



# BGA Test & Technology Sales Terms

**1. Applicable Terms and Conditions:** As used herein, “Seller” shall mean “BGA TECHNOLOGY also known as TEST & TECHNOLOGY (a) Seller’s Terms & Conditions Of Sale only (“Sales Terms”) shall apply to all of Seller’s Quotations, Buyer’s resulting Orders or Purchase Orders [“Order(s)”], and Seller’s Acknowledgments of Orders, if any, for the delivery of Seller’s Services and/or Goods. Notwithstanding any terms or conditions on Buyer’s Orders or any other documents to the contrary, Seller’s Quotations and performance of all Orders are expressly made conditional on Buyer’s acceptance of Seller’s Sales Terms only, and Seller’s Quotations expressly limit Buyer’s acceptance to Seller’s Sales Terms only. Seller’s Acknowledgments of any Orders, or commencement of performance or delivery of any Orders, or Buyer’s issuance of any confirmations, acceptances or Orders, or Buyer’s acceptance, payment or use of any Services and/or Goods shall constitute Buyer’s acceptance of Seller’s Sales Terms only. Seller objects to all terms of Buyer which are in conflict or inconsistent with, in addition to, or different from (“Additional Terms”) the Seller’s Sales Terms. Any such Additional Terms shall not apply or become part of any Order, and Seller’s failure to object to any Additional Terms of Buyer shall not constitute an acceptance thereof; (b) in the event Seller’s Sales Terms are not set forth at length in or attached to Seller’s Quotations as part of the quotation process, but instead are cited by reference to Seller’s website or incorporated by reference in Seller’s Quotations, then these Sales Terms only shall be deemed accepted by Buyer and become part of any Orders as if set forth at length in Seller’s Quotations; (c) any Acknowledgments issued by Seller on either Seller’s or Buyer’s forms shall be deemed issued for administrative purposes only. Such Acknowledgments shall not affect Buyer’s acceptance of Seller’s Quotations on Seller’s Sales Terms only, nor constitute an acceptance of Buyer’s Additional Terms.

**2. Deliveries:** (a) All Services and/or Goods shall be quoted, sold and shipped FOB Seller’s facility; (b) all delivery dates are approximate and are conditioned on Seller’s timely receipt of all Buyer, Buyer-furnished, or Buyer’s customer Goods, test samples, test lots, test documentation, data, instructions, fixtures, equipment or any other materials (collectively, “Property”). All delivery dates shall be extended based on additional time required by Seller (i) to perform the Services with respect to the Goods, (ii) to obtain proper or correct documentation from the Buyer, or (iii) to notify and receive Buyer’s disposition or other instructions relating to the testing of the Goods or performance of the Services; and (c) Seller shall not be in default in the performance of any Order if any delay or failure to perform is caused in whole or in part by causes beyond the reasonable control of Seller, including without limitation any acts of God, Buyer, Buyer’s agents, the public enemy, riots, war or terrorism; fire, flood, earthquakes, epidemics, quarantines, embargos, severe weather or natural disasters; labor actions, strikes or slowdowns; accidents; lack of, inability to obtain, shortages, or delays in obtaining any materials, labor, fuel, electric power, water or other supplies; any delays, failure to procure, suspension or revocation of any export, import or other licenses, approvals or authorizations; delays or defaults of suppliers; any orders, priorities, acts, or any governmental laws or regulations imposed by any civil or military governmental authority in either its sovereign or contractual capacity; or any other causes beyond the reasonable control of Seller. In such event the time for performance shall be extended for the period of such force majeure.

**3. Terms of Payment:** (a) Unless otherwise specified in Seller’s Quotation, all quotations and payments shall be in US dollars and are due Net 30 days from the date of Seller’s invoice. All overdue payments shall bear interest at the rate of 1½ % per month, or the maximum rate permitted by law if lower, from the date such payments are due; (b) Buyer shall be liable for all applicable federal, state, local or foreign taxes, duties, imports, tariffs, fees and all other similar taxes, charges or levies, all of which shall be added to the



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price of the Order and paid by Buyer; (c) Buyer shall be liable for all transportation, handling and insurance costs; (d) all pricing is subject to change by Seller in the event Buyer's Order changes any quantities or other requirements as set forth in Seller's Quotation; (e) all Orders are subject to Seller's approval of Buyer's credit. Seller may suspend testing, withhold test data and the return of any Property, and require full payment if Seller determines in its sole discretion that Buyer's financial condition justifies such actions; (f) in the event Buyer defaults in any payment or breaches any other term of the Order, Seller may withhold delivery of its test data and the Property until full payment is made, or terminate the Order for Buyer's default without prejudice to all other rights and remedies of Seller; (g) all rights and remedies of Seller under this Agreement and at law or equity shall be cumulative; (h) in the event Seller engages an attorney to collect any amounts due, pursue any claim against Buyer, or defend against any claim asserted by Buyer, Buyer agrees to pay all reasonable attorney's fees, costs of suit, and litigation expenses incurred by Seller if Seller prevails with respect to such collection or other claims; (i) Buyer shall not deduct or setoff any monies due Seller under any Orders; (j) Buyer's payments of Seller's invoices shall not be delayed or conditioned on approval or payment by Buyer's customer or any third party; and (k) Buyer's Orders are no cancellable and all deposits are nonrefundable.

**4. Services:** (a) Seller shall perform the Services set forth in Seller's Quotation and any resulting Order. Seller is not obligated to perform any additional, repeat or subsequent services or testing unless agreed upon in writing by Seller; (b) unless otherwise specified in the Order, Seller shall not inspect, test, investigate, verify, represent, warrant or guarantee that the Goods are authentic or genuine and not counterfeit; (c) Buyer shall inspect and accept or reject all Services and/or Goods within thirty days after Seller's delivery of the Services and/or Goods F.O.B. Seller's facility. Seller's Services and/or Goods shall be deemed accepted, and Buyer waives all claims for: (i) any damages, defects, latent defects, discrepancies, nonconformance's, noncompliance's, malfunctions or shortages (collectively, "Defects") with respect to the Goods and/or Services; and (ii) any breach of any Certificate of Compliance ("COC") or any provision of any Order, if any such claims are not made in writing by Buyer and received by Seller within thirty days after the date of Seller's delivery of the Services and/or Goods; and (d) any COC is applicable only as of the date of Seller's performance of the Services, and is not a certification, representation, promise, warranty, guaranty or assurance that the Goods will comply with any performance, design or other specifications or requirements for any period of time after the performance of Seller's Services as set forth on the Order.

**5. Certificate of Compliance:** (a) Seller shall comply with the requirements of the Order and provide its standard COC, if required by the Order; (b) except for any applicable COC, Seller disclaims all oral or written certifications, warranties, representations, statements, assurances, promises and agreements, whether express, implied or statutory (collectively, "Warranties"), relating to the Goods and/or Services, including without limitation the implied warranties of merchantability or fitness for a particular use; (c) Seller disclaims all Warranties that the Goods (i) will comply with any manufacturer or other performance, design or other specifications or requirements; (ii) will be fit, suitable or merchantable for any purpose, application or environment; or (iii) will comply with or meet any quality, capacity, capability, construction, or other standards or requirements; (d) Seller disclaims all Warranties relating to the design or condition of the Goods; (e) Seller disclaims all liabilities relating to any Defects in the Goods, including without limitation any defects or latent defects; (f) Buyer acknowledges that the test samples may not be representative of the entire sample lot. Except for 100% sample lot testing, Seller disclaims that the entire lot will pass Seller's tests even if the test samples passed such tests; (g) Seller's COC, test report or test data, if any, are furnished to Buyer only, and such items shall not be furnished to or relied upon by any

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other person or entity; (h) Buyer shall not make any changes, alterations, insertions or modifications to Seller's COC, test report or test data; and (i) Buyer shall not change, alter, insert or modify in any manner Seller's marking of any test samples or test lots.

**6. Loss or Damage:** (a) Buyer shall be responsible for all loss or damage to the Property while in transit to Seller's facility, and after Seller's delivery of the Property FOB Seller's facility; (b) Seller shall not be liable for any Defects or failures of the Property due to any improper handling, storage, transportation or use of the Property by Buyer or any other person or entity, except Seller; (c) Buyer acknowledges that Seller is acting solely as an independent testing laboratory and is not the manufacturer of the Goods. Seller shall not be liable, and Buyer shall be solely responsible for, any loss or damage to the Property or any loss or damage caused by the Property, resulting from any Defects in the Property; (d) Seller shall not be liable for any failure or inability of the Property to meet any manufacturer's or others specifications or requirements; (e) Seller shall not be liable for any loss or damage to the Property while in Seller's custody unless caused by Seller's negligence; (f) Seller's count of all Property shall be final and binding; (g) in no event shall Seller's maximum liability for any damages arising out of, resulting from, or in connection with any Order for any reason exceed the price of Seller's Services as set forth on the Order from which any claim arose or accrued; (h) in no event shall Seller be liable for any consequential, incidental, indirect, direct, punitive, special or other damages (including without limitation any personal injury, death or property damage, or any loss of use of any property, or any loss of revenues, profits or business, or any liability of Buyer to its customers or third parties) arising out of, resulting from, or in connection with any Order for any reason; and (i) Buyer's sole and exclusive remedy under any Order shall be limited to: (x) the recovery of the price of Seller's Services as set forth on the Order from which any claim arose or accrued, subject to the limitations of liability as set forth in Seller's Sales Terms herein, or at Seller's sole option (y) Seller's re-performance of the Services required by the Order.

**7. Confidentiality:** (a) Buyer agrees to keep this Order, and all terms and conditions hereof, in strict confidence and shall not, directly or indirectly, disclose this Order or any terms or conditions hereof to any other person or entity without the prior written consent of Seller; (b) Buyer agrees to keep all oral and written confidential, proprietary or financial information or trade secrets or intellectual property of Seller ("Confidential Information") which may be disclosed to Buyer in connection with any Order in strict confidence. Buyer shall not, directly or indirectly, use, copy or disclose the Confidential Information to any other person or entity; (c) Buyer agrees that it shall not, directly or indirectly, publish or otherwise communicate, or cause any person or entity to publish or otherwise communicate in any manner any negative, critical, derogatory, disparaging, defamatory or injurious comments or statements relating to Seller, or its reputation, or its services or business, or its officers, directors, employees or representatives, or any dispute with Seller. As used in this Order, the term "publish or otherwise communicate" shall include without limitation the making of any oral or written comments, statements or presentations to any person or entity or through the use of any Media source, email, the Internet or any ISP, or the posting of any message on any Internet or other message board or platform, or the use of any other type of telephonic or electronic communication; (d) Buyer acknowledges that a breach of any of its obligations set forth in this paragraph will cause immediate and irreparable injury to Seller for which a remedy at law or monetary damages would be inadequate. In the event of any such actual or threatened breach, Seller shall be entitled to temporary, preliminary and/or permanent injunctive relief (i) restraining such breach, (ii) requiring Buyer to comply with its obligations under this Order, and (iii) granting an appropriate decree of specific performance. Such injunctive relief shall be granted without the necessity of (i) showing actual damages or that monetary damages would not afford an adequate remedy at law, or (ii) posting any bond or security.



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**8. Termination:** Seller may terminate the Order for Buyer's default in the event Buyer (a) fails to make any payment when due under the Order; (b) breaches any other term of the Order; (c) becomes insolvent or ceases to conduct business; or (d) makes an assignment for the benefit of creditors, or a petition in bankruptcy, reorganization or any similar law is filed by or against Buyer, or Buyer pursues any other remedy under any bankruptcy, insolvency or similar laws, or allows a receiver to be appointed for Buyer's property or business.

**9. Governing Law:** Seller's Quotations, Buyer's Orders, and Seller's Acknowledgments, if any, shall be governed and interpreted in all respects in accordance with the laws of the State of New Jersey without giving effect to any conflict of law rules. Except for injunctive relief sought by Seller, Seller and Buyer expressly agree that any dispute or claim arising out of, resulting from, or in connection with any Quotations or Orders shall be brought exclusively in the state or federal courts of Essex County, New Jersey. Buyer waives its right to a jury trial, and Seller and Buyer expressly consent, unconditionally and irrevocably, to the exclusive jurisdiction of such New Jersey courts and to service of process by certified mail, return receipt requested, or by any manner authorized by the New Jersey Rules of Court.

**10. General:** (a) Buyer shall not transfer or assign in whole or in part any Order or any rights, interests or duties thereunder; (b) in the event any term of Seller's Sales Terms is determined to be invalid, unenforceable or void by a court of competent jurisdiction, such term shall be deemed deleted and the remaining terms shall continue in full force and effect; (c) no delay or omission by Seller in exercising any rights or remedies under any Order shall operate as a waiver of such right or remedy or any other right or remedy. No waiver by Seller of any breach under any Order shall be deemed a waiver of any other or subsequent breach; (d) no modification, amendment, change, alteration, addition, deletion or waiver of any Sales Terms or any provision of any Quotation or Order shall be binding on Seller unless set forth in writing and signed by an authorized representative of Seller; (e) all notices required or permitted to be given under any Order shall be in writing and shall be deemed to have been given if delivered by hand, or by certified mail, return receipt requested, with postage prepaid, addressed to the party at the address set forth in the Order; (f) the Sales Terms herein represent the entire understanding of the parties with respect to the subject matter hereof and supersede and take precedence over any and all prior oral or written writings, representations, negotiations, agreements or understandings; and (g) all Orders shall be binding upon Seller and Buyer and their respective heirs, executors, legal representatives, and successors and assigns.

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