

DEFINITIONS AND ABBREVIATIONS

The Term "Buyer" shall mean Everett Charles Technologies, LLC, a Delaware Corporation located at 14570 Meyer Canyon Drive, Unit 1, Fontana, California 92236. Everett Charles Technologies, LLC is a division of Xcerra Corporation, a Massachusetts corporation with a principal place of business at 825 University Avenue, Norwood, MA 02062. The term "Seller" shall mean the individual partnership or corporation obligated to furnish the articles and services described in the Purchase Order.

1. **ACCEPTANCE.** This Purchase Order constitutes Buyer's offer to Seller and shall become a binding contract (the Contract) incorporating the terms and conditions set forth herein upon acceptance by Seller, either conditions proposed by Seller which differ from or are in addition to terms and conditions contained herein shall be void and of no effect whatsoever unless consented to in writing by Buyer.

2. **DELIVERY SCHEDULE.** Seller acknowledges that Buyer's production schedules are based upon Seller's commitment that materials and services will be delivered to Buyer on the dates specified herein. Time is and shall remain of the essence. If deliveries pursuant to the contract are not or will not be made at the time agreed upon, Buyer reserves the right to cancel the Contract, or to purchase the materials and services elsewhere and to hold Seller liable for all costs incurred by Buyer in excess of those specified for such materials and services in this Contract. Buyer shall have the right to return at Seller's risk and expense shipments received in advance of the schedule of deliveries appearing on the face hereof. Materials received in advance of such schedule of deliveries and accepted by Buyer shall be paid for as if delivered on the schedule date. Invoices will be dated no earlier than the date of shipment.

3. **PRICES.** Seller represents that prices shown on the face hereof do not exceed those charged or quoted by Seller to any of Seller's other customers for similar terms ordered in similar quantities. Seller will promptly refund any sums paid by Buyer in excess of such prices. Buyer shall be entitled at any time to set off any amount owing at any time from Seller to Buyer. Unless otherwise agreed to in writing by Buyer, the price quoted on the face hereof shall be deemed to include packing, crating, drayage, storage, and/or similar expenses.

4. **WARRANTIES.** Seller, by accepting this Contract, warrants that all materials and/or services to be delivered or performed hereunder shall be merchantable and fit for the particular use(s) for which intended, (II) that such material and/or services shall be free of defects of material, workmanship, or design and (III) that such material and/or services shall conform strictly to the specification, drawings, or samples (if any) supplied by Seller and/or published or delivered by Seller. These warranties shall survive any inspection, delivery, acceptance and/or payment by Buyer.

5. **INSPECTION.** All materials and/or services furnished will be subject to inspection and approval by Buyer after delivery and before acceptance. Buyer shall have the right to reject and return at Seller's expense, including cost of inspection, all or any part of any shipment, any part, of which is defective or which fails to comply with specifications, without such action constituting a termination of the Contract. In addition, Buyer shall have the option to (I) require prompt corrective action by Seller (II) rework (or have the defective goods reworked) at Seller's expense or (III) cancel the Contract, and such options as provided herein shall survive any inspection, delivery, acceptance and/or payment by Buyer.

6. **PAYMENT AND INVOICES.**

A. The time period for discount based on prompt payment allowed to Buyer shall begin with Buyer's receipt of material or date of invoice, whichever is later.

B. Payment of Seller's invoice is subject to adjustment for any shortage or rejection.

C. Duplicate invoices must be issued for each shipment applying against this Contract.

D. Freight and other charges must be shown if cash discount is not to be taken on full amount of invoice.

7. **CONFIDENTIAL INFORMATION.** Seller shall not disclose to any third person or use in any way whatsoever any information concerning Buyer's drawings, specification, samples and other material except in performing the Contract, without first obtaining Buyer's written consent. Buyer shall at all times have title to all drawings and specifications furnished to Seller for use in performing the Contract, including all copies thereof, all of which upon request or upon completion of the Contract shall promptly be returned to Buyer. Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Contract shall not, unless otherwise agreed upon in writing by Buyer, be deemed to be confidential information, and as part of the consideration for this Contract, shall be acquired by Buyer free from any restrictions.

8. **SHIPPING.** Material must be shipped in accordance with Buyer's instructions and must be marked plainly with name of consignor and consignee. A packing list must accompany materials. Buyer's count or weight shall be conclusive on shipments not accompanied by a packing list. Any losses accruing from deviation from the Buyer's routing instructions will be charged to the Seller's account.

9. **INSOLVENCY.** In the event any bankruptcy arrangement or insolvency proceedings are commenced by or an assignee for the benefit of creditors or a receiver or trustee for all or any part of the Seller's property or if Seller commits an act of bankruptcy or is unable to meet its debts as they mature, then Buyer, at its option, shall be entitled to cancel any unfilled portion of this Contract without liability. Termination pursuant to the terms of this Paragraph 9 shall not affect any claim for damages which Buyers might otherwise have.

10. **EXCESS.** The quantity of materials or services specified on this Contract must not be exceeded without the prior written consent of Buyer. Buyer will not be responsible for any materials or services furnished without a written order. Any excess materials may, at Buyer's option, be returned to Seller at Seller's risk and expense.

11. **LEGAL COMPLIANCE.** Acceptance of this Contract shall be deemed to include Seller's representation and warranty to Buyer that Seller shall, in completing the Contract, comply with any and all applicable laws, executive orders, regulations, ordinances, proclamations and demands of the Federal Government or any bureau, agency or departments or of any State or local Government Authority which may now or hereafter be applicable to Seller's performance of the Contract.

12. **PROPERTY OF BUYER.** All materials, including tools, dies, patterns, prototypes and samples, furnished and/or paid for by Buyer shall (I) remain property of Buyer (II) be subject to removal at any time without additional cost upon demand by Buyer. (III) be used only in filing orders from Buyer; (IV) be kept separate from all other such materials in the possession of Seller and (V) be clearly identified as property of Buyer. Seller shall maintain all tools, dies patterns, prototypes and/or other materials furnished to it by Buyer in good repair and operating condition. Seller assumes all risk and liability for loss or damage thereto, except for normal wear and tear, and agrees to supply detailed statements of inventory upon request of Buyer. The provisions of this Paragraph 12 survive delivery and payment and shall remain in full force and effect until all such items are delivered to Buyer or disposed of in accordance with Buyer's written instructions.

13. **INDEMNITY.** The Seller shall defend, at its own expense, the Buyer, customers, distributors and dealers in and users of the products of the Buyer and hold them harmless with respect to any and all claims that the products or materials furnished by the Seller under this Contract infringe any United States or foreign patent design registration or copyright, and with respect to any and all suits, controversies, demands, and liabilities arising out of any such claim, unless the products or materials are specially made for the Buyer from a design promulgated by the Buyer and such infringement shall have necessarily resulted from Seller's compliance with special design requirements set forth in specifications or drawings furnished by Buyer. In the event this

Contract involves payment for research or development work, Seller agrees to and hereby does grant the Buyer, its successors and assigns a nonexclusive, irrevocable and royalty-free license under any inventions, improvements or discoveries conceived or first actually reduced to practice in connection with such research or development.

14. **PRODUCT LIABILITY.** The seller shall indemnify the Buyer for any loss or injury to property and person of third parties based upon claims of product liability levied against the Buyer and arising out of the use of Seller-supplied equipment except when such loss or injury arises out of compliance with an express requirement or specification as provided to Seller by the Buyer. Indemnification shall include but not be limited to all attorneys' fees and costs sustained by Buyer arising out of such loss or injury.

15. **LABOR DISPUTES.** Whenever an actual or potential labor dispute delays or threatens to delay the timely performance of the Contract, Seller shall promptly give notice to Buyer, informing Buyer of all relevant information with respect thereto. Buyer reserves the right to cancel the Contract if in Buyer's sole discretion, any such delay or threatened delay may be injurious to Buyer.

16. **INCORPORATED.** All specifications drawings, notes, instructions or technical information referred to in this Contract shall be deemed to be incorporated herein by reference as though fully set forth. Any discrepancies or questions shall be referred to Buyer for decision or interpretation.

17. **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970.** Seller warrants that the manufacture and design of the items covered by and the services performed pursuant to this Contract comply with standard rules, orders and regulations promulgated or prescribed pursuant to the Occupational Safety and Health Act of 1970.

18. **ASSIGNMENT.** The Seller shall not delegate any duties nor assign any right or claims under this Contract or for breach, thereof without prior written consent of the Buyer, and any such attempted delegation or assignment shall be void. All claims for moneys due or to become due from the Buyer shall be subject to deduction by the Buyer for any setoff or counterclaim arising out of this or any other of the Buyer's Contracts with the Seller whether such setoff or counterclaim arose before or after any such assignment by the Seller.

19. **CHANGES.** Buyer reserves the right to cancel or change the quantities as well as to make changes including but not limited to changes in drawings and specifications, methods of shipment and packaging, schedules and the place of delivery as to any material and/or work covered by this contract prior to the specified shipping date by written notice to Seller and the extent of compensation or reimbursement, if any, shall be negotiated in good faith between Buyer and Seller in a just and equitable basis.

20. **CANCELLATION.** Buyer reserves the right to cancel the Contract in its entirety if Seller does not comply with each of the terms and conditions set forth herein.

21. **TERMINATION.**

A. Buyer may terminate, for convenience, work under this contract in whole or in part, at any time by written notice. Upon such termination, Seller shall to the extent and at the time specified by Buyer, stop all work on this Contract, place no further orders hereunder, terminate work under orders outstanding hereunder, assign to Buyer all Seller's interest under terminated subcontracts and orders, settle all claims there under after obtaining Buyer's approval, protect all property in which Buyer has or may acquire an interest and transfer title and make delivery to Buyer of all articles, materials, work in process, or other things held or acquired by Seller in connection with the terminated portion of this Contract. Seller shall proceed promptly to comply with Buyer's directions respecting each of the foregoing without awaiting settlement or payment of its termination claim and unless otherwise directed by Buyer, shall to the best of its ability reduce any resultant termination inventory. B. Within six (6) months from such termination, Seller may submit to Buyer its written claim for termination charges, in the form and with the certifications prescribed by Buyer, it being understood and agreed that no profits shall be allowed if it appears Seller would have sustained a loss on the Contract. Failure to submit such claim within such time shall constitute a waiver of all claims and a release of all Buyers' liability arising out of such termination.

C. The parties may agree upon the amount to be paid Seller for such termination. If they fail to agree, Buyer shall pay Seller the amount due for articles delivered prior to termination and in addition thereto, but without duplication, shall pay the following amounts:

(I) The contract price for all articles completed in accordance with this Contract and not previously paid for.

(II) The actual costs incurred by the Seller which are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this Contract, and a sum constituting a fair and reasonable profit on such costs. If it appears Seller would have sustained a loss on the Contract, no profit shall be allowed under this Subparagraph (II) and an adjustment shall be made reducing the amount of the settlement to reflect rate of loss.

(III) The reasonable costs of the Seller in making settlement hereunder and in protecting property in which Buyer has or may acquire an interest.

D. Payments made under Paragraph 21 exclusive of payments under Subparagraph C (III) shall not exceed the aggregate price specified in this Contract, less payments otherwise made. There shall be excluded from any amounts payable to Seller under this Section, all amounts payable in respect to property lost, damaged, stolen or destroyed prior to delivery to Buyer.

E The foregoing Paragraphs A to D inclusive, shall be applicable only to a termination for Buyer's convenience and shall not affect or impair any right of Buyer to terminate this Contract for Seller's default in the performance hereof.

22. **AMENDMENT OF TERMS.** The terms and conditions herein are subject to modification or withdrawal at any time by written amendment or by reissuance. Until modified or withdrawn, the terms and conditions herein shall apply to all dealings between Buyer and Seller, except where specifically otherwise indicated by Buyer in writing.

23. **GOVERNING LAWS.** This contract and the acceptance thereof shall be a contract made in the State of California and governed by the laws thereof.

24. **ENFORCEABILITY.** No waiver of breach of any provision of this contract shall constitute a waiver of any other breach, or of such provisions. Any provisions or portion of these terms and conditions found void or unenforceable shall not render the remainder of the terms and conditions found void or unenforceable.

25. **ATTORNEY'S FEES AND COSTS.** On demand, Seller agrees to pay for all costs and expenses including reasonable attorney's fees for which shall be made, suffered or incurred by Buyer in cancelling, remedying or enforcing this Contract against Seller.

26. **SUCCESSORS AND ASSIGNS.** The terms and conditions of this Contract will inure to the benefit of the successors and assigns of the parties.