



## TERMS & CONDITIONS OF SALE

### 1. General Conditions

These terms and conditions (“**Terms**”) shall apply to the purchase of products and/or related ancillary services (“**Goods**”) by a purchaser (the “**Buyer**”) from Marki Microwave, LLC (“**MARKI**”), and constitute a material part of the bargain. No other understanding, promise, or representation, and no waiver, alteration, or modification of any of the provisions stated herein shall be binding upon MARKI unless accepted in writing signed by MARKI.

a) Goods furnished by MARKI hereunder are sold solely and exclusively on the Terms stated herein. EXCEPT AS EXPRESSLY ACCEPTED BY MARKI’S WRITTEN AND SIGNED AGREEMENT, ANY OTHER TERMS OR CONDITIONS OF BUYER, INCLUDING AS PART OF ANY PURCHASE ORDER WHICH PURPORTEDLY MODIFIES, SUPERSEDES, OR OTHERWISE ALTERS THESE TERMS, IS REJECTED AND MARKI HEREBY GIVES NOTICE OF OBJECTION TO ANY ADDITIONAL OR CONFLICTING BUYER TERMS OR CONDITIONS.

b) MARKI’s performance of any contract of sale with Buyer is expressly conditional on Buyer’s acceptance of these Terms and Conditions of Sale, unless otherwise expressly agreed in writing by Seller. In the absence of such agreement, commencement of performance and or delivery of Goods shall be for Buyer’s convenience only and shall not be deemed or construed to be acceptance of terms and conditions expressed in any Buyer Documents. Buyer’s acceptance of any portion of Goods shipped by MARKI, or payment of any portion of amounts due from Buyer to MARKI hereunder, will be conclusively deemed Buyer’s acceptance of these Terms.

c) All orders are subject to credit approval and final acceptance by MARKI.

### 1. Shipping and Delivery

a) Unless otherwise agreed in a written agreement signed by MARKI, delivery of Goods shall be made Ex Works (INCOTERMS 2020), at which time the title and risk of loss shall pass to the Buyer. Buyer will bear all shipping and insurance costs. If Buyer’s instructions call for freight-collect shipment the Buyer shall provide an account number for billing purposes. If shipping costs are advanced by MARKI (in MARKI’s sole and exclusive discretion), then any such

advanced costs will be added as a line item to the invoice and paid by Buyer.

b) Delivery dates will be scheduled by MARKI subject to MARKI’s then-current lead times. Delivery dates are approximate, MARKI reserves the right to allocate production and deliveries among its various customers, and MARKI will not be liable for any loss, expense, or damage caused by delays in delivery or non-performance due to causes beyond its reasonable control. Unless the parties mutually agree otherwise, partial shipments are allowed.

### 2. Packing; Marking

MARKI shall pack, mark, and ship Goods using industry standard commercial practices for protection and shipping. Commercially reasonable effort will be made to accommodate Buyer’s prescribed shipping requirements.

### 3. Delivery Acceptance; Inspections

a) Buyer may inspect shipments of Goods for any non-conformance of delivery with respect to the items and quantities as agreed in the Buyer order and/or MARKI offer, as applicable, and shall reasonably promptly accept or reject the delivery in writing, providing reasons for any rejection. Acceptance is deemed to occur within 10 calendar days of delivery if not earlier rejected in writing by Buyer. Any express warranty provided herein will survive delivery acceptance. If Buyer timely provides written notice of rejection of a delivery for non-conformance, then Buyer shall promptly return rejected non-conforming deliveries to MARKI, return shipping at MARKI’s expense, for refund of the purchase price paid for non-conforming deliveries. Services performed by MARKI, if applicable, will be deemed accepted by Buyer upon completion by MARKI, unless otherwise agreed in a written statement of work signed by the parties.

b) Source inspections by Buyer or Buyer’s customer must be mutually agreed in advance in writing and will be subject to limitations on time and manner to minimize disruption to MARKI operations, and subject to MARKI reasonable safety, confidentiality, and security conditions. Buyer has no right-of-access to any MARKI facility except as expressly authorized in advance by MARKI. Buyer shall indemnify and hold harmless MARKI from any and all suits,

damages, liability, and expenses of Buyer, its employees or agents, or its customer, resulting from their personal injury including death, or loss or damage of property, occurring during, or in connection with, any visit to any MARKI facility.

#### **4. MARKI Product Changes; Discontinuance**

a) Minor variations that do not affect form or fit, nor adversely affect performance of a product, or as mutually agreed by the Buyer and MARKI, will not be deemed to constitute failures to comply with specification requirements or constitute defects in materials or workmanship of the Goods.

b) MARKI reserves the right to discontinue manufacture or change specifications of products without prior notice, *provided however*, MARKI shall provide 180 days' advance notice to a Buyer if MARKI will discontinue manufacture of products, or make changes to products that affect the form or fit of Goods, or adversely affect the performance of Goods, that are already committed in a binding contract to be manufactured or supplied by MARKI to such Buyer.

c) MARKI may make product improvements without any obligation or responsibility to incorporate such changes in Goods previously manufactured or delivered.

#### **5. Buyer Order Rescheduling; Changes; Cancellation**

a) *Order Cancellations/Changes*: Orders for Goods are non-changeable, non-cancellable, and non-refundable, *except*: i) orders for standard commercial-off-the-shelf MMIC Goods up to \$10,000 in order value may be cancelled up to 45-days prior to the planned shipment date without penalty, provided however, this exception does not apply to such Orders where the Goods are to be packaged as tape and reel; ii) if applicable U.S. or other law or regulation requires that an order be changeable or cancellable, then upon making any such change or cancellation, Buyer shall promptly pay to MARKI the amount specified in law or regulation, not less than MARKI's actual costs that are incurred for any such change; or iii) if Marki (in its sole and exclusive discretion) agrees to make an exception to allow a change or cancellation in whole or in part, then upon making any such change or cancellation, Buyer shall promptly pay to MARKI the greater of MARKI's actual costs that are incurred for any such change, or a 25% restocking charge for any cancelled portion of such order

b) *Order Rescheduling*: Notwithstanding the preceding, delivery dates for Goods may be rescheduled

upon Buyer's written request without penalty one time only, up to a maximum of 60-days delay from the then-scheduled delivery date, so long as Buyer's rescheduling request is received by MARKI at least 45 days prior to the then-scheduled shipment date.

c) *Service Order Changes*: Except as may be set forth otherwise in a statement of work signed by the parties, orders for services may only be changed or cancelled by mutual consent of the parties.

#### **6. Pricing**

a) MARKI may revise prices at any time, including but not limited to prices for Goods covered in outstanding quotes already made by or on behalf of MARKI. Notwithstanding notice of such price changes, MARKI will honor previously existing quoted prices if an order based on such prior quote and price: i) is received by MARKI prior to effective revision date of a price change included in any such notice published by MARKI; or ii) is received by MARKI after the price revision effective date but still within the period of validity of such quote as expressly stated on the face of the quote, or if no such period is so stated then for 90-days from the date of the quote. Subsequent orders for the same Goods are subject to the revised or newly announced prices. Unit prices are applicable only to the specified quantity, specifications, and shipment arrangements and, are subject to revision at any time prior to shipment if the quantity, specifications, or shipment arrangements are changed for any reason.

b) Prices are in U.S. dollars. Any direct charges, as may be applicable, for special tooling, special testing, or screening procedures will be separately defined, priced, and listed.

#### **7. Payment Terms; Taxes**

a) MARKI shall invoice upon shipment of Goods, or upon completion of performance of services, unless otherwise agreed in a signed statement of work or order.

b) Unless otherwise stated by MARKI, quoted prices do not include sales, use, excise, VAT, or similar taxes, nor any import or export duties or withholding (collectively, "Taxes"). Such Taxes will be borne solely by the Buyer, provided however, that if MARKI is required by law to collect and pay any such taxes, then such taxes will be added to the Invoice as a separate line item which Buyer shall be responsible to pay to MARKI in addition to the price for the delivered Goods.

c) Subject to and upon approval of Buyer's credit, terms of payment are Net 30 days after date of invoice, unless otherwise specified on the invoice. Accounts with invoices 45 days past due incur a finance charge of one percent (1%) per month or the maximum amount permitted by law, whichever is lower, and all orders from such Buyer not yet shipped may be placed on credit hold and shipments held until account is paid current.

d) MARKI reserves the right to modify credit terms, to require COD payment, or to require payment in advance.

e) Goods held for the Buyer beyond a reasonable period shall be at the risk of the Buyer. There is no discount for advance payment.

## **8. Tools; Property Rights**

Unless, and to the extent, expressly agreed in a writing signed by MARKI or as such rights are exhausted under applicable law:

a) MARKI or its licensors retain all right, title, and interest to all copyright, trademark, patent, trade secret, or other intellectual property rights embodied in the MARKI Goods and service deliverables, including but not limited to all designs, specifications, schematics, drawings, code, and documentation.

b) MARKI retains all right, title, and interest to, and possession of, any models, drawings, composites, patterns, dies, molds, masks, schematics, bread boards, jigs, fixtures and tools made for or obtained from sources other than Buyer for the furnishing of Goods or services hereunder. Tools, dies, and other equipment furnished to MARKI by Buyer will be at held at Buyer's risk.

c) All material developed from services provided by MARKI including but not limited to customized Goods, as well as the design, development, or manufacturing work performed by MARKI for Buyer, will not be deemed a work-made-for-hire, and will not convey to Buyer any copyright, trademark, patent, trade secret, or other intellectual property rights in the service or Goods, nor any interest in all or any portion of the mask works relating to the Goods. All such rights will remain the property of MARKI and its licensors. No license of any type, express or implied, is granted to Buyer with respect to such rights or with respect to any trademark of MARKI or its affiliated companies.

d) If MARKI agrees in writing, in its sole and exclusive discretion, to provide specific customized Goods exclusively

to Buyer: i) such exclusivity is limited solely to a specific layout or schematic and associated custom part number, unless MARKI agrees otherwise in a signed writing, and MARKI retains all rights and ownership in intellectual property blocks embodied in such design including commercial reuse without obligation of accounting or payment of any kind; ii) MARKI will retain ownership and possession of all associated mask works. In such circumstances, masks entirely unique to Buyer's design even if based upon Buyer's confidential or proprietary information will be held by MARKI for the exclusive use of Buyer without a right of return to Buyer, provided MARKI shall not use such mask for any third-party without authorization from Buyer. If Buyer places no production orders for six (6) months from the date of engineering sample approval or six (6) months from the last production delivery, MARKI may in its sole and exclusive discretion dispose of such mask with no further obligation or notice to Buyer.

## **9. Warranty**

a) MARKI warrants to the Buyer that all MARKI Goods will be free from defects in materials and workmanship under normal use and service, for a period of one year from the date of shipment, as evidenced by MARKI's packing list or transportation receipt, and will conform to MARKI's published specification and/or data sheet that was in effect upon the shipment date. MARKI warrants for a period of ninety (90) days from completion that its services are performed in workmanlike manner conforming to generally accepted industry standards and practices.

b) MARKI's obligation under this warranty shall be limited to the repair or replacement of Goods, at MARKI's option, which MARKI's examination discloses to its reasonable satisfaction to be defective, or reperformance of defective services. In no event shall MARKI's liability for any breach of warranty exceed the net selling price of the defective Goods or services.

c) MARKI HAS NO OBLIGATION OR RESPONSIBILITY FOR GOODS WHICH HAVE BEEN DAMAGED OR ALTERED IN ANY WAY BY OTHER THAN MARKI OR OTHERS ON ITS BEHALF, AND ANY SUCH ALTERATION WILL INVALIDATE THE ABOVE WARRANTY. Additionally, MARKI makes no warranty of any kind, and accepts no liability for Non-Production Goods (as defined below), which are supplied "as-is."

d) THE FOREGOING IS THE ONLY WARRANTY MADE BY MARKI AND TO THE GREATEST EXTENT ALLOWED IN LAW MARKI HEREBY DISCLAIMS ALL OTHER CONDITIONS AND WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY AGAINST INFRINGEMENT, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE, WITH RESPECT TO GOODS OR SERVICES PROVIDED UNDER THESE TERMS.

#### 10. Warranty Claim Procedures

a) All warranty claims for defective Goods or services must be in writing and received by MARKI within the specified warranty period. For defective Goods Buyer must obtain from MARKI a Return Material Authorization prior to returning Goods to MARKI. Defective Goods must be returned, transportation charges prepaid, to MARKI for correction or replacement. MARKI will pay shipping charges back to BUYER for replacement or repaired Goods, but not for Goods returned which are found not to be in warranty or to have sustained damage in the field. MARKI will accept Goods for warranty claim verification only when returned by Buyer in a condition that allows for suitable testing by MARKI. Election between repair or replacement of defective Goods will be at MARKI's discretion, unless agreed by MARKI in writing otherwise. Upon redelivery of remedied Goods under this warranty, the repaired or replaced portions shall be subject to this warranty for a period of 90 days or until expiration of the original warranty, whichever is later.

b) If the cause of failure is determined by MARKI's examination to be misuse, mishandling, or other field damage, MARKI may provide a price quotation for repair or replacement to Buyer; no repair or replacement work will commence before written authorization to proceed is received from Buyer. If returned Goods are determined not to be defective or if the Buyer elects not to authorize correction at its expense of Goods not covered by this warranty, then MARKI may charge a reasonable amount for its evaluation. The Buyer will not recover from MARKI by offset, deduction, or otherwise, the price of any Goods returned to MARKI under this warranty.

#### 11. Limitation of Liability

a) NO ACTION MAY BE BROUGHT AT ANY TIME MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION

AROSE, EXCEPT THAT LEGAL ACTION MAY BE COMMENCED TO RECOVER THE PURCHASE PRICE DUE AT ANY TIME WITHIN THE APPLICABLE STATUTE OF LIMITATIONS. IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY EXCEED THE AGREED PURCHASE AMOUNT FOR THE GOODS OR SERVICES UPON WHICH LIABILITY IS BASED.

b) NEITHER PARTY, INCLUDING ITS RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, AND AGENTS WILL BE LIABLE FOR ANY LOST PROFITS, LOST REVENUES, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED EQUIPMENT, COST OF SUBSTITUTE EQUIPMENT OR PRODUCTS, DOWNTIME COSTS, OR ANY OTHER SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY THEREOF IN ADVANCE. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INFRINGEMENT OF A THIRD PARTY'S PROPRIETARY RIGHTS, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS OR OTHER TORTS.

#### 12. Limits on Use of Goods

a) *Limited Non-Compete.* Buyer agrees it will not use, directly or indirectly, Goods supplied by MARKI in bare die form knowingly, or what Buyer reasonably should know, are in a manner intended to make or have-made modules or assemblies for resale which can reasonably substitute for and compete with modules or assemblies commercially offered by MARKI on MARKI's then-current standard goods list or website.

b) *Life-Critical Applications.* Goods sold by MARKI are not intended nor authorized to be used in life support equipment or for applications in which the failure or malfunction of the goods would create a situation in which personal injury or death is likely to occur. Any such use of Goods supplied by MARKI is at the sole risk of Buyer, and Buyer agrees to indemnify and defend MARKI against and hold MARKI harmless from all damages, costs and expenses, including without limitation reasonable attorney fees and costs relating to any claim, demand, cause of action, lawsuit or threatened lawsuit, or judgment arising out of such use.

c) *Weapons of Mass Destruction.* Buyer shall not use the Goods in relation to nuclear, biological or chemical weapons or systems intended for delivering same, or in the development of any weapons of mass destruction.

d) *Non-Production Goods*. If Buyer orders an evaluation board or kit, a pre-production sample, or a no-cost sample (collectively, “**Non-Production Goods**”), Buyer shall use such Non-Production Goods for evaluation purposes only, and may not itself, nor permit any other party to, use such Non-Production Goods for any other purpose. Non-Production Goods are provided “as is” and there are no warranties or representations of any kind, express or implied. In no event will MARKI be liable for any damages resulting from Buyer’s possession or use of Non-Production Goods.

e) *No Reverse Engineering*. Buyer shall not, nor authorize any third party to, deconstruct, reverse engineer, or decompile any Goods supplied by MARKI hereunder without MARKI’s express written consent.

### 13. IP Indemnity

a) MARKI agrees to defend, at its own expense, any claims made against Buyer by a third party unrelated to Buyer (“**Claimant**”) alleging that the Goods as sold by MARKI to Buyer under these Terms directly infringe a United States patent, United States trademark, United States copyright, or United States trade secret (“**IP**”). MARKI also agrees to indemnify Buyer against actual damages for such direct infringement which are finally awarded against Buyer that by a court of competent jurisdiction, or agreed to in a settlement approved in advance by MARKI in writing.

b) MARKI’s obligations described in subsection ‘a’, above, shall arise only with respect to claims where: (i) Buyer promptly notifies MARKI, in writing, of all allegations in the claim; (ii) Buyer gives MARKI full control and authority for the defense and settlement of the claim; (iii) Buyer provides MARKI with all reasonable information at its expense and assistance necessary for the defense and settlement of the claim; and (iv) Claimant agrees that it will resolve the claim directly with MARKI. MARKI shall have no responsibility for any settlement or compromise made without its prior written consent.

c) MARKI shall have no obligations under subsection ‘a’, above, with respect to any claim that would not have arisen, but for: (i) MARKI’s use of any material, part or subassembly provided by or specified by Buyer, or MARKI’s compliance with any designs, instructions or specifications furnished by Buyer; (ii) modifications or additions made to the Goods by Buyer or any third party not under the direction or control of MARKI; (iii) the use or combination of the Goods with any other material, part, structure,

subassembly, apparatus, external circuitry, software or other external elements not provided by or specified by MARKI; (iv) such claim arises from an implementation of industry wide standards, including de facto standards, whether or not such standards have been formally established or promulgated by any governmental or industrial standard setting body, relating to the form, fit, functionality, interconnectivity or other aspects of any apparatus incorporating the products; (v) such claim is otherwise attributable to any act or omission on the part of Buyer; or (vi) the use of the Goods after Buyer has received notice of such infringement or other violation, and MARKI has offered a reasonably equivalent non-infringing replacement or modification, or refund therefor. Buyer shall indemnify and hold MARKI and its suppliers harmless against any expense or liability from claims of infringement of any IP not indemnified by MARKI and which are described in this subsection ‘c’.

d) If an infringement claim is asserted, or if MARKI believes one likely, MARKI will have the right, but not the obligation, at its sole expense and election, to: (i) to procure for Buyer the right to use the Goods for the use contemplated by MARKI and Buyer in making these Terms; (ii) to modify the Goods as appropriate to avoid such rightful claim of infringement, as long as modification for this purpose does not materially impair the operation thereof; or (iii) to accept the return of the Goods and reimburse Buyer for the purchase price paid thereof.

e) THE FOREGOING STATES MARKI’S SOLE EXCLUSIVE OBLIGATION WITH RESPECT TO CLAIMS OF INFRINGEMENT OF PROPRIETARY RIGHTS OF ANY KIND, AND IS IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE INDEMNITY IN THIS SECTION SHALL NOT APPLY TO ANY NON-PRODUCTION GOODS.

### 14. Miscellaneous

a) *Compliance with Laws; Export Control*. Both parties agree to comply with all applicable laws and regulations regarding their performance of their respective obligations hereunder and Buyer’s purchase and use of MARKI’s Goods and services supplied hereunder. Without limiting the foregoing, the parties agree: (i) to comply with all applicable export control laws and regulations, and not to export, reexport, or transfer the Goods or related technical data in violation of such laws or regulations, including but not limited to, the U.S. International Traffic in Arms Regulation

(ITAR), the U.S. Export Administration Regulations (EAR), the sanction regimes of the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) or other U.S. Government departments or agencies, and any other export control laws, rules, or regulations applicable in Buyer's location; and (ii) to comply with all applicable commercial and public anti-bribery and anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act. Buyer shall ensure that its officers, employees, and agents comply with this Section. Buyer shall indemnify and hold harmless MARKI against all losses, costs, claims, damages, liabilities, settlements, and expenses (including reasonable attorneys' fees), arising from any act or omission of Buyer, its officers, employees, or agents in breach of its obligations under this subsection.

b) *U.S. Government Contracts.* If Buyer's purchase order indicates by contract number that it is placed under a U.S. Government contract, then: i) MARKI certifies, to the best of its knowledge and belief, that neither MARKI nor any of its principals are debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency; ii) MARKI acknowledges and accepts only such Federal Acquisition Regulation ("**FAR**") and Defense Federal Acquisition Regulations Supplement ("**DFARS**") clauses that the regulations themselves mandate be flowed-down to a party in MARKI's position, including FAR 52.244-6, subject to all relevant limitations, including but not limited to inapplicability of such FAR or DFARS due to dollar-value thresholds, the nature of the Goods as commercial or COTS, or other limitations as stated in the prescribed clause ("**Inapplicable Clauses**"), and such Inapplicable Clauses will be deemed by all parties hereto to be of no force and effect, without the need to remove such inapplicable clauses from a Buyer order reference. Any other flow down requirements are expressly rejected unless reviewed and accepted in writing by MARKI. MARKI retains proprietary rights in all technical data provided under such contract to the fullest extent permitted under the FAR and DFAR as it relates to the sale of Commercial Items. Neither the U.S. Government nor any higher-tier contractor under a U.S. Government contract receives any rights in technical data beyond the rights provided to all commercial customers under these terms and conditions, except that MARKI grants to the U.S. Government the minimum additional rights required under the narrowest applicable provisions of the FAR or DFARS. Without limiting the foregoing an except as expressly agreed in a signed writing

in advance, MARKI will not provide certified cost and pricing data and therefore rejects any Cost Accounting Standards, defective pricing liability obligations, or related cost audit requirements.

c) *Confidentiality; Technical Data.* MARKI has no obligation to hold information received from Buyer in confidence unless the information is covered by a separate signed Non-Disclosure Agreement, *provided however*, neither party will publicize the existence or substance of orders under these terms to any third party without the prior written consent of the other, except its affiliates, representatives, and agents with a need-to-know, or except as required by law, regulation or court order. Except as may be set forth otherwise with respect to a deliverable under a written and signed Statement of Work, any technical information or data offered by MARKI in connection with the sale of Goods is an accommodation to Buyer without charge and Buyer waives any claim against MARKI and releases MARKI from any and all liability arising from Buyer's reliance upon such data.

d) *Force Majeure.* MARKI's performance is subject to all contingencies beyond MARKI's reasonable control or beyond the control of MARKI's suppliers, including, but not limited to, strikes, labor disputes, floods, extreme weather, civil commotion, war, riot, pandemics, laws, orders, restrictions, embargoes, quotas, actions or inactions of any government, foreign or domestic, or any agency or subdivision thereof, casualties, fires, accidents, shortages of transportation facilities, detention of Goods by customs authorities, or other circumstances beyond MARKI's reasonable control or otherwise unavoidable. In any such event, MARKI shall have the right, at its election and sole discretion and without any liability to Buyer, to (a) perform its obligations hereunder in a reasonably restricted or modified manner; (b) perform its obligations fully but delayed by a reasonable time after the causes for nonperformance or delay have terminated; or (c) cancel affected order and refund any purchase price paid.

e) *Governing Law; Disputes.* These Terms shall be governed in accordance with the substantive laws of the State of Delaware without regard to its conflict of law rules, and without application of the U.N. Convention on Contracts for the International Sale of Goods. The exclusive forum for the resolution of any disputes hereunder shall be: i) for a Buyer with no material operations within the United States, by binding arbitration, to be held in San Jose, California, in English, before three arbitrators, administered by JAMS

pursuant to its International Arbitration Rules and Procedures; or ii) for all other Buyers, in Delaware State or Federal courts. The parties consent to the exclusive jurisdiction set forth above. Judgment on any Award may be entered in any court of competent jurisdiction.

f) *Assignment*. Neither party may assign its rights or obligations hereunder without the consent of the other party, *provided however*, that without the consent of Buyer, MARKI may assign its rights and obligations to any affiliate of MARKI or successor-in-interest to MARKI's business.

g) *No Third-Party Beneficiaries*. These Terms are made solely for the benefit of Buyer and MARKI and their respective successors and permitted assigns. Nothing in these Terms is intended to confer any rights or remedies on any third party.

h) *Waiver*. No waiver of any provision of these Terms shall be effective, except pursuant to a written instrument signed by the party making such waiver. Any waiver shall be effective only in the specific instance and for the specific purpose given and will not constitute an ongoing waiver.

i) *Severance*. In the event any provisions hereof are found invalid or unenforceable the remainder of these Terms shall remain valid and enforceable to the greatest extent possible.

[*End of Terms*]