

Standard Terms and Conditions - InCircuits, Inc.

July 2006



Standard Terms

1. **Description of Services.** InCircuits, Inc. will perform mutually agreed upon services for Client subject to these Standard Terms and Conditions and certain portions of the Client's purchase order. Mutually agreed upon services shall be accepted in writing or by confirmed email transmittal. All work by InCircuits, Inc. will be performed on a "Time and Materials" basis.
2. **Hourly Rate.** Services will be billed at an agreed upon hourly rate.
3. **Reimbursable Expenses.** There are no additional fees for InCircuits, Inc. use of available InCircuits, Inc. then current facilities, software or equipment. Client assumes responsibility for and agrees to pay for all materials, outside equipment and service costs, travel (time and expense), and other additional InCircuits, Inc. related expenses.
4. **Terms of Payment.** Client agrees to pay InCircuits, Inc. the mutually agreed upon hourly rate plus applicable expenses. Payment is due in full within fifteen (15) days of InCircuits, Inc. invoice date. Invoices may be submitted as often as every two (2) weeks for work performed. Invoices will also identify reimbursable expenses. Client agrees to pay interest on all overdue amounts at a rate of twelve percent (12%) per annum or the rate allowable by law, whichever is less plus reasonable attorneys fees and costs of collection.
5. **Deposit.** A deposit is not usually required with a Client purchase order, except for materials and other reimbursable expenses.
6. **Termination.** Unless otherwise agreed to in writing, any InCircuits, Inc. services may be terminated by either party upon seven (7) days written notice to the other party. Client is responsible for and agrees to pay InCircuits, Inc. for time and expenses incurred up to the time of termination.
7. **Written Contract.** Unless otherwise agreed to in writing, these Standard Terms and Conditions and the mutually agreed upon services and hourly rate which may be included in Client's purchase order constitute the entire agreement between the parties and shall supersede all other terms, including, but not limited to all other terms and conditions stated on or in the Client's purchase order.
8. **Intellectual property.** Intellectual property developed either solely by InCircuits, Inc. for Client or jointly by InCircuits, Inc. and Client during the direct performance of mutually agreed upon services for Client by InCircuits, Inc. shall belong exclusively to Client. Neither party acquires any right, title, or interest in or to the other party's pre-existing Intellectual Property.
9. **Limitation of Liability.** IN NO EVENT SHALL INCIRCUITS, INC. OR ITS EMPLOYEES BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES. Damages, if any, shall be limited to the amounts paid to InCircuits, Inc. by Client directly related to services from which the damages arose.
10. **Indemnification.** Client agrees to indemnify and hold InCircuits, Inc. harmless against any costs and liability arising from the use of any design, services or product provided to Client by InCircuits, Inc. Client also agrees to indemnify and hold InCircuits, Inc. harmless from any costs and liability regarding the manufacture and distribution of any product based on the designs and prototypes provided by InCircuits, Inc. pursuant to this Agreement.
11. **Suitability of Design.** Client understands that the use of any design, advice, drawing, or other service provided by InCircuits, Inc. does not alleviate Client's responsibility to execute sufficient testing and judgment to ensure that products are suitable for use. InCircuits, Inc. makes no claim as to suitability of InCircuits, Inc. designs.
12. **Limited Warranty.** InCircuits, Inc. represents and warrants that it is free of any obligation that would prevent it from entering into this Agreement. In addition, InCircuits, Inc. represents and warrants that the deliverables provided by InCircuits, Inc. to Client under this Agreement, upon delivery to Client, shall substantially conform to the written specifications mutually agreed upon by the parties. Alleged defects in design, materials or workmanship must be reported to InCircuits, Inc. in writing within ten (10) business days of delivery to Client and must be reproducible by InCircuits, Inc. Defects confirmed by InCircuits, Inc. present at the time of original delivery to Client will be corrected at no additional charge to Client. This warranty shall not apply with respect to defective conditions or non-conformities caused by misuse, neglect, accident or abuse. Finally, InCircuits, Inc. warrants that to its reasonable knowledge it has not knowingly violated any third party intellectual property rights, including patents, copyrights and trade secrets in providing the deliverables under this Agreement.
EXCEPT AS SET FORTH IN THIS SECTION, INCIRCUITS, INC. MAKES NO WARRANTY, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT. INCIRCUITS, INC. HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
13. **Third Party Claims.** Should InCircuits, Inc. be informed that the deliverables under this Agreement are subject to third-party intellectual property and/or licensing claims, InCircuits, Inc. will provide written notice to the Client as soon as reasonably possible. CLIENT AGREES THAT INCIRCUITS, INC. SHALL NOT BE LIABLE FOR ANY COSTS ASSOCIATED WITH ANY SUCH CLAIMS INCLUDING, BUT NOT LIMITED TO PATENT INFRINGEMENT CLAIMS.