

Manufacturing Agreement

This Agreement is hereby made effective this _____ day of _____, 20____ between _____, a _____ Corporation, having its place of business at _____, _____, _____, (hereinafter "Customer") and Total Electronics LLC, an Indiana Corporation, having its place of business at One Technology Way, Logansport, IN 46947 (hereinafter "Total").

1. WORK

Total agrees to use reasonable commercial efforts to perform the work (hereinafter "Work") pursuant to purchase orders or changes to purchase orders issued by Customer and accepted by Total. Work shall mean to procure components and other supplies and to manufacture, test, and assemble products (hereinafter "Products") pursuant to detailed, written specifications for each such Product which are provided by Customer and accepted by Total and to deliver such Products to a Customer designated location. For each Product or revision thereof, written specifications shall include but are not limited to bill of materials, schematics, assembly drawings, test specifications, current revision number, fabrication documentation, gerber files, program device software and approved vendor list (hereinafter "Specifications"). Customer shall timely provide such additional documentation as Total may reasonably require from time to time.

2. REQUIREMENTS FOR PURCHASING

2.1 Purchase Order Commitments

Customer will issue written purchase orders which specify all Work to be completed commencing on the date of the purchase order. Each purchase order shall reference this Agreement and the applicable written Specifications as described in Section 1.0.

Customer's accepted purchase orders will constitute authorization for Total to procure "Inventory" consisting of (1) materials and supplies necessary for the manufacture of Products covered by such purchase orders and (2) minimum lot sizes from the suppliers which are in excess of the purchase order amount ("minimum lot").

Customer will be responsible for all Inventory purchased by Total under this Section 2.1 under the conditions provided elsewhere in this Agreement.

2.2 Acceptance/Rejection

Purchase orders shall not be binding on Total until accepted by Total at its discretion. Total shall notify Customer of rejection of any purchase order within five (5) working days of receipt of such order. Customer may use its standard purchase order form to request products, quantities, prices, schedules, change notices, specifications, or other items as provided for hereunder. Unless delivery dates are expressly agreed to in writing by Total, deliveries are subject to Total' lead times. In all other respects, this Agreement shall govern, and no other terms and conditions, preprinted or otherwise, on such purchase orders shall be of effect.

2.3 Implied License

Total shall be deemed to have been granted by Customer a non-exclusive, royalty-free license during the term of this Agreement to use all of Customer's patents, trade secrets and other intellectual property only to the extent required to perform Total' obligations under this Agreement.

All software which Customer provides to Total is and shall remain the property of Customer. Total shall have a license to copy, modify, and use this software but only for the purposes intended under this Agreement and then only while the Agreement is still in effect. All software and other processes developed by Total to support and perform the Work including process tooling or otherwise shall be and remain the property of Total.

3. SHIPMENTS, SCHEDULE CHANGE, CANCELLATION, AND INVENTORY LIABILITY

3.1 Shipments

All Products delivered pursuant to the terms of this Agreement shall be suitably packed for shipment in accordance with Customer's Specifications, marked for shipment to Customer's destination specified in the applicable purchase order, and delivered to a carrier or forwarding agent. Shipment will be F.O.B. Customer's facility in Logansport, Indiana, or if Customer has no San Diego facility, then F.O.B. Total' San Diego facility, at which time risk of loss and title will pass to Customer. All freight, insurance, and other shipping expenses, as well as any special packing expenses not included in the original price quotation for the Products will be paid by Customer. Customer is directly responsible for all export/import requirements, charges and costs, including the processing and obtaining of permits, authorizations, and licenses and payment of duties, tariffs or any other fees or charges.

3.2 Schedule Change

Customer may change the quantity of Products or their delivery date as contained in any accepted purchase order only with Total' prior written consent; provided, however, that a/ Customer may reschedule the delivery of any particular Products on one occasion, up to a maximum of thirty (30) days beyond the original scheduled delivery date, on written notice more than forty-five (45) days prior to the original scheduled delivery date and b/ provided further that Customer may reschedule the delivery of any particular Products on more than one occasion, up to a maximum of one hundred eighty (180) days prior to the original scheduled delivery date, on written notice at least seventy-five (75) days prior to the original scheduled delivery date. Changes in quantity of Products or their delivery date within forty-five (45) days of scheduled delivery, or otherwise except as expressly permitted by this section 3.2, will not be accepted, and Customer will be required

to take delivery of and pay for Products at the times as set forth in the purchase order.

3.3 Cancellation

Customer may not cancel any portion of an accepted purchase order without Total' prior written approval, which will not be unreasonably withheld. If the parties agree upon a cancellation, Customer will pay Total for Products and Inventory affected by the cancellation as follows: (i) 100% of the contract price for all finished Products in Total' possession, (ii) 120% of the cost of all Inventory in Total' possession and not returnable to the vendor, whether in raw form or work in process, (iii) 110% of the cost of all Inventory on order and not cancelable, and (iv) any vendor cancellation charges incurred with respect to Inventory accepted for cancellation or returned to the vendor. Total will use reasonable commercial efforts to return unused Inventory and to cancel pending orders. Customer will be entitled to take delivery of all Products and Inventory to be paid for by Customer under this section, after Total' receipt of payment therefor.

3.4 Excess Inventory Liability For Purchase Orders Which Are Not Canceled

In addition to Customer's liability for the contract price for Products ordered under a purchase order which is not canceled as provided in Section 3.3, Customer is liable for any Inventory procured by Total for such purchase order which cannot be utilized in the production of said Products as follows: (i) 120% of the cost of all inventory in Total' possession and not returnable to the vendor, whether in raw form or work in process, (ii) 110% of the cost of all Inventory on order and not cancelable, and (iii) any vendor cancellation charges incurred, with respect to Inventory accepted for cancellation or returned to the vendor.

4.0 ENGINEERING CHANGES

Customer may request in writing that Total incorporate an Engineering Change into the Product. Such request will include a description of the proposed change sufficient to permit Total to evaluate its feasibility. Total' evaluation shall be in writing and shall state the impact on delivery schedule and cost. Total will not be obligated to proceed with the Engineering Change until the parties have agreed in good faith on the changes to the Product, Specifications, Delivery Schedule, Pricing and upon the cost to be paid by Customer, including reassembly, retooling or cost of Inventory on hand (not less than 120%) and on order (not less than 110%) that becomes obsolete.

5.0 TOOLING/NON-RECURRING EXPENSES

Total shall provide non-Product specific tooling at its expense. Customer shall pay for or obtain and consign to Total any Product specific tooling and shall prepay other reasonable necessary non-recurring expenses to be set forth in Total' quotation. Customer consigned tooling shall be returned to Customer upon termination of Agreement.

6.0 PRODUCT ACCEPTANCE AND WARRANTIES

6.1 Product Acceptance

The Products delivered by Total may be inspected and tested by Customer within ten (10) days of shipment. If Products are found to be defective in material or workmanship, Customer has the right to reject such Products during the acceptance period. Products not rejected during the acceptance period will be deemed accepted. Customer may return defective Products, freight prepaid, after obtaining a return material authorization number from Total to be displayed on the shipping container and completing a failure report. Rejected Products will be repaired or replaced at Total' option and returned freight prepaid, as Customer's sole remedy.

This section 6.1 does not apply to defects in material in Products which are ordered without testing to be performed by Total or which do not conform to Total testing processes. Customer's sole remedy with respect to such Products is limited to Total' express warranty in Section 6.2.

6.2 Express Warranty

Total warrants that the Products will conform to Customer's applicable Specifications and will be free from defects in workmanship and material for a period of one (1) year from the date of shipment. This express warranty does not apply to (a) materials consigned by Customer to Total; (b) defects or non-conformities resulting from Customer's Specifications for or design of the Products; (c) Product that has been abused, damaged, altered, or misused by any person, entity or cause other than Total; or (d) defects or non-conformities, other than defects in workmanship, which would have been disclosed by Total testing of Products that are ordered without testing to be performed by Total or which do not conform to Total testing processes. With respect to first articles, prototypes, pre-production units, test units, or other similar Products, Total makes no representations or warranties whatsoever. Notwithstanding anything else in this Agreement, Total assumes no liability for or obligation related to the Product's performance, accuracy, adequacy, failure to meet Specifications or defects due to materials, specification fixtures, designs or instructions produced or supplied by Customer, and Customer shall be liable for costs or expenses incurred by Total related thereto. Upon any failure of a Product to comply with the above warranty, Total' sole obligation, and Customer's sole remedy, is for Total, at its option, to promptly repair or replace such unit and return it to Customer freight prepaid. Replacement units may be reconditioned. Repair/replaced units will not extend the warranty period Customer shall return Products covered by the warranty freight prepaid after completing a failure report and obtaining a return material authorization number from Total to be displayed on the shipping container. This warranty is for the benefit of Customer only and is not assignable.

Total MAKES NO OTHER WARRANTIES OR CONDITIONS ON THE PRODUCTS, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR COMMUNICATION WITH CUSTOMER, AND Total SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.0 PAYMENT TERMS, ADDITIONAL COSTS, AND PRICE CHANGES

7.1 Payment Terms

Subject to Total' continuing credit approval including the requirement for other payment terms, payment for any Products, services, or other costs to be paid by Customer hereunder are due thirty (30) days net from the date of invoice and shall be made in lawful US currency. If Customer is late with payments or Total believes Customer may not be able to pay when due, Total in its absolute discretion may require prepayment and/or delay shipments and/or suspend work until payment and security arrangements satisfactory to Total are completed. Late payments accrue interest at the rate of 0.8% per month not to exceed the maximum rate allowed by law.

7.2 Additional Costs

7.2.1 Taxes

Prices are exclusive of federal, state, and local excise, sales, use, withholding, value added, duty and similar taxes and charges of any government or taxing authority, and Customer shall be responsible for all such items.

7.2.2 Expediting Charges

Customer shall be responsible for any expediting charges reasonably necessary because of a change in Customer's requirements. Total shall obtain approval from Customer for expediting charges prior to incurring any such charge.

7.2.3 Overtime/Downtime Charges

Customer shall be responsible for overtime or downtime charges incurred as a result of delays in the normal production or interruption in the work flow process and caused by: (a) Customer's change in the Specifications; or (b) Customer's failure to provide sufficient quantities or a reasonable quality level of consigned materials where applicable to sustain the production schedule. Customer caused delays as a result of consigned inventory will result in a special charge to the Customer of 1% of the sales price of the delayed Product for each month delayed.

7.3 Price Changes

The price for Products to be manufactured will be set from time to time through purchase orders issued by Customer and accepted by Total.

7.3.1 Market Fluctuations

At any time, in the event of extraordinary increases or decreases in the market price of fuels, materials, raw materials, equipment, labor, and other Product costs to Total, the party adversely affected by such fluctuation shall have the right to renegotiate in good faith the price of Products whose costs are affected by such fluctuations and which have not yet been produced or shipped, and if in good faith agreement is not achieved, that party shall have the right to terminate the purchase order(s) for such Products.

7.3.2 Other Charges

In addition to all other remedies, Total shall be entitled to an equitable adjustment in the price for the Products affected by documentation clarification, shortages, or lack of attrition due to Customer supplied materials, or changes to orders or to the Products.

8.0 TERM AND TERMINATION

8.1 Term

The term of this Agreement shall commence on the date of Customers first purchase order issued hereunder and shall continue thereafter until terminated as provided in Section 8.2 or Section 8.3.

8.2 Termination For Convenience

This Agreement may be terminated by either party, with or without cause upon sixty (60) days written notice to the other party. Termination of this Agreement shall not affect the obligations of either party which exist as of the date of termination, including the mutual fulfillment of accepted purchase orders.

8.3 Termination for Cause

Either party may terminate this Agreement and/or any purchase order(s): (a) upon the material breach of any of the terms and conditions of this Agreement by the other party and such breach remains uncured for more than sixty (60) days following notice of breach from the terminating party (failure of Customer to make any payment when due is considered a material breach); or (b) upon notice if the other party becomes insolvent, petitions or is petitioned for liquidation or organization under any bankruptcy or insolvency proceedings, is adjudicated as bankrupt, has a receiver appointed for its business or makes an assignment for the benefit of creditors.

9.0 LIABILITY LIMITATION

9.1 Patents, Copyrights, Trade Secrets, Other Proprietary Rights

Customer shall defend, indemnify, and hold harmless Total from all claims, liabilities, actions, expenses, costs, damages, judgments, and attorney's fees resulting from or arising out of any alleged and/or actual infringement or other violation of any patents, patent rights, trademarks, trademark rights, trade names, trade name rights, copyrights, trade secrets, designs, proprietary rights and processes, or other intellectual property rights in connection with the performance by Total of its obligations under this Agreement. Total shall promptly notify Customer in writing of the initiation of any such claims.

THE FOREGOING STATES THE ENTIRE LIABILITY OF THE PARTIES TO EACH OTHER CONCERNING INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.

9.2 Product Liability

Customer agrees that if notified promptly in writing and given sole control of the defense and all related settlement negotiations, it will defend, hold harmless and indemnify Total from any claim, liability, judgment, action, loss, damage or injury, including death, or costs or expenses (including reasonable attorneys fees) which arises from any alleged defect in design, workmanship, or materials of any Products or the use thereof. Customer shall maintain adequate policies of insurance, with limits approved by Total, for product liability (including the manufacturing thereof), product infringement and contractual liability and shall, if requested by Total, name Total as an additional insured hereunder.

9.3 No Other Liability

EXCEPT AS SPECIFICALLY PROVIDED UNDER THE EXPRESS WARRANTIES CREATED UNDER THIS AGREEMENT, IN NO EVENT SHALL Total BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE ARISING OUT OF THIS AGREEMENT OR THE SALE OF PRODUCTS BY CUSTOMER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING THE POSSIBILITY OF NEGLIGENCE OF STRICT LIABILITY), OR OTHERWISE, EVEN IF Total HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE, IT BEING ACKNOWLEDGED BY CUSTOMER THAT THIS LIMITATION OF LIABILITY IS ESSENTIAL CONSIDERATION TO Total FOR ENTERING INTO AND PERFORMANCE OF THIS AGREEMENT. IF Total SHOULD BE FOUND LIABLE TO CUSTOMER FOR ANY REASON, CUSTOMER AGREES THAT SUCH LIABILITY SHALL IN NO EVENT EXCEED THE AMOUNTS RECEIVED BY Total FROM CUSTOMER FOR THE SPECIFIC PRODUCT RELATING TO SUCH LIABILITY.

10.0 MISCELLANEOUS

10.1 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties relating to such transactions. Each party shall hold the existence and terms of this Agreement confidential, unless it obtains the other party's express written consent otherwise, provided that Total may use Customer's name as a reference unless otherwise instructed in writing by Customer.

10.2 Amendments

This Agreement may be amended only by a writing executed by authorized representatives of both parties..

10.3 Independent Contractor

Neither party shall, for any purpose, be deemed to be an agent of the other party and the relationship between the parties shall only be that of independent contractors. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

10.4 Expenses

In the event a dispute between the parties hereunder with respect to this Agreement must be resolved by litigation or other proceeding or a party must engage an attorney to enforce its right hereunder, the prevailing party shall be entitled to receive reimbursement for all associated reasonable costs and expenses (including, without limitation, attorney's fees) from the other party.

10.5 Security Interest

Until the purchase price and all other charges payable to Total hereunder have been received in full, Total hereby retains and Customer hereby grants to Total a security interest in the Products delivered to Customer and any proceeds therefrom; a security interest in any material and equipment consigned to Total; without prejudice to Total' ownership or other rights thereto, a security interest in undelivered Products, components thereof, material procured or produced for Customer's account and work in process. Customer agrees to promptly execute any documents requested by Total to perfect and protect such security interest and hereby authorizes Total to file this Agreement as a financing statement.

10.6 Governing Law

This Agreement shall be governed by and construed under the laws of the State of California, excluding its choice of law principles. The parties consent to the exclusive jurisdiction of the state and federal courts in San Diego County, California.

10.7 Assignment

Neither party shall assign or transfer this Agreement, except as expressly provided herein, without the prior written consent of the other party; provided, however, that Total may transfer or assign its rights and obligations under this Agreement in connection with a merger, reorganization, consolidation or sale of all or substantially all of its assets; and provided further, that Total may assign its rights to receive payment hereunder. This Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns as permitted herein. Any purchaser of all or substantially all of the assets of Customer, shall at Total' election be deemed bound by the terms and conditions of this Agreement whether or not an assignment is requested by Total.

10.8 Customer's Confidential Information

Total agrees that it will hold in confidence and use only for purposes of this Agreement all confidential information received from Customer which Customer clearly marks as such. This obligation shall not apply to information which is

independently known to Total or which becomes publicly known through no fault of Total or which is disclosed to another by Customer without similar restrictions.

10.9 Notice

Any notice or other communication required or permitted hereunder shall, unless otherwise provided herein, be made in writing and shall be delivered personally or sent by an overnight delivery or courier service, by certified or registered mail (postage prepaid), by telegraph, by telex or by facsimile transmission to the address first specified in this Agreement or to such other address as either party may designate and notice in accordance with this Section. Such notice or other communication shall be deemed given when so delivered personally, telegraphed, telexed or sent by facsimile transmission, or, if sent by overnight delivery or courier service, the day after sent, or if mailed, (3) days after the date of deposit in the mails.

10.10 Other

If any term or provision of the Agreement is declared to be invalid or unenforceable, it shall be deemed to be omitted or modified to the extent necessary to render it valid or enforceable, and the remainder of this Agreement shall continue in full force and effect. Failure of either party to enforce any provision hereof shall not be construed as a waiver thereof or prevent enforcement on any other occasion or of any other provisions. Headings are for reference only; and the use of the singular and plural number shall each be deemed to include the other as indicated by the context. All provisions in this Agreement which by their language, nature or context are intended to survive, such as without limitation, payment limitation of liability and indemnification provisions, shall survive any termination of this Agreement.

11.0 FORCE MAJEURE

In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement (other than a payment obligation) due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, material unavailability, rolling blackouts, power outages and other utility failures, or any other cause beyond the reasonable control of the party invoking this section, such party shall give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences. Regardless of the excuse of Force Majeure, if such party is not able to perform within forty-five (45) days after such event, the other party may terminate the affected purchase order(s).

ACCEPTED AND AGREED TO:

FOR BUYER:

FOR SELLER:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____