



# Terms

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## TERMS AND CONDITIONS

The following terms and conditions shall apply to the sale of goods or products (“goods” or “products”) associated with this invoice:

1. **PRICES.** Unless otherwise specified by Unity Sales International, dba Unity Digital (“Seller”), prices for goods sold are for the quantity specified and do not include charges for transportation, insurance, special packaging, marking, applicable sales or use taxes, value added taxes, export or import licenses, fees, taxes, duties and the like. The entity designated on the face hereof (“Buyer”) shall bear the cost of such charges in addition to the prices quoted or invoiced. Prices are in U.S. dollars.

2. **PAYMENT; PAYMENT TERMS.** Checks are accepted subject to collection, and the collection date shall be deemed the payment date. Seller may apply any check received from Buyer against any of Buyer’s obligation(s) to Seller, under this or any other agreement, regardless of any statement appearing on or referring to such check, without discharging Buyer’s liability with respect to any additional amounts owed by Buyer to Seller, and Seller’s acceptance of such check shall not constitute a waiver of Seller’s right to pursue the collection of any remaining balance. Buyer shall pay the entire net amount of each invoice rendered by Seller pursuant to the terms of each such invoice without offset or deduction. Payment shall be made in U.S. dollars. Unless otherwise specified, payment terms are net 30 calendar days from invoice date, subject to Seller’s approval of amount and terms of credit. Seller reserves the right to require payment in advance or C.O.D. or to modify credit terms either before or after shipment of goods. Invoices not paid by due date will have a 1% per month late payment charge (or the maximum rate allowable by law, if lower) assessed against any unpaid balance from the invoice due date until the payment date, together with Seller’s cost of collection (including reasonable attorney’s fees).

3. **SHIPMENT; SHIP DATE; VARIATION IN QUANTITY.** Goods shall be shipped to Buyer FOB Costa Mesa, CA ( Seller’s manufacturing facility). Without Buyer’s written instructions, Seller shall select the common carrier but shall not assume liability in connection with the shipment, nor shall the common carrier be construed to be Seller’s agent. Transportation charges will be collected on delivery or will be invoiced to Buyer. Goods will be shipped in packaging Seller deems appropriate. If Buyer requests special packaging, Buyer shall pay for and accept responsibility and risk for such packaging. Except as provided in Section 10, title to and risk of loss of or damage to goods shall pass from Seller to Buyer when Seller makes goods available to the common carrier or to Buyer. Seller shall attempt to ship goods within 30



calendar days of the Ship Date; provided, however, that Seller shall not be charged with any liability for any delays or failure to perform due to causes or events covered under Section 8. Shipments may be in installments. Seller's default or delay in shipping the whole or any part or installment of goods shall not affect any other portion thereof. Normal manufacturing processing variation of order quantity per line item of good(s) is + / - 5%. Goods shipped between 95% and 105% of the ordered quantity shall be considered complete, and Buyer shall accept and pay for the actual quantity shipped.

4. CANCELLATION; RESCHEDULING. Buyer may not cancel the purchase, nor reschedule the shipment or delivery, of the whole or any part or installment of goods ordered.

5. SELLER'S LIMITED WARRANTY. (a) Warranty. Except as otherwise provided herein, Seller warrants that goods sold will be free from defects in material and workmanship for 1 year from the date Seller ships such goods to Buyer (the "Warranty Period"). This warranty covers defects arising under normal use and does not include malfunctions, failures or defects resulting from misuse, abuse, mishandling, accident, neglect, improper or inadequate maintenance, alteration, modification, improper installation or repairs by any party other than Seller. Notwithstanding anything else to the contrary, Seller gives no warranty whatsoever for components or goods, including without limitation memory semiconductors, consigned or sold to Seller by Buyer. The warranty provided is limited to Buyer and may not be assigned. EXCEPT AS SET FORTH HEREIN, SELLER PROVIDES GOODS WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE AND EXPRESSLY EXCLUDES ANY SUCH WARRANTIES INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, TRADE USAGE OR TRADE PRACTICE OR ANY WARRANTIES AGAINST ANY INFRINGEMENT OR MISSAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION STATEMENTS REGARDING CAPACITY, AVAILABILITY, SUITABILITY FOR USE OR PERFORMANCE OF GOODS, WHETHER MADE BY SELLER'S EMPLOYEES OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT, SHALL BE DEEMED TO BE A WARRANTY BY SELLER FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF SELLER. BUYER'S REMEDIES SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF ALL OTHER REMEDIES INCLUDING WITHOUT LIMITATION INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR RELIANCE DAMAGES. (b) Warranty Returns. During the Warranty Period, Seller will, at its option, either credit Buyer for or repair or replace defective goods but only if they are returned to Seller as follows: (1) Before shipping defective goods back to Seller, Buyer shall ensure that said goods are defective and shall obtain a Return Material Authorization ("RMA") number from Seller; (2) Buyer shall include a written explanation for goods return and the appropriate RMA number. (3) Buyer shall pay shipping costs for said goods returned and assume risk of loss of or damage to such goods during shipping. Seller shall pay shipping costs to return repaired or replaced goods to the location from where Buyer shipped defective



goods to Seller, and Buyer shall assume risk of loss of or damage to goods once Seller delivers such goods to the common carrier. Goods that are not defective shall be returned to Buyer, and Buyer shall pay for shipping costs and assume risk of loss of or damage to such goods during shipping or otherwise. Title to goods returned pursuant to this Section 5 shall remain with Buyer; provided, however, that the title to the defective goods not returned to Buyer shall pass from Buyer to Seller as of the date Seller ships replacement goods to Buyer or Seller credits Buyer for defective goods. Repair or replacement shall not extend the Warranty Period for said goods.

6. INDEMNITY AGAINST INFRINGEMENT. (a) Seller's Indemnity Obligation. Except as otherwise provided herein, and subject to the limitation of liability set forth below, Seller shall indemnify, defend and hold harmless Buyer and its subsidiaries from and against (i) actions and litigation alleging that the use or sale of goods infringes upon or misappropriates any 3rd party's US patent ("IP Claims"); provided, however, that the foregoing indemnity and defense obligation is conditioned on the following: (i) Buyer's prompt written notice to Seller of any IP Claim for which indemnity is claimed, (ii) Seller's complete control of the defense and settlement, and (iii) Buyer's complete cooperation in such defense. Notwithstanding the foregoing, Seller shall have no defense or indemnity obligation for or with respect to IP Claims arising out of or in any way related to (i) designs, instructions, specifications or intellectual property not developed by Seller or not furnished by Seller, (ii) components of goods, including without limitation memory semiconductors, consigned or sold to Seller by Buyer or specified by Buyer, (iii) the combination of goods with any hardware, products, equipment, materials, text, graphics, software or the like supplied by a party other than Seller, (iv) modification of goods by a party other than Seller, (v) use of goods in a way not specified in writing by Seller, or (vi) components made by someone other than Seller. Seller shall have no obligation for any settlement entered into without Seller's prior written consent. (b) Buyer's Indemnity Obligation. Except as otherwise provided herein, Buyer shall indemnify, defend and hold harmless Seller and its subsidiaries from and against (i) any form of intellectual property claim arising out of or related to (1) designs, instructions, specifications or intellectual property developed by Buyer or furnished by Buyer, (2) components of goods, including without limitation memory semiconductors, consigned or sold to Seller by Buyer or specified by Buyer, (3) combination of goods with any hardware, text, graphics, software or other device supplied by a party other than Seller, (4) the modification of goods by a party other than Seller, and (ii) liens, liabilities, damages, costs, expenses (including reasonable attorney's fees) and the like arising out of or related to any form of intellectual property claim covered under this Section 6(b); provided, however, that the foregoing indemnity and defense obligation is conditioned on the following: (1) Seller's prompt written notice to Buyer of any such claim for which indemnity is claimed, (2) Buyer's complete control of the defense and settlement, and (3) Seller's complete cooperation in such defense. Buyer shall have no obligation for any settlement entered into without Buyer's prior written consent. (c) Injunctive Actions. If during the course of any IP Claim covered under Section 6(a) the use or sale of the allegedly infringing goods is finally enjoined, Seller shall, at its option and expense, use commercially reasonable efforts to do one of



the following (in addition to its obligations under Section 6(a): (i) procure for Buyer the right to use or sell, as applicable, the allegedly infringing goods, (ii) replace or modify the allegedly infringing goods or the affected part thereof with equivalent non-infringing technology, or (iii) within 30 calendar days of Seller's receipt of said allegedly infringing goods, refund to Buyer an amount equal to the net price paid by Buyer for said allegedly infringing goods. (d) Limitation of Indemnity. THE INDEMNITY CONTAINED IN THIS SECTION 6 STATES THE ENTIRE LIABILITY OF EACH PARTY TO THE OTHER WITH RESPECT TO THE MISAPPROPRIATION OR INFRINGEMENT OF ANY GOODS, OR ANY PARTS THEREOF, OF ANY PATENTS, TRADEMARKS, TRADE SECRETS, COPYRIGHTS, MASK WORKS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY PERSON AND IS IN LIEU OF WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, IN REGARD THERETO. EACH PARTY'S REMEDIES SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF OTHER REMEDIES INCLUDING WITHOUT LIMITATION INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR RELIANCE DAMAGES. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY TO BUYER EXCEED THE PURCHASE PRICE OF THE ALLEGEDLY INFRINGING GOODS.

7. PROPERTY AND OWNERSHIP RIGHTS. Seller's design, development or manufacture of a good for Buyer shall not be deemed to produce a work made for hire and shall not give to Buyer any patent, copyright or any other intellectual property right interest in the good or any portion thereof. Such rights shall remain Seller's property. Tooling, fixtures, test equipment, models, patterns, molds, processing, software and technology and other proprietary information of Seller whether or not made for, obtained or developed by Seller for the performance of this agreement, shall remain Seller's sole property. Buyer's payment of any costs or expenses relating to any of the foregoing (including without limitation non-recurring expenses) shall not be deemed to grant Buyer any ownership interest therein. Seller offers goods for sale and sells goods subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent, copyright, mask work or the like with respect to which Seller can grant licenses covering complete equipment, or any compilation, assembly, combination, method or process in which any such goods are used as components. Seller reserves its rights under such patents, copyrights, mask works or the like.

8. EXCUSABLE DELAYS. Seller shall not be liable for delay or failure to perform if such delay or failure is due to causes or events beyond Seller's control, even if foreseeable by either party, including without limitation suppliers' delay, force majeure, act of God, labor disturbance or strike, war, fire, explosion, earthquake, accident, adverse weather, inability to secure transportation, governmental act or regulation, Seller's inability to obtain materials, shortage of materials or any other causes or events beyond Seller's control. Consequently, the Ship Date shall be extended for a period equal to the delay.



Without liability to Buyer, Seller reserves the right to (i) allocate among customers or potential customers, or (ii) defer or delay the shipment of, goods that are in short supply.

9. USE OF GOODS. Seller's goods are not designed for, and Seller has no desire to enter the life support market or to supply its goods for use in life support systems, critical care applications, human implantations, nuclear facilities or systems or any other applications in which product failure could lead to loss of life or catastrophic property damage, or to expose itself to the risk of loss, expense, cost, liability, litigation and/or potential adverse verdict or judgment in relation to any such use of its goods. Accordingly, Seller disclaims liability, and Buyer and Buyer's customers' use or sell such goods for use in such applications at their own risk, and Buyer shall indemnify, defend and hold harmless Seller and its subsidiaries from and against (i) claims, demands, actions, litigation, proceedings and the like arising out of or related to such use or sale ("Use Claims"), and (ii) liens, liabilities, damages, costs, expenses (including reasonable attorney's fees) and the like arising out of or related to any Use Claim.

10. CONSIGNED MATERIAL. (a) Consigned Components. In consideration of Seller's agreement to accept Buyer's consignment of components, if any, for use in the manufacture of goods, Buyer agrees that, notwithstanding anything else contained in this agreement or otherwise (including, without limitation Section 3 and the DDP terms set forth in this Section 10), Buyer bears the risk of loss of or damage to consigned components and shall release Seller from liability for loss to consigned components, including without limitation loss resulting from Seller's negligence or yield loss, and further shall waive rights of subrogation against Seller in the event of such loss. At all times, Buyer shall hold title to consigned components. Seller does not guarantee the yields that can be achieved on any of said consigned components. Buyer shall ship consigned components to Seller DDP (Incoterms 2000) Seller's manufacturing facility. (b) Defective, Faulty or Damaged Consigned Components. Seller shall return consigned components damaged at delivery, damaged through yield loss, defective or faulty, to Buyer FOB Costa Mesa (Seller's manufacturing facility). The quantity of goods ordered shall be automatically reduced as necessary due to the return of said consigned components.

11. BUY-SELL MATERIAL. (a) Buy-Sell Components. If Buyer sells to Seller any components necessary to manufacture the goods, including without limitation memory semiconductors, then the terms and conditions of this Section 11 shall apply to said sale, in addition to any other terms and conditions included in any applicable agreement, including without limitation Seller's purchase order, covering said sale; provided, however, that the terms and conditions of this Section 11 shall supersede and control in the event of any inconsistencies between this Section 11 and such purchase order or other agreement.



Components sold by Buyer to Seller shall be shipped to Seller DDP (Incoterms 2000) Seller's manufacturing facility. Title to the components shall pass from Buyer to Seller upon delivery of such components to Seller at Seller's manufacturing facility dock. Until components are delivered to Seller, Buyer shall bear risk of loss of or damage to such components. Seller shall pay Buyer for the components within 15 calendar days of Seller's receipt of payment from Buyer for goods containing such components. (b) Repurchase of Buy-Sell Components. Notwithstanding anything else to the contrary, if any components sold by Buyer to Seller remain in Seller's inventory for a period longer than 90 calendar days without being used by Seller in goods ordered by Buyer, then Seller shall have the right to require Buyer to repurchase said components. Buyer shall repurchase said components at the price paid by Seller plus 1% per month (beginning with the month in which said components were received by Seller and ending with the month in which said components are repurchased and paid for by Buyer) for inventory, restocking and handling. Buyer shall repurchase and pay for said components within 30 calendar days of Seller's request. Return shipment of said components to Buyer shall be FOB Costa Mesa (Seller's manufacturing facility). Title to and risk of loss of or damage to components shall pass from Seller to Buyer when Seller makes such components available to the common carrier or to Buyer. (c) Buyer's Warranty on Buy Sell Components. Buyer warrants that components sold by Buyer to Seller will be free from defects in material and workmanship for 1 year from when Buyer ships component to Seller. Buyer shall promptly credit Seller for defective components returned to Buyer FOB Costa Mesa (Seller's manufacturing facility). Title to and risk of loss of or damage to components shall pass from Seller to Buyer when Seller makes such components available to the common carrier or to Buyer.

12. LIMITATION OF LIABILITY. IN NO EVENT SHALL SELLER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES BY BUYER. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR RELIANCE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF USE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY AND WHETHER OR NOT SUCH PARTY WAS NOTIFIED OR AWARE OF THE POTENTIAL OF SUCH DAMAGES. WITHOUT LIMITATION OF THE FOREGOING, THIS EXCLUSION INCLUDES LIABILITY THAT MAY ARISE OUT OF 3rd PARTY CLAIMS AGAINST BUYER. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, SELLER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT OR OTHERWISE, FROM ANY CAUSE WHATSOEVER, WHETHER RESULTING FROM BREACH OF CONTRACT OR NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID FOR THE SPECIFIC GOODS AS TO WHICH THE CLAIM IS MADE. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER ANY TERM OF THIS AGREEMENT.



13. BUYER'S DUTY TO GIVE TIMELY NOTICE OF SELLER'S BREACH. Buyer shall notify Seller in writing within 30 calendar days of Buyer's discovery of any defective performance, failed performance or other breach of this agreement by Seller. Buyer's failure to provide such notice to Seller within this specified period constitutes a waiver of the defective or failed performance or other applicable breach by Seller.

14. SUBSTITUTIONS AND MODIFICATIONS. Seller reserves the right to make substitutions and modifications in the specifications of goods sold by it if such substitutions or modifications do not cause a material adverse effect on overall performance.

15. GENERAL PROVISIONS. (a) Integration. This agreement constitutes the entire understanding between Buyer and Seller with respect to the subject matter hereof and supersedes prior agreements, discussions and understandings between Buyer and Seller; however, if there is a pre-existing written contract covering the sale of goods from Seller to Buyer, this order shall be subject to such pre-existing contract and, unless otherwise provided in such pre-existing contract, the terms and conditions of this agreement. If terms and conditions contained in the "Terms and Conditions" section of this agreement conflict with the terms and conditions contained on the face of this agreement, the latter shall apply. This agreement may not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not set forth herein. Buyer acknowledges that it has not entered into this agreement in reliance upon any warranty or representation by any person or entity, except for such warranties or representations set forth herein. (b) Choice of Law. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement; rather this agreement shall be construed, enforced and governed in accordance with California state laws without giving effect to choice of law provisions thereof. (c) Jurisdiction; Venue. The jurisdiction and venue of any action shall be the Superior Court of California for the County of Orange or the U.S. District Court Southern District of California, and each party submits itself to the jurisdiction and venue of such courts. (d) Severability. If any term or provision of this agreement is held to be illegal, invalid, unenforceable or in conflict with any law of any governmental entity with jurisdiction over this agreement, this agreement shall continue in force without such provision or as changed and interpreted to give best effect to the parties' intentions. (e) Import; Export. Laws, regulations, orders or other restrictions on the export from the U.S.A. of any technology, products incorporating technology or information pertaining thereto that may be imposed by the U.S.A. government or any agency thereof apply. Notwithstanding anything else to the contrary, Buyer shall not export or re-export, directly or indirectly, any technology, products incorporating technology or information pertaining thereto to any country for which the U.S.A. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval. Seller shall provide information under its control for Buyer to obtain any import or export licenses required for Buyer to receive or ship goods sold. (f) U.S. Govt. Contract Provisions and Clauses. If goods purchased are sold,



or are incorporated into products that are sold, under a U.S. Government contract, Seller rejects provisions or clauses required to be passed on to Seller pursuant to said contract and such provisions or clauses shall not be deemed included or binding on Seller unless accepted in writing by Seller's authorized representative. (g) Waivers; Amendments. This Agreement may be amended, changed, modified, waived or discharged, but only if it is in writing and signed by an authorized representative of the party against whom enforcement is sought. (h) Delays; Omissions. No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default of the other party under this agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default. Waiver, permit, consent or approval of any kind or character of any breach or default must be in writing signed by an authorized representative of the party against whom enforcement is sought. (i) Mediation. If any dispute arises out of or related to this agreement, the parties shall first to try in good faith to settle the dispute by mediation in the County of Alameda. Either party may initiate mediation by delivering a written request to the other party. Within 10 calendar days of such request, the parties shall confer to select a mediator. If the parties fail to agree upon a mediator, either party may request that the Judicial Arbitration and Mediation Services (JAMS) appoint a mediator. (j) Litigation Expenses. The prevailing party in any action or proceeding to enforce or interpret this agreement shall be entitled to recover its reasonable expenses including without limitation attorney's fees and fees on any appeal. (k) Errors. Stenographic and clerical errors in sales made under this agreement are subject to correction.

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