

TERMS AND CONDITIONS OF SALE

- 1. Terms And Conditions.** This sale is subject to, and Seller's acceptance is conditioned upon, Customer's assent to the terms and conditions stated herein and on Micron's sales confirmation, which are in lieu of and replace any and all terms and conditions set forth in any documents issued by Customer, including, without limitation, purchase orders and specifications. ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS AND CONDITIONS ON ANY SUCH DOCUMENT ISSUED BY CUSTOMER AT ANY TIME ARE HEREBY OBJECTED TO BY SELLER, AND ANY SUCH DOCUMENT SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE HEREUNDER AND SHALL NOT BE BINDING IN ANY WAY ON SELLER. No waiver or amendment to these terms and conditions shall be binding on Seller unless made in writing expressly stating that it is such a waiver or amendment and signed by Seller. In case of conflict between the terms and conditions stated here and those on the face hereof, those on the face hereof shall control.
- 2. Prices.** Except as otherwise specified by Seller in writing, all billings for products and services will be at the price indicated on the reverse side hereof. If such price is different than the price originally quoted to Customer, Customer may, upon five (5) days written notice to Seller and within five (5) days of the date of Seller's acknowledgment, cancel this order without liability. Seller shall have the right to increase the prices contained herein by an amount equal to any additional duty, tariff, tax, or other charge imposed as a result of any action by the U.S. Government, any state or local government, or any agent or agency thereof or to compensate for exchange rate variations.
- 3. Payment.** Subject to Section 4 and unless otherwise stated on the face hereof, ALL PAYMENTS SHALL BE MADE IN UNITED STATES DOLLARS WITHIN THIRTY (30) DAYS OF THE DATE OF INVOICE; provided, however, that if shipments are delayed by Customer without Seller's prior written consent, payments shall become due on the date that Seller is prepared to make shipment. On any amounts not paid when due, Customer agrees to pay interest at the rate of 1-1/2% per month (18% per year) or, if such rate is in excess of the rate allowed by law, then Customer agrees to pay the highest rate allowed by law. In addition, Customer agrees to pay all costs of collection, including costs of litigation and reasonable attorneys' fees. Seller may accept partial payment in an amount less than the full amount of any invoice, but such acceptance shall not constitute a waiver of Seller's right to collect the balance or accord and satisfaction notwithstanding Seller's endorsement of a check or other instrument. If Customer is adjudicated bankrupt or a petition for winding up or judicial management is made against Customer or corporate reorganization under any bankruptcy or similar laws is filed by or against Customer, or Customer makes a general assignment for the benefit of creditors or a receiver and/or manager for Customer is appointed, Seller may, to the extent allowed by applicable law, cancel any unfilled order. Each individual shipment shall be invoiced and paid as a separate and independent transaction. Seller reserves title to all products sold and correspondingly a purchase money security interest in the products sold to Customer, and in the proceeds thereof, until payment is made in full by Customer. In the event that Customer sells or otherwise disposes of the products sold to Customer without the prior written consent of Seller prior to full payment for these products being made to Seller, Seller shall be entitled to the entire proceeds of sale, which amount will be held by Customer in a separate bank account on trust for Seller. Customer agrees to execute financing statements and other instruments at Seller's request.
- 4. Credit.** All shipments, deliveries, and performance of work covered by this sale shall at all times be subject to credit approval or review by Seller. Customer shall provide such credit information, references, and assurances as are requested by Seller at any time. Customer authorizes such references to release credit information about Customer's accounts and warrants that all such information and assurances shall be true and correct to the best of Customer's knowledge. Customer agrees to indemnify and hold harmless such references and Seller and their employees and agents from any and all liability resulting from the released information and the extension of credit hereunder. Seller, in its sole discretion and judgment, may discontinue credit at any time without notice.
- 5. Taxes.** Unless otherwise stated on the face hereof, stated prices do not include any customs duties, sales, use, value added, excise, goods and services, federal, state, local or other similar taxes. All such duties or taxes shall be paid by Customer, or, in lieu thereof, Customer shall provide Seller with an appropriate exemption certificate.
- 6. Shipping And Risk Of Loss.** Unless otherwise stated on the face hereof, all shipments are F.C.A. origin. Seller's liability for delivery shall cease and title and all risk of loss or damage shall pass to Customer upon delivery to carrier, regardless of any provision for payment of freight or insurance or the form of shipping documents. Products held by Seller for Customer shall be at Customer's risk and expense. Unless otherwise specified in writing, Seller shall ship by the method which it deems most advantageous. Transportation will be collect, or if prepaid, will be subsequently billed to Customer. Claims against Seller for shortages shall be deemed waived if not made within ten (10) days after receipt of the shipment. Seller may modify the specifications of products designed by Seller, provided such modifications do not adversely affect the performance of the products.
- 7. Order Cancellation; Returns And Adjustments.** Customer may cancel any accepted purchase order without liability by providing Seller with at least thirty (30) days' written notice of cancellation prior to the scheduled shipment date. No delivered product may be returned by Customer for any reason without the prior written approval of Seller. All returns shall be in the original packaging or equivalent. Any product returned to Seller without prior authorization for its return or proper packaging may be refused.
- 8. Remedies.** If Customer fails to pay any sum when due, fails to accept any delivery of conforming goods, returns product without advance authorization of Seller, or otherwise fails to abide by these terms and conditions, in addition to any other remedies allowed by law, Seller may suspend deliveries while Customer is in breach, or cancel all further deliveries, and Customer shall remain liable for, as damages, the difference between the stated price of this sale and the average selling price obtained by Seller for product of like kind and quality for sales at or about the time of scheduled delivery. CUSTOMER'S REMEDIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ANY OTHER REMEDIES AVAILABLE TO REPRESENTATIVE, WHETHER PROVIDED AT LAW, EQUITY OR OTHERWISE
- 9. Force Majeure.** Seller shall not be liable for any delay in performance directly or indirectly caused by or resulting from acts of God, fire, flood, accident, riot, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late delivery by suppliers or other difficulties which are beyond the reasonable control of Seller. QUANTITIES ARE SUBJECT TO AVAILABILITY. In the event of production difficulties or product shortages, Seller may allocate sales and deliveries at its sole discretion.
- 10. Component Resale.** Customer shall not resell components, or remove components from a board for resale or otherwise, except upon express Seller's prior written authorization.
- 11. Warranty.** SELLER MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OTHER WARRANTIES THAT MIGHT ARISE FROM COURSE OF DEALING OR CUSTOM OR TRADE OTHER THAN THAT SELLER WARRANTS ONLY THAT THE PRODUCT COMPLIES WITH SELLER'S SPECIFICATION SHEET FOR THE PRODUCT AT THE TIME OF DELIVERY, PROVIDED THAT DEVIATIONS FROM SPECIFICATIONS WHICH DO NOT MATERIALLY AFFECT PERFORMANCE OF SUCH PRODUCT IN THE SYSTEM AND CONFIGURATION IN OR FOR WHICH IT IS INITIALLY INSTALLED OR QUALIFIED BY CUSTOMER SHALL NOT BE DEEMED TO CONSTITUTE FAILURE TO COMPLY WITH SUCH SPECIFICATIONS. Any claim against Seller must be made within ninety (90) days from the date of shipment by Seller for Micron branded products (other than SSD products), within one (1) year from the date of shipment for SpecTek, and within three (3) years for Micron-branded SSD products and seller has no liability thereafter. Seller's liability is limited to repair or replacement of the defective product or credit or refund of the purchase price of the defective product, provided that Seller may elect refund in lieu of credit, replacement or repair. Allegedly nonconforming product shall be returned as provided herein to Seller, transportation charges prepaid. All warranties cover only defects arising under normal use in compliance with seller's specifications and do not include malfunctions or failures resulting from misuse, abuse, neglect, alteration, modification, or improper installation, or repairs by anyone other than Seller. No agent, employee or representative of seller has any authority to bind Seller to any affirmation, representation or warranty relating the products other than as specifically provided herein. The warranty provided for herein is subject to the following conditions: (a) if product becomes defective during the warranty period, Customer shall notify Seller promptly in writing of any claims; (b) if Seller advises Customer to return product for repair or replacement, Customer will follow Seller's instructions with respect to the return of such product; (c) if product alleged by Customer to be defective or returned to Seller for repair as provided in this section is either (i) not under warranty, or (ii) determined not to be defective, or (iii) defective due to any cause or condition not covered under the warranty provided herein, Customer agrees to reimburse Seller for all reasonable expenses incurred in traveling and/or the shipping, handling, and inspection of such product; (d) products will be accepted by Seller for warranty claim verification only when returned by Customer in a condition which allows for suitable testing by Seller; (e) when more than one type of product is returned, the products must be segregated by product type; (f) Seller shall reimburse Customer for shipping charges to the extent of the percent of the total returns that are found by Seller to be defective as specified herein; (g) any returned products electrically or mechanically destroyed by Customer or third parties will not be covered by this warranty, and will not be returned to Customer, but will be scrapped by Seller.
- 12. Limitation Of Liability.** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM SELLER'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS SALE, OR THE FURNISHING, PERFORMANCE OR USE OF ANY GOODS OR SERVICES SOLD PURSUANT HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, THE NEGLIGENCE OF SELLER, OR OTHERWISE.
- 13. NO Warranty Against Patent Infringement.** CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT SELLER DOES NOT WARRANT THAT THE PRODUCT IS FREE OF CLAIMS OF PATENT INFRINGEMENT BY ANY THIRD PARTY. SELLER HEREBY DISCLAIMS ANY SUCH WARRANTY OR INDEMNIFICATION AGAINST PATENT INFRINGEMENT.
- 14. Critical Components.** SELLER'S PRODUCTS ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE MANAGING DIRECTOR OF SELLER. Life support devices or systems are those which are intended to support or sustain life and whose failure to perform can be reasonably expected to result in a significant injury to the user. Critical components are those whose failure to perform can be reasonably expected to cause failure of a life support device or system or affect its safety or effectiveness.
- 15. Software Copyright.** Any software included in this sale is protected by copyright law and international treaty provisions. By purchasing a printed circuit board with software, Customer is hereby granted a license to use the software on any computer in which the board is installed. Customer may not copy the software or any portion of it except to create a single backup or archival copy. Customer may transfer ownership of the software only if Customer also transfers ownership of the board, requires the other party to abide by the terms of this license agreement, and destroys all archival and back-up copies.
- 16. Limitation Of Actions.** No action against Seller for breach hereof shall be commenced more than one (1) year after the accrual of the cause of action.
- 17. Product Discontinuance.** Seller reserves the right to discontinue production of any product at any time without notice except for that quantity of product for which Seller has received and acknowledged a purchase order from Customer and has scheduled such product for shipment within six (6) months of the date of such acknowledgment.
- 18. Property Rights.** The design, development or manufacture by Seller of a product for Customer shall not be deemed to produce a work made for hire and shall not give to Customer any copyright interest in the product or any interest in all or any portion of the mask works relating to such product. All such rights shall remain the property of Seller. No license, express or implied, with regard to any trademark of Seller or its affiliated companies is granted to Customer under this agreement. Sale of products or any part thereof does not convey to Customer any license, express or by implication, estoppel or otherwise, under any patent or patent claim with respect to which Seller can grant licenses covering completed equipment, or any assembly, circuit, combination, method or process in which any such products are used as components (notwithstanding the fact that such products may have been designed for use in or may only be useful in such patented equipment, assembly, circuit, combination, method or process, and that such products may have been purchased and sold for such use). Seller expressly reserves all rights under such patent or patent claim.
- 19. Tools, Etc.** Unless otherwise expressly agreed, Seller shall retain title to and possession of any models, drawings, composites, patterns, dies, molds, masks, working plates, schematics, bread boards, jigs, fixtures and tools made for or obtained for the furnishing of products hereunder. In any event, tools, dies and other equipment furnished to Seller shall be at Customer's risk and expense.
- 20. Confidential Information; Export Compliance.** Seller shall have no obligation to hold any information received from Customer hereunder in confidence unless such information is covered by a separately negotiated non-disclosure agreement which is reduced to writing and signed by both parties. Customer shall not, without prior authorization from the appropriate governing authority, export, re-export, or transship, directly or indirectly, the products or any technical data disclosed to Customer, or the direct product of such data, into any country as to which the United States government has placed an embargo against the shipment of products. Customer warrants that the products will not be used, directly or indirectly, in the research, design, development, production, testing, maintenance, use or stockpiling of weapons of mass destruction, including without limitation, nuclear weapons, chemical weapons and biological weapons. Customer warrants that products will not be used in other controlled nuclear activities including, but not limited to, maritime nuclear propulsion projects or in missile projects. These restrictions apply to subsequent sales by Customer to third parties whether they involve the re-export of product or domestic sale.
- 21. Governing Law.** This agreement is governed by the laws of England. Customer acknowledges and agrees that English courts have jurisdiction over this agreement and Customer, that England is an appropriate place for venue of any litigation, and that all litigation, to the extent possible, shall be in England. Customer consents and agrees that England shall be the sole forum for resolution of disputes regarding this Agreement or transactions hereunder. The parties hereby acknowledge and agree that the provisions of the Sale of Goods (United Nations Conventions) Act, Chapter 283A, as amended or replaced, are expressly excluded and shall not apply to the terms and conditions of this Order.
- 22. Assignment.** Customer may not assign its rights or obligations hereunder without the express prior written consent of Seller, and any assignment without such consent shall be a breach hereof by Customer. Seller shall be entitled at any time to assign its rights or obligations hereunder to any third party without Customer's prior written consent.
- 23. Entire Agreement; Severability; Headings.** These terms and conditions, including those on the face hereof, (but expressly not including any terms and conditions of Customer's documents, including any purchase order) constitute the entire agreement with regard to this sale and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to said sale. This agreement shall be binding upon the heirs, successors, and assigns of the parties hereto. If any provision of this agreement is adjudged to be unenforceable in whole or in part, such adjudication shall not affect the validity of the remainder of this agreement. Each provision of this agreement is severable from every other provision and constitutes a separate, distinct and binding covenant. Headings are inserted solely for convenience of reference, shall not constitute a part of this agreement and shall not otherwise affect the interpretation hereof.