1. BINDING, EXCLUSIVE AGREEMENT. These standard terms and conditions of sale (“Agreement”) apply to any sale or transfer of Product(s) by Seller to Buyer. Seller accepts and agrees to be bound by this Agreement by: a) ordering based on a Seller’s price quote or b) accepting or paying for Products. Seller objects to and rejects any additional or different terms or conditions in any form tendered by Buyer, including expressly rejecting any provisions that dictate that Buyer’s terms control or any additional or different provisions in a Buyer’s electronic business portal. Seller’s failure to object to any provision or terms from Buyer will not be a waiver or amendment of any of the provisions of this Agreement. These terms shall supersede any terms and conditions contained on any sales order acknowledgment, or other writing Buyer may give or receive, and the rights of the parties shall be governed exclusively by the terms and conditions hereof.

2. DEFINITIONS.

a) Buyer - the buying entity named on the Order Document as well as any affiliates of Buyer.

b) Buyer’s order acknowledgment - Buyer’s written order acknowledgment sent to Seller that confirms Buyer’s acceptance of an Order Document.

c) Claim - any and all claims, demands, causes of action, damages, injuries or liabilities, whether arising, at law or in equity, including those with respect to or arising under breach of contract, tort, negligence, delay in or failure of Delivery, nonperformance, infringement, misappropriation, product or strict liability.

d) Government - any governmental entity, authority, agency, official, or department at the national, state, county or local level.

e) Intellectual Property or IP - all intellectual property, including without limitation patents, patent applications, copyrights, mask works, designs, utility models, moral rights, licenses, confidential or proprietary information, trade secrets, trade indicia (including trademarks, trade names, logos, product names and slogans), and all legal rights to inventions, know-how, methods, processes, Software, protocols, schematics, specifications, web sites, works of authorship, and databases.

f) Order - Order Document.

3. ORDER PLACEMENT.

All orders and requested changes to orders are subject to acceptance by Seller, which acceptance will be (i) through Seller’s written order acceptance sent to Buyer, (ii) by Delivery, or (iii) through electronic acceptance by Seller by mutually agreed upon methods. No acceptance other than actual Delivery or acceptance by Buyer after a maximum of two (2) business days from the date of Seller’s receipt of Buyer’s order or request for change will be valid for orders placed with less than 30 days prior to Delivery or with orders that have not been invoiced before Delivery.

4. TITLE AND DELIVERY. Delivery of Products will be EX-WORKS (EXW) Seller’s Plant (INCOTERMS 2010) Buyer’s designated carrier. Delivery dates are approximate and Seller will not be responsible for any claims damages resulting from late deliveries. Buyer’s sole remedy for Seller’s delay in delivery or failure to deliver for any reason whatsoever is to cancel the order, and Seller will refund Buyer any portion of the purchase price prepaid by Buyer for the product. IN NO EVENT WILL SELLER BE LIABLE FOR INCREASED MANUFACTURING COSTS, DOWNTIME COSTS, DAMAGES RELATING TO BUYER’S PROCUREMENT OF SUBSTITUTE PRODUCT (i.e., “COST OF COVER”), LOSS OF PROFITS, REVENUES, OR GOODWILL, OR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES.

5. CANCELLATION/RESCHEDULING. Buyer may only cancel or change an Order for Standard Products, in whole or in part, by delivery of written notice to Seller at least sixty (60) days before the original Scheduled Ship Date. Rescheduling requests inside sixty (60) days will be evaluated on a case by case basis. For a partial cancellation of an Order that satisfies the notice requirements, the price will be adjusted based on the remaining quantity. Seller has the right to cancel an Order at any time if Buyer becomes insolvent or if voluntary or involuntary proceedings are commenced as to Buyer under any bankruptcy or insolvency law, or upon default or breach by Buyer of the Agreement or applicable law. After receipt of a Claim relating to the Products, Seller may terminate without liability to Seller any Order as to any or all Products not delivered. All cancellations may be subject to a restocking fee up to 15% of invoiced value.

6. PAYMENT TERMS. Seller may require payment of all equitable value for Products not yet delivered by giving notice to Buyer of such price renegotiation and Seller’s proposed new pricing. All invoices are due and payable in full by Buyer in U.S. Dollars. Unless otherwise stated, payment is due 30 days after the date of invoice. Interest will accrue on all past due amounts at the lesser of 1.5% per month or the maximum rate allowable by applicable law. Buyer will pay for all Products Delivered. For Products Delivered in installments, Buyer will pay separately for each installment. Seller may, without incurring any Seller liability, suspend or cease any Delivery and/or cancel any Orders if Buyer is in breach of this Agreement or an Order, or if Seller determines, in its sole judgment, that there is a risk that Buyer will not fulfill its obligations. Seller may require Buyer to make full or partial payment in advance, provide certain security or satisfy other conditions. Seller may enforce its rights under this Section without prior notice or demand and without proceeding under Section 17.

7. TAXES. All taxes, assessments, fees, and charges applied by any Government to the Products or their sale, delivery, shipment or use (collectively, “Taxes”) will be added to the purchase price of the Products and will be paid by Buyer, except to the extent that Buyer provides Seller with an acceptable tax exemption certificate. If Buyer is required to withhold any amount of tax from its payment to Seller, Buyer shall promptly pay such amount to the appropriate tax authority and take all reasonable steps to minimize such withholding tax.

8. SPECIAL PRODUCTS. All drawings, designs or specifications for Special Products must be mutually agreed upon in a written document signed by both parties and will be a part of the Order Documents as a condition to any obligation of Seller. Orders for Special Products are non-cancellable, non-returnable. If Buyer cancels, reschedules or rejects any Delivery of Special Products, in whole or in part, Buyer will pay the full purchase price for the quantity of Special Products stated in the Order.

9. CONFIDENTIALITY. Buyer acknowledges that by reason of its relationship to Seller hereunder it will have access to certain information and materials concerning business, plans, customers, technology, and products of Seller and its affiliates that are confidential and of substantial value to Seller, which value would be impaired if such information were disclosed to third parties. If a Confidential Disclosure Agreement has been executed, such Agreements are incorporated herein by reference. Confidential Information is defined as any information, technical data, or know-how, including, but not limited to, that which relates to software, developments, inventions, processes, designs, the engineering, or hardware configuration information. Confidential Information includes Confidential Information of a third party which is in possession of Seller and is disclosed to Buyer in confidence hereunder. Buyer agrees that it will not use in any way for its own account or the account of any third party, nor disclose to any third party, any Confidential Information revealed to it by Seller or its affiliates. Buyer will take every reasonable precaution to preserve the confidentiality of such information, including written confirmation of this provision by each of Buyer’s employees and agents. In the event of termination of this Agreement or a Confidential Disclosure Agreement, or in any Confidential Information of a third party otherwise indicated in writing by Seller, the obligation to protect the Confidential Information will survive for seven (7) years following the date on which such information is disclosed.

10. INTELLECTUAL PROPERTY RIGHTS.

a) Subject to Sections 12 and 13, Seller will defend or settle valid Claims by third parties that the Products as delivered directly infringe any third party’s patents or registered copyrights, trademarks or integrated circuit patents, excluding claims directed to manufacturing equipment, processes, and software or foundry services. For those Claims defended by Seller as provided herein, and subject to Sections 12 and 13, Seller will reimburse Buyer for the portion of the settlement or the judgment finally awarded by a court of competent jurisdiction which is directly attributable to the defective or infringing aspects of the Products above.

b) Seller’s duties to defend and reimburse are each conditioned upon Buyer providing Seller: (i) prompt written notification of the Claim; (ii) all information and assistance reasonably helpful in defending the Claim; and (iii) the sole and full authority to defend or settle the Claim or any related proceedings.

11. LEGAL PROTECTION. Seller will not be obligated to defend or be liable for any costs or damages where: (i) the infringement arises out of technology, IP, or requirements provided by Buyer or Buyer’s Customers or a combination or modification of the Product with hardware, software, technology, IP, or other materials not provided by Seller; or (ii) Buyer’s use of the Product is unauthorized under Section 13 or is not normal or intended according to the Specifications. If legal action is brought against Seller because of the occurrence of one of the
11. LIMITED WARRANTIES; EXCLUSIVE REMEDIES. Seller warrants to Buyer that Standard Products (i) are, at the time of Delivery, free from material defects in materials and workmanship and (ii) will, for a period of one year following Delivery, materially conform to the Specifications. This warranty does not apply to Die, Wafers, and Special Products or to Products that Seller determines: (i) is in other than its original condition or (ii) has been subjected to Unauthorized Uses under Section 13. Seller’s sole and exclusive liability and Buyer’s sole and exclusive remedy for any breach of warranty shall be, at Seller’s option, (i) to correct or replace the non-conforming Product to conform with the Specifications at Buyer’s expense; or (ii) to refund the purchase price paid; (i) to deliver to Buyer a replacement. This warranty and any remedy extend to Buyer only and Seller has no liability to any of Buyer’s Customers, users or any other third party. For this limited warranty, Seller makes no other warranties and disclaims all other warranties or liabilities as to any Product, Software or IP, whether express, implied, statutory, or otherwise, including all warranties of merchantability, fitness for a particular purpose, title, ownership, non-infringement, and non-misappropriation. Special Products, labeling on Products and packaging that are intended solely for compliance with applicable law, and all Software are provided “as is” and without any warranty of any kind. The warranty obligations of Seller and the remedies of Buyer set out in this Section 11 are the sole and exclusive obligations of Seller and the sole and exclusive remedies of Buyer for all Claims and other liabilities arising out of or in connection with any warranty, nonconformance, failure, defect or breach of warranty. No obligation or liability will arise out of Seller’s rendering of advice or service in connection with Buyer’s purchase of the Products or any repair or replacement of a Product. No warranties will apply after the one-year period. Seller does not offer any warranties of any kind, and makes no representations, certifications, or warranties whatsoever about compliance with Government acquisition statutes and regulations. Seller is not responsible for any representations or warranties of any kind, express or implied, made by Buyer or anyone on behalf of Buyer. Buyer warrants and represents that it will defend Seller and reimburse Seller for all damages and costs awarded against Seller, including its reasonable attorneys’ fees. For Products designed or marked to Buyer’s specifications, Buyer shall defend Seller and reimburse Seller for all damages and costs awarded against Seller, including its reasonable attorneys’ fees. For Products designed or marked to Buyer’s specifications, Buyer grants Seller a limited royalty-free, worldwide non-transferable license, without the right to sublicense, to use and distribute the Software as part of the Products and without notice to or consent by Buyer. Buyer may subcontract manufacturing or other work as to any or all Products without notice to or consent of Buyer. Buyer will not copy, distribute, prepare derivative works, reverse engineer, decompile, or otherwise disassemble the Software. This license will terminate automatically upon breach of any license terms.

g) As between Buyer and Seller, Seller owns and retains all IP in, relating to, or arising from or with respect to each Product, whether or not such Product is a Special Product or a Product developed to specifications furnished by Buyer. Other than the Software licensed above, Seller does not grant, convey, or confer any ownership, interest, right, or license, express or implied, or in or to any IP of Seller. Seller owns and retains all interest in, title to and possession of all tooling of any kind (including masks and pattern generator tapes) and related IP used in production of the Products.

12. LIMITATIONS OF LIABILITY. In the aggregate cumulative liability of Seller, its affiliates, and their employees, directors, or agents (“Seller Parties”) for all Claims ever made by Buyer against Seller (inclusive) arising out of or in connection with any and all Orders, Order Documents, Products, Software or Claims shall not exceed, individually or collectively, and Buyer will not have any claim for, (i) $10,000,000, whichever is less. The existence of one or more Claims will not enlarge or extend this limit. These limitations apply notwithstanding any failure of essential purpose of any limited or exclusive remedy. In no event will Seller Parties be liable to Buyer or any third party for any special, collateral, indirect, incidental, consequential, exemplary, punitive, or enhanced damages (“Excluded Damages”). Excluded Damages include costs of installation, removal, and replacement of products or other items, rework, re-acquistion or recall costs (including administrative and personnel costs) of replacing or substituting items, loss of goodwill, loss of revenue or profits, and loss of use, without regard to whether Seller has been notified in advance of the possibility of any such Claim or damage. Except to the extent liability is not excludable by applicable law, these limitations apply to personal injuries (including death) caused by Seller’s negligence. The allocation of risk contained in this Agreement is reflected in the price of the Products and is reasonable in all circumstances having regard to all relevant factors, including the parties’ relative bargaining positions.

13. UNAUTHORIZED USES. Buyer will comply with all applicable laws and regulations. The Products, Software or related technologies may be subject to export license or other international trade control. Buyer represents, warrants and certifies that Buyer will comply with applicable laws and regulations relating to export or re-export, including the Export Administration Act of 1979, as amended, the U.S. Export Administration Regulations and U.S. Foreign Assets Control Regulations, 31 C.F.R., Chapter V.

14. GOVERNMENT CONTRACTS. All Products of Seller are commercial items as defined in FAR 2.101. If Buyer sells Products to any Government, or to a Government prime contractor or subcontractor, Buyer shall be solely and exclusively liable for compliance with all Government acquisition statutes and regulations. Seller makes no representations, certifications, or warranties whatsoever about compliance with Government acquisition statutes and regulations. Seller is not responsible for any representations or warranties of any kind, express or implied, made by Buyer or anyone on behalf of Buyer. Buyer, at its own expense, shall be responsible for obtaining any and all necessary governmental authorizations, licenses, clearances and consents as may be required to export or re-export the Products. Seller shall not be liable for, or be responsible for, any non-compliance by Buyer with any Government acquisition statutes and regulations. Seller shall have no further liability or responsibility to Buyer for any government actions or decisions, including, but not limited to, “Buy American” or other import restrictions, which may result in the termination of this Agreement. If any provision of this Agreement or any Order Document is held to be illegal, invalid or unenforceable, then (i) such provision will be reformed to cure or remove such defect and if not reformed will be severed, (ii) the legality, validity and enforceability of the remaining provisions will not be affected or impaired, and (iii) the parties will endeavor in good faith to replace the severed provisions with valid provisions of the same or similar economic effect. The invalidity of any provision in an Order Document shall not affect the legal validity of the remaining provisions of the same Order Document. All rights in technical data, intellectual property and software owned or licensed by Seller are hereby reserved and deemed restricted or limited. Under no circumstances shall Buyer or Buyer’s Customers receive rights or documentation greater than that which is generally made available by Seller to its other commercial customers.

15. LEGAL COMPLIANCE. Seller complies with all applicable laws, regulations and standards, and all order-related technology data, intellectual property and software owned or licensed by Seller are hereby reserved and deemed restricted or limited. Under no circumstances shall Buyer or Buyer’s Customers receive rights or documentation greater than that which is generally made available by Seller to its other commercial customers.

16. BUYER’S DUTY TO DEFEND. Buyer will defend Seller Parties and reimburse Seller Parties for all Claims, taxes, penalties, interest, costs, assessments and expenses (including court and attorney’s fees) that arise as a result of or in connection with any inadequacy or invalidity of any tax exemption certificate submitted by Buyer or any act, omission or misrepresentation of Buyer or any of Buyer’s Affiliates, representatives, contractors, customers or users, including any breach of Sections 9, 13, 14, or 15.

17. DISPUTES. APPLICABLE LAW AND FORUM. All disputes relating to this Agreement or any other Claims arising out of or related to the relationship of the parties (“Disputes”) shall be resolved exclusively by the following sequential methods, except that Seller may take immediate legal action to prevent immediate or irreparable harm to it or for Buyer’s failure to make payments under Section 6. Upon written notice by one party to the other of a Dispute, the parties will first attempt to promptly resolve the Dispute by negotiation for a 45-day period. If not so resolved, all Disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (or, if in Singapore, the Rules of the Singapore International Arbitration Centre) by one or three arbitrators appointed in accordance with said Rules. Discovery will be reasonably limited according to the amount in dispute. If a party unreasonably delays in submitting to binding arbitration, then the other party may commence litigation in a court of competent jurisdiction specified in this Section 17. Arbitration or litigation shall be commenced solely in the parties’ respective individual capacities, and not as a plaintiff or class member in any purported class or representative proceeding. Each of the parties waives its right to a jury trial. Each party will bear its own costs in dispute resolution including attorney fees, except to the extent that a court or arbitrator awards costs to one party. All Dispute negotiations will be confidential settlement negotiations that are inadmissible as provided by applicable rules of evidence in litigation. The English version of any documents shall control and all communications shall be in English. The parties consent to the sole, exclusive jurisdiction of the law courts of the state of Buyer’s principal place of business. Seller and Buyer hereby agree that any action brought against Seller shall be heard in the courts of the State of Texas or the United States District Court for the Northern District of Texas. This Section 17 shall not apply to any Order, Order Document, or any sale of Products to Buyer.

18. FORCE MAJEURE. Seller shall not be in breach of this contract and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a Force Majeure event or other circumstances beyond Seller’s reasonable control, including but not limited to shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any natural disaster, fire, flood, earthquake, explosion, terrorist acts or Act of God. In the event of a shortage of components, Seller may, at its sole discretion, allocate component production and deliveries.

19. MISCELLANEOUS. This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. There are no third party beneficiaries to this Agreement. Buyer may not assign this Agreement in any respect without the prior written consent of Seller. Seller may assign this Agreement, in whole or in part, or any rights hereunder without notice to or consent of Buyer. Seller will not assign this Agreement in any way that affects Buyer’s right to receive the Products in a timely manner. Buyer shall be responsible for all costs, fees, taxes, duties, and charges in connection with the sale of the Products and the payment of any taxes with respect to the sale. Buyer shall not impose any conditions on the sale or delivery of the Products without the prior written consent of Seller. Any assignment by Buyer without the consent of Seller shall be null and void. Seller shall not be in breach of this contract and will not be liable for any non-performance or delay in performance if such non-performance or delay is due to a Force Majeure event or other circumstances beyond Seller’s reasonable control, including but not limited to shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any natural disaster, fire, flood, earthquake, explosion, terrorist acts or Act of God. In the event of a shortage of components, Seller may, at its sole discretion, allocate component production and deliveries.

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