



### US Semi Inc CONDITIONS OF TRADE

THE SALE OF PRODUCTS AND SERVICES ("PRODUCTS") BY US SEMI INC. ("SELLER") IS SUBJECT TO THESE TERMS AND CONDITIONS ("AGREEMENT"). ANY PURCHASE ORDER, ACKNOWLEDGMENT FORM, OR OTHER FORM OF BUYER CONTAINING TERMS OR CONDITIONS DIFFERENT FROM, OR IN ADDITION TO, THE TERMS AND CONDITIONS OF THIS AGREEMENT IS SPECIFICALLY REJECTED AND SHALL NOT HAVE THE EFFECT OF MODIFYING THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS AGREEMENT MAY ONLY BE MODIFIED OR AMENDED IN A WRITING SIGNED BY SELLER OR ITS AUTHORIZED REPRESENTATIVE.

1. **Orders.** All orders placed by Buyer are subject to acceptance by Seller. Orders may not be cancelled or rescheduled without Seller' s written consent. All orders must include delivery dates, quantities and complete descriptions of Products being purchased. Seller may in its sole discretion allocate Product among its customers. Seller may designate certain Products as non-cancelable, non-returnable (" NCNR" ) or customer specific (" CS" ) and the sale of such Products shall be subject to the special terms and conditions contained in Seller' s Special Product Agreement, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere.

2. **Prices.**

(a) The prices of the Products are those specified on the Seller' s invoice. Pricing for undelivered Product may be increased in the event of any increase in Seller' s cost, change in market conditions or any other cause beyond Seller' s control. Price quotations shall automatically expire thirty (30) calendar days from the date issued and may be cancelled or amended within that period upon notice to Buyer.

(b) Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes, including, but not limited to, federal, state, and local sales, excise, value added, good and services taxes and any other taxes. Buyer agrees to pay these taxes unless Buyer has provided Seller with an exemption resale certificate in the appropriate form for the jurisdiction of Buyer' s place of business and any jurisdiction to which Products are to be directly shipped hereunder, or unless the sale is otherwise exempt from these taxes. Buyer agrees to indemnify and

**19086 NW 23<sup>rd</sup> Street      Pembroke Pines, FL 33029      United State of America**

**Office. 954-251-0567      Fax. 954-379-4516**

**[www.USSEMI.com](http://www.USSEMI.com)**

hold Seller harmless for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on Seller' s invoice.

### **3. Payment.**

(a) Buyer shall pay for the Products in full, without offset of deduction, within thirty (30) days from the date of invoice. In addition, Buyer will be deemed to have accepted an invoice upon the tenth (10th) day from the date of the invoice and no further objections to the invoice will be permitted or accepted.

(b) All late payments shall be charged interest computed on a daily basis from the due date until paid in full. A late charge of one and one-half percent (1 ½%) per month or the maximum rate permitted by applicable law, whichever is less, will be imposed on all past due accounts. Buyer shall be liable for costs of collection, including reasonable attorneys' fees and court costs, in any action to collect past due amounts and in the retention of collection agencies.

(c) Transportation charges from Seller' s facility to Buyer' s facility shall be paid by Buyer to Seller, in addition to the purchase price of the Product, unless otherwise agreed to in writing by Seller. Seller will select the carrier in the absence of specific instructions by Buyer.

(d) Seller reserves the right to establish and/or change credit and payment terms extended to Buyer when, in Seller' s sole opinion, Buyer' s financial condition or previous payment record warrants such action. Further, on delinquent accounts, Seller shall not be obligated to continue performance under any agreement with Buyer.

(e) If Seller believes in good faith that Buyer' s ability to make timely payments may be impaired or if Buyer shall fail to pay any invoice when due, Seller may suspend delivery of any order or any remaining balance thereof, and buyer shall remain liable to pay for any Products already shipped and all NCNR and CS Products ordered by Buyer.

(f) Seller retains a purchase money security interest in the Products delivered to Buyer, and in their accessories, replacements, accessions, proceeds and Products, including accounts receivable (collectively, the "Collateral") to secure payment of all amounts due under this Agreement. Buyer' s failure to pay all amounts hereunder in full when and as due shall constitute a default hereof and shall give Seller all rights of a secured party. If Buyer fails to pay any amount when due, Seller shall have the right to repossess and remove all or any part of the Collateral from Buyer' s or Buyer' s agent' s possession. Any repossession or removal shall be without prejudice to any other remedy of Seller hereunder, at law or in equity. Buyer agrees, from time to time, to take any act and execute and deliver any document (including, without limitation, financing statements) reasonably requested by Seller to transfer, create, perfect, preserve, protect and enforce this security interest.

(g) Any payment received from Buyer may be applied by Seller against any obligation owing from Buyer to Seller, regardless of any statement appearing on or referring to such payment, without discharging Buyer' s liability for any additional amounts owing from Buyer to Seller, and the acceptance by Seller of such payment shall not constitute a waiver of Seller' s right to pursue the collection of any remaining balance.

**19086 NW 23<sup>rd</sup> Street      Pembroke Pines, FL 33029      United State of America**

**Office. 954-251-0567      Fax. 954-379-4516**

**[www.USSEMI.com](http://www.USSEMI.com)**

4. **Delivery and Title.** All deliveries will be made FOB Seller' s facility or place of origin. Subject to Seller' s right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Buyer and title and risk of loss shall thereupon pass to Buyer. Selection of the carrier and delivery route shall be made by Seller unless specified by Buyer. Buyer acknowledges that delivery dates provided by Seller are estimates only and Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of Seller nor shall the carrier be deemed an agent of Seller. In the event of delay caused by such event, the date of the delivery shall be extended for a period of time equal to the time lost as a consequence of the delay in delivery without subjecting Seller to any liability or penalty. If the Products perish while in the custody of the carrier, Seller shall be deemed to have performed its obligations in full. Delivery of a quantity which varies from the quantity specified shall not relieve Buyer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments. Seller may refuse or delay any shipment if Buyer fails to satisfy or fulfill any contractual obligations to Seller, whether pursuant to this Agreement or any other agreement between Seller and Buyer. Seller may deliver all goods covered by this Agreement at one time or in portions, from time to time, within the time for delivery provided in such order.

5. **Acceptance/Return of Products.** Shipments of Products from Seller to Buyer will be deemed to have been accepted by Buyer upon delivery of the said shipments to Buyer unless a timely objection is given in writing to Seller. Buyer shall have thirty (30) days from receipt of the Products to notify Seller in writing of any non-conformity in the Products shipped. If a Return Merchandise Authorization ( " RMA" ) is warranted, Buyer must make such request in writing to Seller within the thirty (30) day time period described herein. Any Product returns shall be subject to compliance with Seller' s RMA policies and procedures and, if applicable, a restocking charge equivalent to fifty percent (50%) of the value of such Product as specified in Seller' s invoice to Buyer. Returned Products must be in the original packaging and conform to minimum package quantity ( " MPQ" ) requirements. Products not eligible for return shall be returned to Buyer freight collect or held by Seller for Buyer' s account at Buyer' s expense.

6. **Limited Warranty.** Subject to numbered paragraph 7 below, entitled "Limitation of Liability", Seller warrants that it has title to the Products and that the Products generally conform to the descriptions, if any, accompanying this Agreement. Product descriptions consist of a part number ( " P/N" ) and manufacturer ( " Mfr" ). " P/N" refers to the generic part number or the original manufacturer' s part number of the Product when so identified. " Mfr" refers to the original manufacturer of the Product when so identified. THE PRODUCTS SOLD UNDER THIS AGREEMENT ARE SOLD " AS IS" AND " WITH ALL FAULTS" . EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN AND CONDITION, QUALITY, CAPACITY, SUITABILITY, CONSTRUCTION, PERFORMANCE, OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCTS. Buyer acknowledges that Seller is acting solely as a third party distributor of the Products and that the licensor or manufacturer of the Products shall be solely

**19086 NW 23<sup>rd</sup> Street      Pembroke Pines, FL 33029      United State of America**

**Office. 954-251-0567      Fax. 954-379-4516**

**[www.USSEMI.com](http://www.USSEMI.com)**

responsible to Seller and third parties for all liability, claims, damages, obligations, and costs and expenses related to the Products distributed by Seller. Buyer agrees to look solely to the manufacturer for compliance with the manufacturer's warranty, if any, and for any maintenance, support or repair of the Products. Any warranty delivered to Seller by manufacturer or other vendor of the Products shall be assigned to Buyer to the extent such assignment is permitted by the terms thereof. Seller makes no representation, covenant, or warranty with respect to the extent or enforceability of manufacturer's warranty, if any. No repair or replacement of Products by Seller or manufacturer shall extend the warranty period, if any, of manufacturer. Seller neither assumes, nor authorizes Buyer or any other person to assume on behalf of Seller, any other liabilities in connection with the use, sale, or resale of the Products.

#### **7. Limited Liability.**

(a) All claims of Buyer against Seller for any cause whatsoever (whether based in contract, negligence, strict liability, other tort or otherwise) shall be deemed waived by Buyer unless made in writing and received by Seller within thirty (30) days after Buyer's receipt of the Products upon which such claims are made, or if the claims are for non-delivery of such Products, within thirty (30) days after the Products were scheduled to be delivered. Failure of Seller to receive written notice of any claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim irrespective of whether the facts giving rise to such claim shall have then been discovered.

(b) BUYER'S EXCLUSIVE REMEDY AGAINST SELLER SHALL BE FOR DAMAGES. SELLER'S LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY CLAIM WHATSOEVER (WHETHER BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY) SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS UPON WHICH SUCH CLAIM IS BASED. SELLER SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY OTHER DAMAGES, WHETHER SUCH DAMAGES BE DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE, INCLUDING, BUT LIMITED TO, LOSS OF PROFITS, BUSINESS LOSSES, BUSINESS INTERRUPTION, REMOVAL AND/OR REINSTALLATION COSTS, REPROCUREMENT COSTS, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, DAMAGE TO PROPERTY, PERSONAL INJURY, DEATH, OR ANY LIABILITY OF BUYER TO ITS CUSTOMERS OR THIRY PARTIES ARISING OUT OF, OR RELATING TO, THE SALE TO, AND USE BY, BUYER AND THIRD PARTY PURCHASER FROM BUYER. BUYER ASSUMES FULL RESPONSIBILITY FOR ALL PERSONAL INJURY, DEATH AND PROPERTY DAMAGE CONNECTED WITH THE HANDLING, TRANSPORTATION, POSSESSION, PROCESSING, REPACKAGING, FUTHER MANUFACTURER, OR OTHER USE OR RESALE OF THE PRODUCT, WHETHER THE PRODUCT IS USED ALONE OR IN COMBINATION WITH ANY OTHER MATERIAL.

(c) Products sold by Seller are not authorized to be used in life support equipment or for applications in which the failure or malfunction of the Products would create a situation in which personal injury or death could result. Any such use or sale of the Products sold by Seller is at the sole risk of Buyer, and Buyer agrees to indemnify and defend Seller against, and hold Seller harmless from, all claims, suits, causes of action, damages, costs and expenses, including, but limited to, attorneys' fees and costs relating to any lawsuit

**19086 NW 23<sup>rd</sup> Street      Pembroke Pines, FL 33029      United State of America**

**Office. 954-251-0567      Fax. 954-379-4516**

**[www.USSEMI.com](http://www.USSEMI.com)**

or threatened lawsuit, arising out of such use or sale.

(d) Buyer is solely responsible for the installation and operation of the Products, including, but not limited to, the obtainment of all permits, licenses, or certificates required for the installation or use of the Products.

8. **Intellectual Property**. If any Product includes software or other intellectual property, such software or other intellectual property is provided by Seller to Buyer subject to the copyright and user license, if any, for such Products, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement. Buyer acknowledges and understands that Seller is not the manufacturer of any Products ordered or to be supplied to Buyer and is not liable to Buyer or any third party for any copyright, design or patent issue, right or claim that may arise in relation to any Product.

9. **Export Control**. Buyer certifies that it will be the recipient of Products to be delivered by Seller. Buyer acknowledges that the Products are subject to the export and/or import laws and regulations of various countries including the Export Administration Laws and Regulations of the United States. Buyer agrees to comply strictly with all United States export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Products sold by Seller cannot be transferred, sold or re-exported to any party on the Entity List or Restricted Person List of the U.S. Department of Commerce, Bureau of Export Administration (BXA), any party designated by the U.S. Treasury Department's Office of Foreign Assets Control, and any party debarred or sanctioned for proliferation or terrorism reasons by the U.S. State Department.

10 **Technical Assistance**. Advice and Data. Any technical assistance or advice offered by Seller in regard to the use of any Product or provided in connection with Buyer's purchases is given free of charge and only as an accommodation to Buyer. Seller shall have no obligation to provide any technical assistance or advice to Buyer and if any such assistance or advice is provided, such fact will not obligate Seller to provide any further or additional assistance or advice. Seller shall not be held liable for the content or Buyer's use of such technical assistance or advice nor shall any statement made by any of Seller's representatives in connection with the Products constitute a representation or warranty, express or implied. Buyer shall not use, duplicate, or disclose any technical data delivered or disclosed by Seller to Buyer for any purpose other than for installation, operation, or maintenance of the Products purchased by Buyer from Seller.

11. **Force Majeure**. Seller shall not be liable for its inability to secure sufficient quantities of any Product or failure to deliver due to causes beyond Seller's reasonable control, including, but not limited to, acts of God, natural or artificial disasters, riots, wars, strikes, delays by carrier, shortages of Product, acts or omissions of other parties, acts or omissions of civil or military authorities, government priorities, changes in law, material shortages, fire, floods, epidemics, quarantine restrictions, acts of terrorism,

**19086 NW 23<sup>rd</sup> Street      Pembroke Pines, FL 33029      United State of America**

**Office. 954-251-0567      Fax. 954-379-4516**

**[www.USSEMI.com](http://www.USSEMI.com)**

delays in transportation or inability to obtain labor, materials or Products through its regular sources, expropriation or confiscation of facilities, blockades, insurrections, arrest and restraint of people and rulers, civil disturbances, boycotts, landslides, lightning, explosions, windstorms, earthquakes, tornadoes, hurricanes, breakage or accident of machinery or equipment, failure of information technology, which shall be construed as an event of force majeure excusing Seller from performance and barring remedies for non-performance. In the event of a force majeure condition, Seller's time for performance shall be extended for a period of time equal to the time lost as a consequence of the force majeure condition without subjecting Seller to any liability or penalty. Seller may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to Buyer.

12. **Default/No Waiver.** The waiver by Seller of any breach hereof or default in any payment shall not constitute a waiver of any succeeding breach or default. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or any other remedy at any other time. No action, regardless of type, arising out of, or in any way connected with, the Products furnished by Seller to Buyer may be brought by Buyer more than one year after the cause of action accrued. Buyer shall pay to Seller on demand all costs incurred by Seller in enforcing, prosecuting, or defending any provision of this Agreement. For purposes of this Agreement, "costs" shall include the fees costs and expenses of experts, attorneys, mediators, witnesses, arbitrators, collection agents, and supersedeas bonds, whether incurred before or after demand or commencement of legal proceedings, and whether incurred pursuant to trial, appellate proceedings, mediation, bankruptcy, arbitration, administrative, or judgment/execution proceedings.

13. **Entire Agreement.** This Agreement (together with any agreements, policies or terms incorporated by reference) shall constitute the complete, final and exclusive statement of the terms of the Agreement between the parties with respect to the subject matter of this Agreement and the transactions between the parties and shall not be modified or rescinded, except by a writing signed by Seller and Buyer. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements, and understandings of the parties with respect to the subject matter of this Agreement. Products furnished by Seller are done so only in accordance with these terms and conditions. If any provision of this Agreement is found to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

14. **Assignment.** No rights, duties, agreements or obligations hereunder may be assigned or transferred by Buyer, by operation of law, merger or otherwise, without the prior written consent of Seller. Any attempted or purported assignment or transfer shall be void.

15. **Dispute Resolution.** The validity, enforcement, construction, and interpretation of this Agreement is governed by the laws of the State of Florida (including the provisions of the Florida Commercial Code) and the federal laws of the United States, excluding the laws of those jurisdictions pertaining to resolution of conflicts with laws of other jurisdictions.

**19086 NW 23<sup>rd</sup> Street      Pembroke Pines, FL 33029      United State of America**

**Office. 954-251-0567      Fax. 954-379-4516**

**[www.USSEMI.com](http://www.USSEMI.com)**

The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods. Seller and Buyer consent to the personal jurisdiction of the state and federal courts having jurisdiction over Broward County, Florida. Seller and Buyer stipulate that the proper, exclusive, and convenient venues for all legal proceedings arising out of this Agreement are Broward County, Florida for state court proceedings and the Middle District of Florida, Broward Division for federal court proceedings. Seller and Buyer waive any defense, whether asserted by motion or pleading, that Broward County, Florida or the South District of Florida, Broward Division is an improper or inconvenient venue.

16. **General.** As used herein, terms appearing in the singular shall include the plural and terms appearing in the plural shall include the singular. The obligations, rights, terms and conditions hereof shall be binding on the parties hereto and their respective successors and assigns. The captions and headings used herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

**19086 NW 23<sup>rd</sup> Street      Pembroke Pines, FL 33029      United State of America**

**Office. 954-251-0567      Fax. 954-379-4516**

**[www.USSEMI.com](http://www.USSEMI.com)**