

LYTICA INC.

TERMS AND CONDITIONS OF USE OF LYTICA'S BENCHMARKING SERVICE

PLEASE READ BEFORE ACCEPTING

Use the scroll bar or page down key to advance through this document.

BY CLICKING THE "CUSTOMER ACCEPTS" BUTTON BELOW, YOU INDICATE THAT COMPANY THAT REGISTERED ("CUSTOMER") HAS READ AND AGREED TO THE TERMS AND CONDITIONS OF THIS AGREEMENT ("AGREEMENT") GOVERNING USE OF THE LYTICA BENCHMARKING SERVICE ("SERVICE"). IF CUSTOMER DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SELECT THE "CUSTOMER DOES NOT ACCEPT" BUTTON AND NO AGREEMENT WILL BE CONCLUDED.

1. License Grant and Restrictions

LYTICA INC. ("Lytica") hereby grants Customer a right to use the Service, solely for Customer's own purposes, subject to the terms and conditions of this Agreement.

2. e-Contract Terms Consenting to Electronic Documents.

Customer and Lytica consent to the exchange of information and documents between them electronically over the Internet or by e-mail and agree that this Agreement in electronic form shall be the equivalent of an original written paper agreement between them.

3. Lawful Use

Customer and Lytica shall abide by all applicable federal, state or provincial, and local laws and regulations in connection with Customer's use of the Service and Lytica's provision of the Service.

4. Account Information and Customer Data

Information such as Customer-specific part numbers, Customer's name, address, telephone number, email address, and other personal information such as credit card numbers constitute Customer-identifiable information ("Customer Account Information") and Lytica shall not disclose Customer Account Information to third parties. Lytica shall aggregate other data of Customer ("Customer Data") for the purpose of providing the Service with data from other customers of Lytica, but shall not disclose Customer Data to third parties in unaggregated format.

5. License to Use Customer's Data

Provided Lytica does not identify Customer, does not disclose any data as that of any identified party and does not identify product pricing as that of any specific vendor, Customer grants to Lytica an irrevocable, royalty-free, worldwide, non-exclusive, transferable license to create derivative works of, use, distribute, and market Customer Data solely in an aggregated format with data from its other customers.

6. Intellectual Property Rights

Lytica owns the Service. The Customer's use of the Service is a license, not a sale. Customer owns the report produced for it by the Service and may reproduce the report for internal distribution and distribution to affiliates of Customer, but not to other third parties. The LYTICA name, and product names and logos are trademarks of Lytica, and no right or license is granted to Customer to use them.

7. Billing

Where applicable, Lytica bills in advance for use of the Service. Lytica will bill Customer's credit card or electronically bill Customer or Customer may pre-pay by wire transfer. At its discretion Lytica may extend payment terms to customers approved by it as credit-worthy. Lytica fees are exclusive of all taxes or duties imposed by taxing authorities and Lytica shall invoice Customer for all such taxes or duties other than taxes imposed on Lytica's net income.

8. Representations and Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Customer warrants that it shall exercise reasonable commercial due diligence to ensure the accuracy and integrity of data it provides to Lytica. Lytica warrants that it shall provide the Service according to industry standards and shall exercise reasonable commercial due diligence in the collection of data, operation of the Service and the production of reports pursuant thereto. Customer acknowledges that Lytica collects data from a number of sources and that Lytica has no means to and cannot warrant the validity or genuineness of all the data so collected.

9. Disclaimer of Warranties

Except as expressly provided in this Agreement, Lytica makes no representations. Lytica makes no representation or warranty as to the reliability, timeliness, quality, suitability, or accuracy of the Service. Lytica does not represent or warrant that (a) the Service will meet Customer's requirements, (b) any stored data will be accurate or reliable, or (c) the quality of any products or services purchased or obtained by Customer through the Service will meet Customer's requirements or expectations. Lytica disclaims all implied warranties, including, without limitation, any implied warranty of merchantability and fitness for a particular purpose to the maximum extent permitted by applicable law.

10. LIMITATION OF LIABILITY

IN NO EVENT WILL LYTICA BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR AGGRAVATED DAMAGES, ARISING OUT OF THE PRODUCTS OR SERVICES PROVIDED BY LYTICA OR OTHERWISE RELATED TO THIS AGREEMENT, EVEN IF LYTICA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE REASONABLY FORESEEABLE. IN NO CASE WILL LYTICA'S TOTAL LIABILITY ARISING UNDER ANY CAUSE WHATSOEVER (INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, NEGLIGENCE, GROSS NEGLIGENCE, OR OTHER LEGAL THEORY) BE FOR MORE THAN THE AMOUNT PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT OR SERVICE TO WHICH THE CLAIM RELATES.

11. EXCLUSIONS NOT PERMITTED

SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL OR CERTAIN OTHER TYPES OF DAMAGES. THEREFORE, SOME OF THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER AND CUSTOMER MAY HAVE SPECIFIC LEGAL RIGHTS THAT VARY AMONG JURISDICTIONS.

12. Miscellaneous

- (a) Survival. Provisions of this Agreement that by their nature must survive shall continue in force after expiration or termination of this Agreement.
- (b) Governing Law and Dispute Resolution. Lytica is physically located within the Province of Ontario, Canada. This Agreement will be governed by the laws of the Province of Ontario and the federal laws of Canada and shall be treated in all respects as an Ontario contract, without reference to the principles of conflicts of law. Any disagreement or dispute relating to this Agreement shall be settled by final and binding arbitration to be conducted by a single arbitrator in Ottawa, Ontario, Canada in accordance with the *Arbitration Act, 1991* of Ontario.
- (c) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understandings and agreements between the parties with respect thereto.
- (d) Notice. Either party may give notice to the other party by electronic mail or by written communication sent by pre-paid first-class mail in the case of Customer to, Customer's address on record in Lytica's account information and in the case of Lytica, to 308 Legget Drive, Suite 200, Kanata Ontario, K2K 1Y6 to the attention of the Vice President, Sales or email: sales@freebenchmarking.com.
- (e) Language of Agreement. The parties to this Agreement acknowledge having required that this Agreement as well as all notices, documents or agreements related to this Agreement be drafted in English. Les parties aux présentes reconnaissent avoir exigé que la présente convention ainsi que tous avis, documents ou ententes s'y rapportant soient rédigés en anglais.
- (f) Assignment. Either party may assign this Agreement as part of a sale of all or substantially all of its assets.