter other than as expressly provided herein.

### **2.0 WORK SCOPE**

During the term of this Agreement, SMT will supply product that complies with the product warranties set out in Section 14 at a cost provided in the applicable purchase order. Buyer has responsibility to ensure their specifications meet applicable regulatory requirements and effectively communicate requirements to SMT. All parts and components purchased and inventory used in the construction of the product, shall be sourced from the Buyer's AVL (Approved Vendor List). Parts and components NOT listed on the Buyer's AVL shall NOT be used unless approved by the Buyer. Any modifications to the Buyer AVL must be approved, in writing, by the Buyer, through the EC process, as defined in Section 8.0.

### **3.0 TERM OF AGREEMENT**

The Initial Term of this Agreement is twelve (12) months. Unless terminated earlier as provided in Section 28.0, the Agreement is automatically renewed at twelve (12) months increments, unless either party gives written notice to the other party not to renew with not less than 90 days of notice.

### **4.0 PRICES/TITLE**

Unit pricing listed on SMT's quotation shall be specific to the order quantity, release quantity, and revision level of the assembly.

Pricing cannot be changed without written approval by both parties, which shall not be unreasonably withheld.

All prices are FOB SMT's facility in Appleton, Wisconsin. Buyer shall be responsible for and pay all shipping and insurance costs for products. All taxes will be borne by Buyer. If sales to buyer are exempt from any taxes, Buyer shall furnish to SMT a Certificate of Exemption from the application taxing authority.

Initial term pricing shall remain fixed for a minimum of 12 months. Successive years negotiated prices will be firm, for each one-year period. In the event that the parties fail to agree to pricing for any future period, the price shall be the reasonable price, fixed in accordance with the provisions of Section 402.305 of the Wisconsin Statutes. If engineering changes, or if there are substantial variations in material cost; i.e., memory prices, the parties agree to analyze the pricing involved and make appropriate adjustments if necessary.

Title to and risk of loss of the Products shall be passed to Buyer upon shipment from SMT, Appleton, Wisconsin.

### **5.0 PURCHASE ORDERS**

Buyer will issue purchase order(s) for the order quantity and release quantities as stated in SMT's quotation. The specific release schedules for delivery must allow sufficient time, as stated in the quotation, to permit SMT to obtain the long lead-time components. Follow on purchase orders, if required, must be issued with sufficient time to permit SMT to obtain the long lead-time components.

Buyer's purchase orders ("orders") must be in writing and with the following information: (I) identification of the products by quantity, model number, revision and description; (II) shipment instructions, including requested shipment date, and (III) price. All orders shall be deemed to incorporate by reference the terms and conditions of this Agreement, whether or not the order includes any specific reference to this Agreement on its face, and without regard to the inclusion or incorporation of any other terms or conditions. The terms and conditions of this Agreement shall supersede all terms and conditions contained in Buyer's purchase orders. All requirements shall be released per the order, and all release dates shall be regarded as dates of shipment from SMT's facilities.

Any provision of any such purchase order which is in addition to or different from the terms of this Agreement (this Agreement being deemed to include only the purchase order terms concerning quantity, shipment and price described immediately above) shall not operate as a rejection of this Agreement, but shall be deemed to be a material alteration and this Agreement shall be deemed to be accepted without such additional or different term(s), any such additional or different term(s) being hereby objected to and rejected.

#### 6.0 RESCHEDULING

Buyer may make changes and reschedule the individual assembly to be manufactured and delivered in accordance with the following;

The order for any product in the nearest 60-day period is a firm order and not subject to rescheduling. Any orders for product to be produced beyond 60-days may be increased or decreased by an amount agreed to by both parties. The starting day of the remaining lead-time is defined as the first day of the following month, after the written schedule change notices is received by SMT. Rescheduling resulting in delays of shipments in excess of 60-days (either in one rescheduling event or in the aggregate), beyond the original purchase order schedule, will require buyer deposit for the material value of the assemblies.

#### 7.0 CANCELLATION

In the case of cancellation, in addition to any other amounts properly to be paid by Buyer pursuant to this agreement or the uniform commercial code, Buyer is responsible for any material inventoried by SMT in support of Buyers' purchase order(s) that is not immediately reusable by SMT or returnable to the supplier. Additionally, Buyer is responsible for any cancellation charges, restocking charges, or any non-cancelable commitments incurred by SMT for such material. Such inventory items will be identified, if requested, upon the initial execution of this Agreement, and as they become otherwise identified during the course of this Agreement.

#### 8.0 ENGINEERING CHANGES

Engineering changes (EC's) may be initiated under the following terms:

Buyer gives advance written notice to SMT of any EC requested by Buyer. If the EC is identified as critical by Buyer, SMT will respond to the EC within 48 hours of receipt of such notice. Implementation of the requested EC is contingent upon material availability. All other EC implementation schedules will be per mutual agreement.

SMT shall provide a written assessment of the anticipated effects of any EC on SMT's schedule and manufacturing costs (including costs associated with scrap and rework, retooling, fixtures, and any changes to the recurring product price).

Buyer will reimburse SMT for the reasonable cost as a result of any EC of any parts and/or material, long lead components and minimum buy components that cannot be used by SMT to produce products. In the case of parts and materials not yet delivered by the suppliers, the cancellation charges or other liabilities incurred by SMT in canceling such parts and materials shall be borne by Buyer. Buyer will be responsible for all rework or scrap costs incurred by SMT that result from design, test, component or material changes made by Buyer. SMT shall use reasonable effort to minimize Buyer's liability.

#### 9.0 INCREASED REQUIREMENTS

If there is an increase in requirements, SMT shall make reasonable efforts to service the increase and shall advise Buyers of its efforts to service the increased requirements. Buyer and SMT shall jointly work with suppliers of the long-lead items to ensure that an adequate supply of critical components is available at all times. Buyer will be responsible for the material on all long lead items, critical, and minimum buy components when SMT has procured either to meet Buyer's forecasts or as a result of written authorization from Buyer.

#### 10.0 CARRYING CHARGES

In the event that SMT is required to maintain inventory in excess of its reasonable and customary inventory practices as a result of the increase in requirements, accelerations of the release schedule, engineering changes or other Buyer actions, the parties agree to a monthly carrying charge of 1 1/2% of the invoice cost of the excess inventory or full prepayment to cover the costs associated with maintaining the excess inventory. This carrying charge is in addition to Buyer's material liability stated above.

#### 11.0 END OF CONTRACT INVENTORY

Buyer will be responsible for all material inventoried by SMT in support of Buyer's purchase order that is not reusable by SMT or returnable to the supplier. Additionally, Buyer is responsible for any cancellation charges, restocking charges, or any non-cancelable commitments incurred by SMT for such material.

#### 12.0 TOOLING, FIXTURES AND PROGRAMS

Tooling and test fixtures shall be acquired and maintained by SMT, and invoiced to Buyer along with any set-up charges reasonably and customarily charged by SMT. Title to the test fixtures and tools will pass to Buyer upon the later of the termination of this Agreement or the receipt of full and final payment of amounts due SMT. Buyer will be responsible for providing SMT with complete current documentation, documentation changes, special test fixtures, and technical support as needed to build and test product.

#### 13.0 QUALITY ASSURANCE

Printed circuit assemblies will be manufactured in accordance with IPC-A-610D Class 2. Buyer will provide assistance and guidance to SMT to ensure that the manufacturing, labeling, and production records are in compliance with all applicable regulations and standards.

#### 14.0 PRODUCT WARRANTIES

SMT warrants to Buyer that each product shall comply with the specifications and drawings provided by Buyer at the time of the execution of the purchase order and be free from defects in workmanship for 12 months from the product ship date. SMT shall also pass on to Buyer, as permitted, any component manufacturer's warranties as the sole warranty as to such components. The product warranty shall not apply to product that is abused, damaged, altered or misused, or product damaged by external causes not directly contributed to by SMT.

Products shall be considered free from defects in workmanship and to be in compliance with the Buyer's specifications and drawings if they are manufactured in accordance with SMT's manufacturing workmanship standards and successfully complete product acceptance tests to which Buyer and SMT have agreed in advance and performed by SMT at its facilities. Buyer may perform additional acceptance testing, which measures a different array of performance criteria, but the parties agree that the documented Buyer's product acceptance tests will be the measurement standard to determine if the product meets specifications at the time of testing. Product acceptance tests can be reviewed and revised upon mutual agreement.

THE PRODUCT WARRANTY IS THE ONLY WARRANTY GIVEN BY SMT. SMT MAKES, AND BUYER RECEIVES, NO OTHER WARRANTY EITHER EXPRESSED OR IMPLIED. ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, AND ALL IMPLIED WARRANTIES OF TITLE FOR ANY CONSIGNED OR BUYER SUPPLIED MATERIALS, ARE EXPRESSLY DISCLAIMED AND EXCLUDED HEREOF.

SMT MAKES NO WARRANTY THAT THE PRODUCTS WILL (i) MEET ANY SPECIFICATION NOT MADE KNOWN TO AND AGREED TO BY SMT, OR (ii) RECEIVE THE APPROVAL OF OR BE CERTIFIED BY UNDERWRITERS LABORATORY, ANY FEDERAL, STATE, LOCAL OR FOREIGN GOVERNMENT AGENCY (INCLUDING WITHOUT LIMITATION THE FEDERAL COMMUNICATIONS COMMISSION) OR ANY OTHER PERSON OR ENTITY ("REGULATORY STANDARDS"). SMT ASSUMES NO RESPONSIBILITY FOR OBTAINING SUCH APPROVALS OR CERTIFICATIONS, OR MEETING SUCH SPECIFICATIONS. NOTWITHSTANDING THE FOREGOING, HOWEVER, SMT WARRANTS THAT ITS MANUFACTURING PROCESS WILL NOT ALTER REGULATORY STANDARDS IF BUYER HAS QUALIFIED THE PRODUCTS FOR SUCH STANDARDS.

ALL CLAIMS FOR BREACH OF WARRANTY MUST BE RECEIVED BY SMT NO LATER THAN THIRTY (30) DAYS AFTER THE EXPIRATION OF THE WARRANTY PERIOD FOR THE PRODUCT.

#### 15.0 REMEDIES

Buyer's exclusive remedy for any breach of the product warranty shall be, at SMT's option, repair or replacement by SMT at the facility of original manufacture, or return of the purchase price of each defective product unit which is returned to SMT's factory within the warranty period, and which upon examination SMT determines in its sole discretion to be defective in workmanship. SMT will repair Products which are outside the warranty period or otherwise excluded from warranty coverage, on mutually agreed prices and terms and conditions.

#### 16.0 LIMITATION OF LIABILITY

SMT's warranty obligations will cease only upon the earlier of the expiration of the warranty period or as of the date on which Buyer has removed its test equipment from SMT's premises such that SMT no longer has the test capability to perform the warranty obligation.

Buyer warrants to SMT that any documentation or other data that it provides SMT to manufacture the products is accurate and complete, unless Buyer informs SMT otherwise.

#### 17.0 PAYMENT TERMS

Initial Payment terms are to be agreed upon between SMT and Buyer. Once credit performance is established, the standard payment term is net 30 days from the date of invoice from SMT. SMT reserves the right to change payment terms and credit arrangements at any time if Buyer's financial condition or previous payment record so warrants.

#### 18.0 LIABILITY

Except as otherwise provided in this Agreement, neither party shall be liable for special, indirect, incidental or consequential damages arising out of or in connection with the performance of this Agreement or with claims brought by third parties, or any indemnifications granted by either party in connection with this Agreement.

#### 19.0 SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable, such invalidity of unenforceability shall not affect the enforceability of any other provisions of this Agreement not held to be invalid.

#### 20.0 AMENDMENTS

Modification of this Agreement must be made in writing, signed by a duly authorized individual of each party. Such writing shall be effective as an amendment only to the extent that the writing expressly indicates the intent of the parties to modify this Agreement. No Amendment shall be deemed effective, until a duplicate original of such Amendment is received by each party.

#### 21.0 COMPLIANCE WITH THE LAWS

Both parties agree to comply with all applicable laws, rules and regulations with regard to the performance of its obligations under the Agreement and indemnify and hold the other party harmless from any loss resulting from its failure to obey all such laws, rules and regulations. This Agreement is made in, governed by, and shall be construed in accordance with the laws of the State of Wisconsin including, unless provided otherwise herein, the Uniform Commercial Code as implemented in chapters 401 to 411 of the Wisconsin Statutes.

#### 22.0 WAIVER

Either party's failure to exercise, in whole or in part, or delay in exercising any right under this Agreement will not preclude any future exercise of the same right or the exercise of any other right hereunder.

#### 23.0 FORCE MAJEURE

Neither party will be liable nor deemed to be in default for delay or failure in performance or interruption of service hereunder resulting directly or indirectly from any cause beyond its reasonable control, including without limitation, acts of God, wars, floods, riots, labor strikes, worldwide parts shortages, or transportation shortages. The time for performance so affected or delayed will be deemed extended for the period of such delay. The party claiming excuse for failure to perform due to force majeure shall notify the other party in writing of the existence of the force majeure cause and its expected duration. Such notice shall be delivered within five (5) days of the date on which the party knows or should reasonably know that the event will cause a delay, failure or interruption of such party's performance.

#### 24.0 AUTHORITY

Buyer warrants that it has the unqualified right to enter this Agreement, that it is the owner of or has the right to transfer all rights and licenses to all technology, intellectual property and other deliverables under the terms of this Agreement, and that it has the right to perform all obligations under this Agreement.

#### 25.0 ASSIGNMENT

Neither party may assign or otherwise transfer its rights and obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

#### 26.0 NON-LICENSING

The parties understand that except as may be otherwise expressly stated herein, the terms and conditions of the Agreement shall not be considered in any way as a grant of any license whatsoever under either party's present or future trademarks, trade secrets, or other proprietary rights, nor is any such license granted by implication, or otherwise.

#### 27.0 INDEMNIFICATION

Buyer shall defend, at Buyer's expense, all claims against SMT for infringement or alleged infringement of copyrights, patents, or intellectual property rights by the units furnished under this Agreement.

#### 28.0 TERMINATION CLAUSE

If either party breaches a material provision of this Agreement and the breach is not cured within 60 days after receipt of written notice from the other party specifying the nature of the breach or if a plan is not in place to expeditiously cure such breach, the non-breaching party may terminate the Agreement by written notice to the party in breach.

As used above, the term "breach" shall include, but not be limited to the occurrence of any of the following events: the failure of a such party to comply with a material provision of this Agreement; the filing by the party of a petition in bankruptcy or insolvency; or any adjudication that the party is bankrupt or insolvent; or the filing by the party of any petition or answer seeking reorganization, readjustment, or rearrangement of the business under any law relating to bankruptcy or insolvency; or the appointment of a receiver for all or substantially all of the property of the party, or the making by the party of any assignment or attempted assignment of the benefit of creditors; or the institution of any proceedings for the liquidation or winding up of the business or for the termination of the corporate charter of the party.

Termination or other expiration of this Agreement shall not affect the survival of any rights or obligations hereunder which by their nature are to survive and be effective following termination of this Agreement.

#### 29.0 GOVERNING LAW

This Agreement shall be construed in accordance with Wisconsin law. Any dispute or controversy arising out of or in connection with the interpretation or performance of this Agreement shall be adjudicated by, and the parties hereto hereby submit to exclusive venue and jurisdiction of, the Circuit Court of Outagamie County, Wisconsin.

#### 30.0 NOTICES

All notices and other communications required or permitted hereby shall be validly given only in writing, addressed to the receiving party at the address or fax number stated above, and shall be effective (a) at the time delivered personally, (b) at the time transmitted by fax, provided that the transmittal includes a delivery confirmation produced by the sending and/or receiving machine in form customarily regarded as reliable between merchants, (c) the day after sent by means of any nationally recognized overnight courier delivery service or (d) four days after sent by certified U.S. Mail, return receipt requested. A party may give notice of changes of its address by written notice delivered as stated herein.

BUYER HEREBY FULLY ACCEPTS AND AGREES TO SMT'S CONTRACT MANUFACTURING AGREEMENT AND ITS CONDITIONS AS STATED ABOVE.

SURFACE MOUNT TECHNOLOGY CORP.

[Company]

(Signature) \_\_\_\_\_

(Signature) \_\_\_\_\_

(Name) \_\_\_\_\_

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(Title) \_\_\_\_\_

(Date) \_\_\_\_\_

(Date) \_\_\_\_\_