



## Terms and Conditions of Sale

July 2006

The following sets forth the terms and conditions of sale of products and services of Integrated Test Corporation (ITC) as of the date set forth above. All terms and conditions are subject to change, subject to the provisions of paragraph 3 below relating to price.

### 1. ACCEPTANCE

No order for ITC products or services shall be binding upon ITC until accepted verbally or in writing by an authorized ITC representative. Purchaser shall be deemed to have agreed to all terms and conditions of sale provided herein and to any special terms and conditions contained in a quotation and acknowledgement or other writing provided by an authorized ITC representative. Purchaser shall also be deemed to have agreed to all changes or additions to such terms and conditions which become effective subsequently, and prior to ITC's acceptance of Purchaser's order, unless Purchaser notifies ITC in writing to the contrary within five (5) days after Purchaser receives notification of the new or changed conditions, in which case ITC shall have the right to cancel Purchaser's order.

### 2. CANCELLATION

Purchaser shall advise ITC of cancellation (whether wholly or in part) in writing. Upon receipt of Purchaser's written notification of cancellation, ITC will arrange to stop all work on the products and/or services cancelled as promptly as reasonably possible.

Except in the case of a cancellation in accordance with paragraph 1 above, Purchaser shall pay to ITC, as liquidated damages for loss of profits, a cancellation charge for the products and/or services cancelled, in accordance with the following cancellation schedule:

% of Purchase Order Price	25 %	50 %	75 %	100 %
<b>Interface Hardware</b>				
Custom* (parts ordered only)			X	
Standard (parts ordered only)	X			
Assembly started				X
NRE Design Phase		X		
NRE Detailing Phase				X
<b>PCB (process step at cancellation)</b>				
Tooling	X			
Drill**		X		
Plated NI/AU			X	
Test				X

\* - Custom items would be those solutions for a specific customer application, as opposed to a standard configuration that is applicable to numerous customers.

\*\* - May vary depending on technology type, such as multi-lam type boards which have multiple drill cycles.

Purchaser agrees to reimburse ITC in addition to the liquidated damages described above, the full cost of all labor, supplies and materials, engineering work, services, and all commitments made by ITC with respect to the relevant products and services up to the time of ITC receipt of notice to cancel, less credit for all standard items which can be used at the time of cancellation to fill another order.

### 3. QUOTATIONS AND PRICING

The prices stated in the price quotation attached to these terms and conditions of

sale shall be firm for thirty (30) days from the date of the quotation and are thereafter subject to change until ITC accepts the order. Prices shown in published price lists or other literature are not offers to sell and are subject to confirmation by specific quotations. The ITC quotation is not assignable by Purchaser without the prior written consent of ITC.

#### **4. N-STANDARD ACCEPTANCE REQUIREMENTS**

All ITC products are thoroughly tested during manufacture to ensure that published specifications are met. At any time prior to the shipment of an order, customers may review ITC quality control data at its facilities, when accompanied by an ITC customer representative. If a customer requires additional custom acceptance tests, the written test procedure and acceptance criteria with sample customer materials and components must be approved by ITC prior to acceptance of the order. Costs for these additional tests, if any will be estimated by ITC and must be included in the purchase order for the products being purchased.

#### **5. PAYMENT**

All invoices to domestic customers shall be payable in full within thirty (30) days of the date of the invoice, unless otherwise specified in the attached quotation. All payments not made when due shall be subject to a late charge of 2% per month of current balance; provided, however, that the rate of the late charge shall not exceed the highest applicable rate allowed by Arizona or other law. Unless otherwise agreed by ITC in writing, International payment terms are by Confirmed Irrevocable Letter of Credit, confirmed and payable through a bank approved by ITC

#### **6. SHIPPING AND RISK OF LOSS; SECURITY INTEREST**

##### *(a) Delivery*

The availability of ITC products on the shipping dock of the ITC factory (ex-works) for loading by the Purchaser's designated carrier shall constitute delivery to the Purchaser and accordingly, all risk of loss or damage in-transit shall pass to Purchaser at

that time. Purchaser is responsible for all transportation, delivery, customs and duties, and insurance costs incurred in connection with the delivery of the products to the designated site.

##### *(b) Packaging*

All ITC products will be packaged and shipped in industry acceptable packaging. The Purchaser will be invoiced for any special packaging requested outside of the normal ITC packaging specifications.

##### *(c) Security Interest*

Purchaser hereby grants to ITC a security interest in products sold to it, and in any proceeds (including accounts receivable) thereof as security for its obligations hereunder. This security interest shall commence upon delivery of any product and terminate upon full payment therefore. At the request of ITC, Purchaser shall execute any document required to perfect this security interest.

##### *(d) Shipping Schedule*

The shipping schedule shall be computed from the date ITC receives Purchaser's order for products with full instructions, samples, and such other information or items as ITC may need in order to proceed with the design, manufacture, and test of the products ordered.

##### *(e) Shipping Method*

In the event that Purchaser fails to supply ITC with shipping instructions in a timely manner, ITC shall have the right to arrange for shipment in any reasonable manner.

##### *(f) Shipping Cost Invoices*

If the cost of shipment is prepaid by ITC at Purchaser's request, ITC shall invoice the products upon shipping to reflect shipping costs known to ITC; additional shipping costs shall be invoiced as they become available from the shipper. A partial shipment will be invoiced as per the unit price.

##### *(g) Claims for Defects*

All claims for defects in delivery of products or services shall be deemed waived unless

presented in writing within ten (10) days after delivery. Purchaser's receipt of products and/or services shall constitute a waiver of any claim for delay.

*(h) Returns*

No product shall be returned without authorization and shipping instructions first being obtained from ITC. All freight forwarding, transportation or any other shipping costs and custom clearance charges shall be paid by the Purchaser.

**7. TAXES AND OTHER CHARGES**

Purchaser shall pay any manufacture tax, retailer's occupation tax, use tax, sales tax, excise tax, duty, custom inspection or testing fee, or other tax, fee or charge of any nature whatsoever, (other than taxes based on ITC's net income) imposed by any governmental authority, on or measured by any transaction between ITC and Purchaser. In the event ITC is required to pay any tax, fee, or charge, Purchaser shall reimburse ITC therefor; or, in lieu of such payment, shall provide ITC at the time the order is submitted with the exemption certificate or other documentation acceptable to the authority imposing the tax, fee or charge. Purchase orders must state the existence and amount of any tax, fee, or charge if ITC must collect such tax, fee or charge from Purchaser and pay it to the authorities.

**8. WARRANTY**

ITC warrants the product manufactured by it to be free from defects in material and workmanship for a period of time specific to the type of product purchased. The warranty commences on the date of shipment, and includes labor and parts during the period specified below:

Product	90 days	1 year
Interface Hardware		X
PCB	X	

ITC reserves the right to not accept RMAs for Warranty based on ITC evaluation and determination that the product was damaged or misused outside of ITC.

Warranty Repairs

ITC warrants those parts replaced under warranty for a period equal to the remaining warranty coverage of the product receiving the part, or forty five (45) calendar days from the shipment date of the part to Purchaser, or as provided in the original invoice, whichever is longest.

ITC's sole and exclusive obligation under these warranty provisions shall be to repair, or at its sole option exchange defective products or the relevant part or component, but only if: (i) Purchaser reports the defect to ITC in writing and provides a description of the defective product and complete information about the manner of its discovery within ten (10) days of its discovery; (ii) ITC has the opportunity to investigate the reported defect and determine that the defect arises from faulty material, parts or workmanship; and (iii) if deemed appropriate by ITC, Purchaser returns the affected product, part, or component to a location designated by ITC.

Warranty Limitations

Any repairs, replacements, modifications or corrections made pursuant to the foregoing warranties shall be made, at ITC's option, either at the customer site or at a qualified ITC service location.

Custom products are subject to the Warranty Terms and Conditions as expressly established in the purchase order.

If the repair, replacement, modification or correction is made at a qualified ITC service location, freight for the return of the product to ITC and the subsequent return to Purchaser shall be paid by the Purchaser including forwarding, transportation, insurance and other shipping costs and customs clearance charges. No product shall be returned to ITC without authorization and shipping instructions from ITC.

**Requests to ITC for on site warranty repairs shall be carried out on a best effort basis by ITC when possible and must be agreed upon by the customer and an authorized ITC Representative.**

These warranties shall not apply to (i) products repaired, modified, or altered by anyone other than those authorized by ITC, (ii) products subjected to negligence, accidents or damage by circumstances beyond ITC's control, or (iii) product subjected to improper operation or maintenance in accordance with ITC instructions or for use other than the original purpose for which the product was designed to be used.

ITC reserves the right to make changes to the design of any products sold to Purchaser at any time without incurring any obligation to install the new design on products previously purchased or shipped. ITC shall not be responsible for the correctness, accuracy or consistency of any information provided by others, including information provided by Purchaser.

THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.

**ITC shall not in any event have obligations or liabilities to the Purchaser or any other party for loss of profits, loss of use or incidental, special or consequential damages, whether based on contract, tort (including negligence), strict liability, or any other theory or form of action, even if ITC has been advised of the possibility thereof, arising out of or in connection with the manufacture, sale, delivery, use, repair or performance of the ITC products or any failure or delay in connection with any of the foregoing or for breach of any warranty set forth herein. Without limiting the generality of the preceding sentence, ITC shall not be liable to the Purchaser for personal injury or property damages, except for bodily injury, death or tangible property damage caused by**

**the negligence of ITC or any of ITC employees. In no event shall the liability of ITC to the Purchaser arising under or in connection herewith exceed the original invoice amount of all products purchased pursuant to such invoice.**

This warranty policy applies only to ITC products purchased directly from ITC or its authorized representatives and distributors. ITC provided service is the exclusive remedy of Purchaser for product defects or any other claim of liability in connection with the purchase or use of ITC products.

#### **9. CONFIDENTIALITY**

Purchaser agrees to exercise due diligence to protect and preserve in confidence the confidential information which ITC designates as such including but not limited to instruction and operating manuals. Purchaser shall not disclose or publish such information or use the information for any purpose other than Purchaser's use of ITC products in connection with its business as contemplated herein.

#### **10 REMEDIES**

In addition to ITC remedies as stated in paragraph 2 above, and in addition to other available remedies, ITC shall have the following remedies:

In the event Purchaser fails to make any payment when due, ITC shall be entitled to: (i) offset the overdue amount against any other funds of Purchaser in ITC custody; (ii) terminate ITC obligations under these terms and conditions of sale and treat this agreement as if cancelled by Purchaser, in which case Purchaser shall be liable for any amount payable to ITC Pursuant to paragraph 2 above; (iii) delay manufacture or delivery of all or part of the products and/or delay performance of the related services sold to Purchaser under this or any other sale agreement between Purchaser and ITC and/or (iv) recover or require Purchaser to return forthwith, at Purchaser's expense (including proper insurance with respect thereto), all products and other materials which ITC provided to Purchaser

and with respect to which Purchaser failed to make timely payment.

Without otherwise limiting ITC's right to change the terms and conditions of sale as provided in paragraph 1 above, if ITC at any time and in its sole discretion determines that Purchaser's financial condition or conduct jeopardizes ITC right to payment, ITC may require payment in advance of shipping all or part of the products or performing related services pursuant to these terms and conditions of sale. ITC shall have the right to obtain an injunction against unauthorized copying or use of ITC designated confidential information in violation of paragraph 9 above. ITC reserves the right to assign any overdue amounts to a third party collection agency. Purchaser will be responsible for all collection expenses.

#### **11. LIMITATION OF LIABILITY**

In addition to the limitations of ITC's liability set forth in paragraph 8 above, the following limitations are also applicable:

##### **(a) Patent Infringement**

ITC agrees to defend any patent infringement suits based on any such patent claim brought against Purchaser if such a suit is based on an assertion that Purchaser's use of the product furnished by ITC infringes any such claim of a U.S. Patent, provided that (i) Purchaser timely notifies ITC within 10 days after Purchaser becomes aware of any possible charge of infringement, and (ii) Purchaser gives ITC the authority to defend and settle, as well as information and assistance needed for the defense of a suit or the threats of a suit. ITC may, at its option and expense (a) procure for Purchaser the right to continue using the accused product (b) modify the product to render it non-infringing, or (c) take back the accused product and refund the purchase price and the Purchaser's transportation and other reasonable product-related costs.

The foregoing states the entire liability for patent infringement and ITC shall have no obligation to defend any infringement suit if: (i) Purchaser's alleged infringing use of the

ITC product is based upon contributory infringement or results from the use of ITC product in connection with a product supplied or designed by others, or (ii) Purchaser's infringing use arises from the use of the ITC product for purposes not intended by ITC.

##### **(b) General Limitations of Liability**

In addition to any other limitations on ITC liability under this Agreement, ITC total liability to Purchaser for any and all causes of action, regardless of form, shall *not exceed* the aggregate purchase price of the products and services sold to Purchaser as stated in the price quotation herein attached and in other applicable conditions of sale signed by an authorized ITC representative.

EXCEPT AS HEREIN PROVIDED ITC SHALL NOT BE LIABLE TO PURCHASER OR ANYONE ELSE FOR ANY OTHER EXPENSE, INJURY, LOSS OR DAMAGE WHETHER DIRECT OR CONSEQUENTIAL, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE OF THE PRODUCT OR PRODUCTION, LOSS OF INFORMATION OR INCREASED COST OF OPERATION OR DELAYS IN OPERATION arising in connection with the sale, repair, use of, or inability to use the products for any reason. The provisions of this section shall survive any termination of these terms and conditions of sale.

#### **12. FORCE MAJEURE**

ITC shall not be held responsible or liable for any loss or damage resulting from a delay in the delivery of the products or any failure to perform its obligations to Purchaser if the causes of such delay or failure are attributable to Acts of God, governmental authority, or Purchaser, or due to strikes, embargoes, supply shortages or other causes beyond the reasonable control of ITC. In the event any delay occurs because of these causes, the date of delivery shall be extended by at least the period of time attributable to the delay.

#### **13. INDEMNIFICATION**

Purchaser shall defend, indemnify and hold ITC harmless from any and all liability,

claims, losses, damages, costs and expenses (including reasonable attorney's fees and costs) arising from Purchaser's breach of these terms and conditions of sale, including Purchaser's duties as described in paragraph 9 above. Purchaser shall also defend, indemnify, and hold ITC harmless from liability in contract, tort or for copyright, trademark, patent or other intellectual property infringement for any products furnished and manufactured by ITC in accordance with designs proposed by Purchaser.

#### **14. EXPORTS**

Equipment manufactured by ITC may be subject to export control by the U.S. Department of Commerce and, possibly, may not be exported without application and issuance of appropriate licenses from the Department of Commerce. Purchaser is responsible for obtaining the appropriate export licenses when reselling the equipment, at any time, to a party other than that which was named in the original contract of sale as the end user of the equipment.

#### **15. MISCELLANEOUS**

##### **(a) Assignment**

These terms and conditions of sale shall inure to the benefit of and shall be binding upon the heirs, successors, and assigns of the parties hereto. Purchaser shall not assign its duties and obligations hereunder without ITC prior written consent.

##### **(b) Controlling Law**

These terms and conditions of sale shall be governed by, construed under, and enforced in accordance with the laws of the State of Arizona.

##### **(c) Waiver**

No waiver by ITC of any breach of the Terms and Conditions hereof by Purchaser shall be effective unless made in writing. Failure of ITC to object to provisions contained in any purchase order or other communication from Purchaser (including but not limited to penalty clauses) shall not be construed as acceptance of those

provisions or as a waiver of these terms and conditions of sale.

##### **(d) Integration and Merger**

These terms and conditions of sale, as well as the attached price quotation, the latest published terms and conditions of sale in effect at the time of acceptance of an order, and any special conditions of sale contained in a writing signed by an authorized ITC representative, are the complete and exclusive statement of the terms of the Agreement between Purchaser and ITC. All prior proposals, negotiations and representations, if any, pertaining to this transaction are merged into these terms and conditions of sale. Except as stated herein, no other terms, conditions, agreements or understandings, in any way modifying or adding to these terms and conditions of sale whether contained in Purchaser's work order or form of acceptance or elsewhere, shall be binding on ITC unless made in writing and signed by an authorized ITC representative.