



## Brea, CA – Warranty, Liability, and Indemnification

(applicable to all customer purchase orders confirmed)

### 1. PRODUCT WARRANTY AND DISCLAIMER.

- a. Product Warranty. Emerald Technologies – Brea, CA Manufacturing warrants that Products manufactured will conform to the Specifications and will be free from Defects in workmanship for a period of 365 days from the date of delivery of the Products to the Buyer listed on Purchase Order. Buyer shall promptly notify Emerald Technologies – Brea, CA in writing of any malfunction in the Products, which notification shall describe the malfunction in sufficient detail to permit Emerald Technologies – Brea, CA to isolate the malfunction. Upon notification from Buyer, Emerald Technologies – Brea, CA will provide Buyer with instructions on returning the Product under a warranty claim. Upon receipt of any Products returned by Buyer pursuant to this Section 1, **Emerald Technologies – Brea, CA shall test the Products in accordance with the contracted level of testing as set forth in the applicable Product Schedule in order to isolate any malfunctions in the Product. If Emerald Technologies – Brea, CA determines that the malfunction is not due to nonconformity with the Specifications or Defect, then Emerald Technologies – Brea, CA will seek instructions from the Buyer regarding whether Emerald Technologies – Brea, CA should return the Product to Buyer or dispose of it.** If Emerald Technologies – Brea, CA is unable to isolate any malfunctions in the Product using the contracted level of testing as set forth in the applicable Product Schedule, then Buyer is solely responsible for isolation of the malfunction and Emerald Technologies – Brea, CA will seek instructions from the Buyer regarding whether Buyer will authorize additional testing on the returned Product or whether Emerald Technologies – Brea, CA should return the Product to Buyer or dispose of it. If any returned Product contains malfunctions due to nonconformity with the Specifications or Defects in workmanship, then Buyer's exclusive remedy and Emerald Technologies – Brea, CA's sole liability under this warranty will be for Emerald Technologies – Brea, CA, at its sole option and expense, to correct or replace the nonconforming or defective Product. This warranty does not apply to: (i) any first articles, prototypes, pre-production units, test units of a Product; (ii) any Products which have been repaired by Buyer or a third party; (iii) any Products which have been altered or modified in any way by Buyer or third party; or (iv) any Products which have been subject to misuse, abnormal use or neglect.
- b. Disclaimer. THE WARRANTY STATED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS OR OTHER TERMS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TERMS AS TO QUALITY, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE, WHETHER IMPLIED BY CUSTOM OR LAW. Without limiting the foregoing disclaimer, by sending purchase order to Emerald Technologies – Brea, CA, Buyer understands, acknowledges and agrees that Emerald Technologies – Brea, CA does not warrant any parts, components or other materials used in the manufacture of the Products.

### 2. LIMITATION OF LIABILITY.

IN NO EVENT SHALL EITHER EMERALD TECHNOLOGIES – BREA, CA OR BUYER BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE ARISING OUT OF OR RELATING TO ANY PURCHASE ORDER SENT AND FULFILLED BY EMERALD TECHNOLOGIES – BREA, CA OR CONNECTED WITH OR RESULTING FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, OR USE OF ANY



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PRODUCTS OR THE FURNISHING OF ANY SERVICE OR PART THEREOF, WHETHER SUCH LIABILITY IS BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAD BEEN WARNED OF THE POSSIBILITY OF ANY SUCH DAMAGES. THE MAXIMUM LIABILITY FOR PRODUCTS DELIVERED SHALL NOT EXCEED THE VALUE OF THE PURCHASE ORDER.

### **3. INDEMNIFICATION.**

Buyer shall defend, indemnify and hold Emerald Technologies – Brea, CA and its parent companies, subsidiaries, affiliates, officers, directors, employees, agents and representatives harmless from any and all claims, demands, liabilities, actions, suits, proceedings, losses, injuries, death including damages, judgments, expenses and/or costs (including without limitation reasonable attorneys' fees and related costs) based on or arising out of: (i) any claims or demands that use of Buyer's Proprietary Information in manufacturing the Products constitutes infringement; (ii) any claims or demands relating to the design of the Products; (iii) any claims or demands by any third party that there was a failure to warn of any foreseeable use, improper use, misuse or defects of any Products; (iv) any claims or demands relating to Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; (v) any claims or demands of Buyer's violation or alleged violation of any federal, state, or local laws or regulation, including without limitation, the laws and regulations governing product safety, labeling, packaging and labor practices; or (vi) any claims or demands arising out of a breach by Buyer of any of the terms and conditions listed here or in the Emerald Technologies – Brea, CA provided quote. Emerald Technologies – Brea, CA shall give written notice of any claim or potential claim to Buyer within a reasonable time following the time at which Emerald Technologies – Brea, CA first became aware of the circumstances which gave rise to such claim for indemnification hereunder. Buyer may, at its option, have control of any litigation and appointment of counsel in defense of any third party claims for which Emerald Technologies – Brea, CA seeks indemnification hereunder. No suit or proceeding shall be settled or compromised without the prior written consent of Emerald Technologies – Brea, CA.