

# Terms and Conditions - Prior Art Library

## 1. Proprietary Rights

Under this Agreement TechInsights provides Company (including affiliates of Company, meaning entities under common control with Company) with the Service as more fully described in this Agreement and the Company receives access to Prior Art Technical Analysis which is either sent directly to the Company or is accessed by Company through a TechInsights' proprietary access portal (collectively, the "Content Access Tool"). The Content Access Tool makes Prior Art Prior Art Technical Analysis and other content available by making it viewable, which content viewed thereby may not be saved or printed, except as permitted below (the "Service"). "Prior Art Technical Analysis" comprises all technical and business information obtained or generated by TechInsights and/or that is made available via the Content Access Tool, which was created at least more than 6 years prior to the first day of the calendar month during which Company access such information, and includes but is not limited to information obtained by TechInsights from market analysis, analysis of parts procured, samples prepared, images captured, schematic diagrams produced, test results documented of semiconductor or electronics circuits, processes, or systems, products torn down, except that it does not include Customer Data (defined below). "Customer Data" means any information or data collected by TechInsights or by the Content Access Tool with regard to Company's use of the Service, including, but not limited to usage patterns, Prior Art Technical Analysis accessed or viewed by Company, sale of reports, images, schematics, tables, etc. to Company. All copyright, proprietary, and other intellectual property rights to the Content Access Tool, any Prior Art Technical Analysis, and collected Customer Data will reside with TechInsights and/or the creators thereof. The individual authors of various aspects of the Prior Art Technical Analysis hold moral rights in the Prior Art Technical Analysis, which are not waived. TechInsights reserves the right to re-use and re-sell any Prior Art Technical Analysis. TechInsights warrants that TechInsights shall solely use the Customer Data for the purposes of providing the Services and other support to Company.

## 2. License, Distribution & Use

TechInsights grants to Company, during the Term (defined below), a non-exclusive, non-transferable, revocable, limited license (without the right to sublicense – except as expressly permitted) to use the Content Access Tool in the manner designed to access and, as permitted, download the Prior Art Technical Analysis, in accordance with the following, adherence to ALL of which is the responsibility of Company:

- a. The Content Access Tool may only be used by "Authorized Users" which are defined as employees or contractors of the Company authorized by Company to access the Content Access Tool and who have been supplied a user account and password by Company, and who are subject to obligations of confidentiality at least as restrictive as those set forth below in Section 5. Company may substitute a previously unauthorized user for an Authorized User provided that the number of Authorized Users does not exceed the maximum permitted of 25, unless specified as otherwise in writing in this Agreement, or other applicable agreement, and provided that Company changes the designated username and password for each newly designated Authorized User.
- b. Company must only use the Content Access Tool in the way that the tool is designed to be used and specifically must not modify, reverse engineer, disassemble or decompile or create derivative works based on software programs or data associated with the Content Access Tool.
- c. Prior Art License: TechInsights agrees to grant and hereby grants to Company a fully- paid, non-exclusive, non-transferable, worldwide, limited license to use Prior Art Technical Analysis or any substantial part thereof, in accordance with and subject at all times to the following rights and obligations:
  - i. Company may, in perpetuity for any Prior Art Technical Analysis downloaded during the Term via the Content Access Tool, copy, distribute, and make derivative works from any Prior Art Technical Analysis, and extracts thereof, solely for Invalidity Purposes and subject to the download limitation set forth in Section 2.c.iii. below, provided that access to such Prior Art Technical Analysis or extract thereof, or copy or derivative work thereof, is restricted to Company's employees, contractors,

- service providers, and professional advisors that are individuals under an obligation of confidentiality and non-disclosure with respect to Prior Art Technical Analysis at all times during which they have access to or possess any Technical Analysis or portion thereof, and which Company agrees that it shall remain liable and responsible to TechInsights for any act or omission that, if committed or omitted by Company, would not be permitted under this Agreement.
- ii. Company may, in perpetuity for any Prior Art Technical Analysis downloaded during the Term via the Content Access Tool, disclose a Prior Art Technical Analysis or extracts or derivative works thereof, outside of Company solely for Invalidity Purposes (defined below) associated with an Ongoing Dispute (defined below). Client agrees that (i) the person or entity to whom Client discloses a Prior Art Technical Analysis under this Section 2.e.ii. shall not be permitted to use the Prior Art Technical Analysis for their benefit in any way and shall be required to return or destroy all copies of Prior Art Technical Analysis that have been distributed to them under this Section; (ii) Company shall notify any person referred to above of such restrictions; and (iii) that Company shall remain responsible and liable for any non-permitted use by such person or entity.
  - iii. Company shall be entitled to download any Prior Art Technical Analysis that it believes is relevant to an Ongoing Dispute, except that TechInsights reserves the right to restrict Company's ability to download or otherwise restrict or suspend access to any Prior Art Technical Analyses in the following circumstances: (I) after requesting further information regarding the existence of applicable Ongoing Disputes, TechInsights, acting in good faith, believes that Company has downloaded Prior Art Technical Analyses in the absence of any Ongoing Dispute; or (II) Company has downloaded more than 25 Prior Art Technical Analyses in any 4 month period without prior written notice to TechInsights.
  - iv. All copies and reproductions of the Prior Art Technical Analysis disclosed hereunder, or extracts, or any substantial part thereof, must bear on their face, or be inextricably linked with an indication that the Prior Art Technical Analysis or extract thereof was prepared by and that copyright is held by TechInsights.
  - v. Company may only access any Prior Art Technical Analysis as permitted in this Agreement and may not use it any way not explicitly provided for herein.
  - vi. All extracts taken from the Prior Art Technical Analysis must continue to have the meaning that would be ordinarily attributed to it within the context of the original Prior Art Technical Analysis; and
  - vii. Company agrees that, notwithstanding any rights granted hereunder, it will take all reasonable steps, at its own expense, to seek a protective order, or similar, that seeks to prevent or minimize any public disclosure, in respect of any Prior Art Technical Analysis that is or may be used in any litigation or other court or other dispute resolution process of which the Company is involved.
  - viii. For greater certainty, the following are not permitted under this Agreement without first obtaining prior consent of TechInsights: (i) any use including or in association with establishing or confirming infringement of any patent or patent application in which Company has an interest, including preparation of claim charts and/or evidence of use documentation, and/or communication of an assertion or allegation of infringement of any patents or patent applications, in which Company has an interest, to any third party, or in any way for intellectual property licensing discussions or litigation involving patents or patent applications in which Company has an interest; or (II) the sale, transfer, leasing, or provision of access to any Prior Art Technical Analysis to any third party in exchange for any consideration or benefit.
- d. The following definitions shall be used in this Agreement:
- i. "Invalidity Purposes" means, and is limited to, purposes and uses of a Prior Art Technical Analysis relating to (i) in respect of any patent or patent application asserted against Company, assess, allege, or assert the invalidity of such patent or patent application in view of a given Prior Art Technical Analysis; or (ii) as a prior art reference to defend against, or mitigate the impact or scope of, any assertion of third-party intellectual property rights against Company.
  - ii. "Ongoing Dispute" means, in respect of two or more adversarial parties that includes Company: (i) any potential, threatened, or actual litigation, adjudication, or similar

proceeding (including arbitration or mediation) relating to an intellectual property right; and/or (ii) assertion of any intellectual property right for the purposes of negotiating, gauging interest in, or entering into a licensing or other similar arrangement in respect of said intellectual property right, such arrangement including any requirement to pay royalties or other benefits in exchange for a license, authorization, consent, and/or covenant or other agreement not to sue, but for which there would be a breach of an exclusive right associated with said intellectual property right; provided that (x) the litigation or assertion referred to above in (i) or (ii) has not been, with respect to Company, finally settled, finally adjudicated without further possibility for appeal by way of right, or licensed, OR (y) in any case, the intellectual property rights referred to above have expired, lapsed, or have been declared invalid by a court, tribunal, or other legal authority having sufficient jurisdiction.

### 3. Term

The initial term of this Agreement (the "Initial Term") shall run from the Start Date to the End Date set forth in the Agreement. Unless otherwise set forth in the Agreement, the Initial Term shall be automatically renewed for additional one-year periods (each a "Renewal Term"), provided however: (i) either party may provide the other party a notice of non-renewal no less than thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable; (ii) TechInsights reserves the right to increase the fees for any Renewal Term on at least sixty (60) days prior notice to Company. The Initial Term together with all Renewal Terms (or portions thereof) is referred to herein as the Term.

### 4. Prior Art Technical Analysis Derived from Reverse Engineering and Liability

a. Company acknowledges that devices and components analyzed by TechInsights are complex and that while TechInsights takes commercially reasonable measures to ensure that its analysis work is carried out to a high standard and seeks to present complete and accurate Prior Art Technical Analysis information, it is not possible to guarantee absolute completeness or accuracy of that information, and accordingly, TechInsights makes no representation or warranty about its work/written report. Company acknowledges the absence of any representation or warranty

of any kind, and agrees to accept all deliverables from TechInsights "as is/where is."

b. In no event shall the amount of TechInsights' liability hereunder exceed the aggregate amount payable by Company to TechInsights hereunder, within the 12 months preceding the incident giving rise to a liability.

### 5. Confidential Information

a. The Parties agree that all Prior Art Technical Analysis, as well as information derived therefrom, including comparison to third-party devices or activities, as well as any assessment or determination of infringement of any patent or other intellectual property right based on or derived from a Prior Art Technical Analysis, including confirmation thereof, shall constitute "Confidential Information".

b. The Company agrees that it shall not use Confidential Information for any purpose other than to carry out one, and only one, of the Permitted Purposes. The Company shall not disclose or permit disclosure of any Confidential Information to third parties or to its employees, other than Authorized Users or persons described in Section 2.d.ii. above, and for whose actions in violation of this Agreement,

the Company agrees that it shall remain responsible. The Company agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of the Confidential Information to persons not authorized under this Agreement to have such information. The Company further agrees to notify TechInsights in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information as soon as possible after it becomes aware thereof. Notwithstanding the above, the Company shall not have liability with regard to any Confidential Information to the extent it can prove (a) it was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Company in breach of this Agreement; (b) it was known to the Company at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (c) it is disclosed with the prior written approval of TechInsights; (d) it becomes known to the Company, without restriction, from an independent source, without breach of this Agreement and not in violation of the disclosing party's rights; (f) is disclosed generally to third parties by TechInsights without restrictions similar to those contained in this Agreement; or

(g) is disclosed pursuant to an order or requirement of law, regulation, a court or similar governmental body that is not related to an External Purpose, provided that the Company shall provide prompt notice of such court order or requirement to TechInsights to enable TechInsights to seek a protective order or otherwise prevent or restrict such disclosure.

- c. The Company and TechInsights each agree that (a) the terms herein are necessary and reasonable in order to protect TechInsights and its business, (b) due to the unique nature of the Confidential Information, monetary damages would not necessarily, or on their own, be adequate to compensate TechInsights for any breach of this Agreement by the Company, (c) any such violation or threatened violation shall cause irreparable injury to TechInsights, and (d) in addition to any other remedies that may be available, in law, in equity or otherwise, TechInsights shall be entitled to injunctive relief, as well as other equitable relief, against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages or of posting any bond. In addition to any other remedy provided by law or equity, including the above injunctive relief under this Section 5.c., TechInsights may claim, at its sole option, and Company hereby agrees to be liable for, damages in the amount of 1.5X the price the highest reasonable price it would charge to any customer for a given Prior Art Technical Analysis for *each* disclosure to a third-party provided access to such given Prior Art Technical Analysis that resulted from a breach of this Agreement.

#### **6. Export Control and Sanctions Compliance**

- a. Company acknowledges that the information, data, technology, software, products, and/or Services obtained from TechInsights may be subject to the export control and economic sanctions laws and regulation of the United States, European Union, Canada, and other relevant jurisdictions (the "Export Control and Sanctions Laws"). By accessing or downloading TechInsights information, data, technology, software, products, and/or Services you certify that you and your organization are eligible to receive such items under applicable Export Control and Sanctions Laws, will not use such items in breach of or contrary to Export Control and Sanctions Laws, and, further, that you and your organization are not: (i) located, operating, resident, or organized in a country or territory, or whose government is subject to, comprehensive U.S. sanctions (currently including Cuba, Crimea

Region of Ukraine, Iran, North Korea, Venezuela, or Syria) ("Sanctioned Territory"); (ii) identified on any list of restricted parties targeted under U.S., EU, Canadian, or multilateral sanctions, including, but not limited to, the U.S. Department of the Treasury, Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons, the U.S. Department of Commerce's Entity or Denied Persons Lists, the EU Consolidated list of persons, groups and entities subject to EU financial sanctions, or the Consolidated Canadian Autonomous Sanctions List; (iv) owned or controlled by, or acting on behalf, or at the direction, of any of the foregoing.

- b. Company may not export, re-export, transfer, retransfer, sell, supply, or allow access to or use of the information, data, technology, software, products, and/or services obtained from TechInsights to any prohibited or unauthorized parties or in breach of Export Control and Sanctions Laws, or in any way that would expose any person to the risk of any adverse measures pursuant to any Export Control and Sanctions Laws. Diversion contrary to U.S. or other laws is prohibited.

#### **7. Invoicing, Payment Terms, and Project Scope and Schedule**

- a. Currency: All prices are quoted in US dollars and do not include applicable taxes.
- b. Invoicing: Invoicing will be annual in advanced unless otherwise provided for in this Agreement.
- c. Prices, taxes, etc.: If any tax, public charge, duty or tariff, or increase therein, is or shall be assessed or imposed on TechInsights, on the goods or services on any sale, delivery or other action taken hereunder, each such charge shall be paid by Company and shall be additional to any price quoted by TechInsights.
- d. Terms: Payment terms will be as per invoice, unless otherwise noted. Account payment terms can be confirmed with your TechInsights Sales contact.
- e. Late Payments: Interest will be charged on all overdue accounts at 1.5% per month (18% per annum) in US dollars.

#### **8. Cancellation and Termination**

- a. Either party may cancel a subscription during the Term by giving the other party not less than thirty (30) days' prior written notice. TechInsights may cancel this Agreement, with immediate effect upon written notice to Company, if Company breaches a material provision of this Agreement, including non-payment of invoiced amounts due.
- b. TechInsights may immediately terminate any subscription when, in TechInsights' reasonable

judgment, TechInsights determines that Company has, in its use of TechInsights' information, data, technology, software, products, and/or services, breached Section 6 of this Agreement, and/or violated, or exposed TechInsights to the risk of penalties under, any applicable Export Control and Sanctions Laws. TechInsights will not have any liability to Company, and Company will not be entitled to any total or partial refund, for any termination of the Agreement in these circumstances.

- c. Company will be charged for all fees due during the Term regardless of whether Company accesses or uses, or cancels the Service during the Term, or whether TechInsights cancels the subscription due to material breach of this Agreement by Company.

## 9. Mutual Indemnification

- a. TechInsights shall at its own expense, defend Company in any action, suit or proceeding by a third party alleging that the Service infringes or misappropriates any intellectual property rights of such third party (an "IP Claim") and shall indemnify and hold Company harmless from and against any settlement amounts agreed in writing by TechInsights and/or any losses, damages, expenses or costs (including but not limited to reasonable attorneys' fees) awarded to such third party against Company by a court or tribunal of competent jurisdiction. As conditions for such defense and indemnification by TechInsights, (i) Company shall notify TechInsights promptly in writing upon becoming aware of any IP Claim; (ii) Company shall give TechInsights sole control of the defense and settlement of IP Claims; (iii) Company shall cooperate fully with TechInsights in the defense or settlement of such IP Claims; and (iv) Company shall not settle any IP Claims without TechInsights' written consent, or compromise the defense of any such IP Claims or make any admissions in respect thereto.
- b. Company shall indemnify, defend and hold harmless TechInsights from and against all liabilities, damages, claims, losses, costs and expenses, including reasonable attorneys' fees, arising, directly or indirectly, out of or in connection with acts or omissions giving rise to a breach of this Agreement or any of the representations or warranties contained herein.

## 10. Entire Agreement

- a. The terms and conditions outlined in this Agreement supersede any and all prior understandings and agreements, whether written or oral, between TechInsights and Company, save that any Mutual Non-Disclosure Agreement remains in effect with regard to the

subject matter of that agreement.

- b. These terms and conditions cannot be modified or amended by any other or subsequent document or agreement, unless a written agreement referencing this Agreement is provided and signed by an authorized representative from both TechInsights and Company.
- c. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this agreement shall remain in effect.
- d. This Agreement shall not be assigned by either Company or TechInsights without the other party's prior written consent.

## 11. Force Majeure

TechInsights shall not be liable for any loss or damage arising, directly or indirectly, through or as a consequence of, or any delay in the fulfillment or failure to fulfill an order for any cause beyond TechInsights' reasonable control including, without limitation, any act of God, government regulation or order, inability to obtain from or curtailment of TechInsights' then existing sources of supply of energy, raw materials, or components, water shortage, explosion, fire, flood, civil commotion, terrorist act, war (whether or not declared), inability to obtain labor, lockout, strike, or other labor trouble. In any such event, TechInsights may terminate this Agreement in whole or in part, or delay performance thereunder, and shall give Company notice of such election. Company agrees to pay TechInsights for services rendered to up to and including the date of notice of such election, prorata for the expired Term of the agreement to the date of such notice.

## 12. Miscellaneous

- a. The parties consent and agree that the construction, interpretation and enforcement of this Agreement shall be governed by the laws of the Province of Ontario, Canada, and further consent and agree that the courts of the Province of Ontario, Canada shall have exclusive jurisdiction over any claim or dispute arising under or related to this Agreement, and each party consents to the personal jurisdiction and venue therein. This Agreement may be signed in counterparts.
- b. Notices under this Agreement shall be in writing and shall be addressed to the Legal Department of the relevant party.