

TESSALink Hardware Terms and Conditions

THIS TESSALINK LP HARDWARE TERMS AND CONDITIONS AGREEMENT ("AGREEMENT") GOVERNS CUSTOMER'S ACQUISITION AND USE OF HARDWARE AND SERVICES ("SERVICES"). IF CUSTOMER RECEIVES FREE HARDWARE SAMPLES OR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE HARDWARE OR THOSE FREE SERVICES. BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE HARDWARE OR SERVICES.

TESSALink and Customer may be alternately referred to in this Agreement individually as "Party" and collectively as "Parties."

TERMS OF SALE ("Terms")

- 1. Exclusion of Other Terms;** Entire Agreement. Additional or different terms or conditions proposed by Customer (including any additional or different terms provided in a purchase order) will be void and of no effect unless specifically accepted in writing by TESSALink, LP. Our sales invoice, this Agreement, these Terms, your design and specifications for the goods, and any other written agreement executed by both you and TESSALink, LP concerning the subject matter (collectively, the "Order") constitutes the entire agreement between you and TESSALink, LP unless modified in writing and signed by both you and TESSALink, LP.
- 2. Design;** Assumption of Risk. Customer is solely responsible for the design and specifications for the goods purchased under the Order. Customer must ensure that the final design of and specifications for the goods purchased under this Order will be suitable for Customer's needs and meet Customer's requirements. TESSALink, LP assumes no liability for designs and specifications agreed upon, reviewed or provided by Customer. TESSALink, LP may recommend modifications to Customer proposed design to (a) improve the ability to manufacture your goods; (b) reduce cost; (c) meet lead times, or any combination of the foregoing. Customer is solely responsible for reviewing and approving all such modifications.
- 3. Payment.** TESSALink, LP will invoice Customer for the goods ordered and for any services rendered under this Order. Customer must pay TESSALink, LP all undisputed amounts specified in an invoice no later than 30 days from the date of the invoice. All payments must be made in U.S. dollars. TESSALink, LP reserves the right to require alternative payment terms, including, without limitation, site draft or payment in advance. Any invoice that Customer fails to pay when due will bear interest at the rate of 1-1/2% per month or the highest rate then permitted by law, whichever is less. Customer must also reimburse TESSALink, LP for its costs incurred (including internal administrative expenses and reasonable attorneys' fees) in the collection of Customer's past due invoices.
- 4. Security Interest.** TESSALink, LP retains a security interest in all goods delivered to Customer and all proceeds until paid in full. Customer agrees, without further consideration, at any time to do or cause to be done, all acts, and to execute and deliver, all such documents as may be reasonably requested in order to protect TESSALink, LP security interest in the goods, including the filing of financing statements TESSALink, LP may deem necessary to perfect its security interest.
- 5. Taxes.** In addition to the purchase price of all goods and services provided under the Order, Customer must pay any sales, excise or similar taxes applicable to the transaction, unless Customer provides TESSALink, LP with a valid tax exemption certificate. Customer must pay use taxes, if applicable to the transaction, directly to the appropriate taxing authority.

6. **Shipment.** All shipping charges will be prepaid by TESSALink LP and billed to Customer. We will handle situations with the carrier if/when reported to us by Customer.

7. **Risk of Loss.** Risk of loss to goods purchased will pass to Customer at the time the goods are duly delivered to you.

8. **Force Majeure.** TESSALink, LP will not be liable to Customer for any loss, damage, delay, or failure of delivery resulting from unforeseen causes that are beyond TESSALink LP's reasonable control.

9. **Acceptance:** Claims for Shortage or Error.

a) Goods delivered to Customer by TESSALink must be inspected at the time of delivery and any damages or shortages from shipping must be noted within five (5) days, in writing, by Customer. To assist in any claims process that might be necessary, note all damage on any documents Customer signs if any delivery driver requests the same. If Customer is unable to fully inspect the shipment at the time of delivery, Customer may wish to write "**Subject to inspection and concealed damage**". If Customer signs a shipping document and does not note any damage, any subsequent damage claim will likely be automatically denied by the shipping company. TESSALink can only make claim to losses properly documented by you and in accordance with the policies of the shipping company employed.

b) TESSALink, LP and Customer define Acceptance and Approval of the purchased goods as 30 days after receipt of the purchased goods.

c) If prior to Customer's Acceptance and Approval, Customer discovers some or all of the goods do not conform to the express warranty set forth in section 10, the alleged nonconforming goods may, at TESSALink's sole discretion, be returned to TESSALink, LP for replacement or a refund of the purchase price.

d) If prior to Buyer's Acceptance and Approval, Buyer discovers Buyer received an incorrect quantity that was not the fault of the carrier, TESSALink, may, at TESSALink's sole discretion, provide replacement parts or a refund of the purchase price paid for the missing parts.

10. **Express Warranty; Limitations on Remedies.**

(a) TESSALink, LP warrants that (1) TESSALink, LP has the right to convey good title to the goods sold under an Order and, upon Customer payment in full for such goods, Customer will have good title in and to the goods; and (2) the goods manufactured by TESSALink, LP and sold to Customer under an Order are free from defects in materials and workmanship occurring under normal use, and conform, in all material respects, to the design specifications for the goods provided by Customer. TESSALink's warranty is limited to a period of one year from the date of shipment from TESSALink's factory. The goods will be subject to tolerances and variations consistent with usual industry practices or with TESSALink's current parts/engineering catalogs where applicable. This limited express warranty does not apply to any goods misused, abused, altered or used other than as approved in writing by TESSALink, LP, as determined by TESSALink's inspection of the non-conforming goods. THIS EXPRESS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES. ALL IMPLIED WARRANTIES ARE DISCLAIMED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES IMPLIED FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. (b) After acceptance, as defined above, if Customer finds a defect in the materials or workmanship for the goods or a failure of the goods to materially conform to Customer's specifications during the applicable warranty period, as determined by TESSALink's inspection of the alleged non-conforming goods, then Customer's sole and exclusive remedy will be, at TESSALink's option, the repair, the replacement of, or a refund of the purchase price for the non-conforming goods.

11. **Limitation of Liability.** Customer assumes all risk from Customer's purchase and use of the goods or services. Neither Customer nor TESSALink, LP will be liable to the other for any consequential damages, punitive damages, or any special, incidental or exemplary damages suffered by the other in connection with its performance of its obligations under this Order.

12. **Indemnity;** Customer will indemnify TESSALink, LP, its directors, officers, agents, employees, successors and assigns from all losses, liabilities, damages, costs, and expenses (including, without

limitation, costs of investigation, court costs, arbitrators' fees and attorneys' fees), incurred by any indemnified person, arising out of or incidental to, Customer's selection, purchase and use of the goods under this Order. This indemnification will survive the expiration or termination of this Order.

13. **Governing Law; Jurisdiction and Venue.** Unless otherwise agreed in writing between Customer and TESSALink, LP, this Order and all disputes arising under this Order are exclusively subject to, governed by, and construed in accordance with the law of the State of Texas, without regard to rules of conflicts of law. Any action relating to this Order must be brought in state or federal courts with jurisdiction over Harris County, Texas, and the parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in such courts.

14. **Prevailing Party's Attorneys' Fees.** In the event of any litigation or arbitration related to this Order, the prevailing party will be entitled to recover from the non-prevailing party, the costs and expenses (including attorneys' fees) reasonably incurred by the prevailing party in connection therewith.

15. **Fab Tolerance** is Plus or minus 0.005 inches.

16. **Art to Fab Tolerance** is Plus or minus .030.

17. **Preferred Art Formats** are .ai; .eps; .pdf (if done in Illustrator); .dwg; .dxf; .ps.

18. **Two-sided parts:** TESSALink, LP does not guarantee the surface quality of the back of two-sided parts.

19. **Packaging:** Bulk packaged in a box.

20. **Terms Available:** Net 30 for tags and software with approval from TESSALink for domestic customers. Prepayment only for international customers. VISA/MC/AMEX accepted.

21. **Prices:** Valid for 30 days. Pricing is based upon shipment of +/- 10%.

22. **Warranty:** The products are made to Customer's design specifications and free from defects in materials and workmanship. All of our products are RoHS compliant.

23. **Exclusive Remedy:** TESSALink, LP, at its option, will (1) repair the product; (2) replace the product or (3) return the purchase price.

24. **Blanket Releases:** All releases in multiple release orders must be taken by Customer with 12 months of the original PO date.