



## MAXIM INTEGRATED PRODUCTS, INC. TERMS AND CONDITIONS OF PURCHASE

Any purchase by Maxim Integrated Products, Inc. and/or its subsidiaries (hereinafter "Buyer") is expressly made conditional on Seller's acceptance of these Terms and Conditions of Purchase.

1. **ACCEPTANCE.** Seller shall be deemed to have assented to all terms and conditions contained herein upon Seller's acknowledgment of an order ("Order") placed by Buyer for goods ("Goods") or commencement of performance pursuant hereto. Conditions stated in Seller's acknowledgement or acceptance of an Order or in any quotation or invoice shall not be binding unless expressly agreed to in writing by an authorized representative of Buyer. Seller may not ship under reservation. Buyer's failure to object to provisions contained in any communication from Seller shall not be deemed a waiver of any of the provisions contained herein. All orders or contracts must be approved and accepted by Buyer at its headquarters at 120 San Gabriel Drive, Sunnyvale, California 94086. From time to time Buyer may accept certain of Seller's terms and conditions of sale by signing Seller's proposed sale agreement. If such acceptance is preceded or accompanied by Buyer's interpretation of Seller's terms and conditions, such interpretation shall control the construction or interpretation of the meaning of Seller's terms and conditions.

2. **PAYMENT.** Payment will be made net forty-five (45) calendar days from Buyer's receipt of Seller's correct and valid invoice for Goods delivered and accepted or services rendered and accepted. Payment may be withheld or setoffs made against Seller if Seller is not performing work pursuant to an Order. If Buyer returns an invoice to Seller for any reason not attributable to the fault of Buyer, any applicable discount period will commence on the date of receipt of a corrected invoice by Buyer. Payment of any item will not be deemed an acceptance of the Goods or a waiver of any right to test or inspect the Goods.

**PRICES.** Unless otherwise specified on the face of an Order, prices include all applicable federal, state and local taxes and cost of delivery of Goods F.O.B. destination, freight and cartage prepaid. Seller shall credit Buyer for any tax refund or credit adjustments received by Seller on taxes paid to Seller by Buyer with respect to Goods provided under any Order. Prices will remain firm and will not be subject to renegotiation and shall not be higher than last quoted or charged to Buyer unless otherwise agreed in writing.

3. **DELIVERY.** Time is of the essence for the Order. Failure by Seller to meet delivery dates specified in the Order will constitute a material breach of the Order and Purchaser may, at its option take one or more of the following actions: (a) extend the time for delivery; (b) cancel the Order in whole or in part; (c) require Seller to ship all or part of the Goods by prepaid air freight at Seller's expense until Seller's deliveries are in accordance with the requirements of the Order. Seller agrees to pay Buyer any penalty and/or damages imposed upon or incurred by Buyer resulting from Seller's failure to deliver the Goods on the specified delivery dates. Title and risk of loss shall pass to Buyer upon receipt of the Goods by Buyer.

4. **CANCELLATION/RESCHEDULE.** Buyer may cancel, reschedule or modify all or any part of an Order at any time for convenience upon written notice to Seller. Upon receipt of Buyer's notice, Seller shall cease all work under the Order. Buyer shall only be liable to Seller for services satisfactorily performed to the date of termination and Goods delivered and accepted by Buyer. Any claim by Seller for reimbursement, if any, shall be presented to Buyer in writing within thirty (30) days of Seller's receipt of Buyer's written notice. Seller shall mitigate its claim to the maximum extent, and Buyer shall have the right to audit Seller's books and records related to such reimbursement claim. Cancellation or

termination by Buyer will not constitute a waiver or release of any rights and remedies of Buyer in contract or provided by law.

5. **QUANTITIES.** Seller will furnish the specific quantity of Goods called for in the Order. Except as otherwise specified in the Order or by prior written agreement signed by Buyer, no variation in these quantities will be accepted, Buyer may return excess shipments at Seller's expense.

6. **PACKAGING AND SHIPPING INSTRUCTIONS.** All Goods are to be suitably packed for safe transportation and handling, or otherwise prepared for shipment in accordance with Buyer's instructions or specifications. Unless otherwise specified in the Order, Buyer is not responsible for any costs for packing, crating or carriage. Any losses resulting from Seller's failure to follow Buyer routing instructions will be charged to Seller's account. Each shipping container and all intermediate containers must be marked to show Buyer's Order number, part number with revision letter and quantity. A packing list showing this information must be included in each shipment. All materials to be shipped on a given day via the same mode of transportation from a common shipping point to a common address are to be consolidated into one shipment. Seller shall ship only the quantity specified in the Order and at the lowest freight charges, unless otherwise agreed in writing by Buyer.

7. **INSPECTION.** Prior to shipment of Goods, Seller shall carefully inspect and test all Goods for compliance to applicable specifications. Seller shall retain proper records of such inspections and tests and provide copies to Buyer, if requested. Unless otherwise specified in the Order, final acceptance or rejection of the Goods shall be made after delivery to the final destination, however Buyer's failure to accept or reject Goods or detect defects during inspection does not relieve Seller from its responsibility to provide Goods in accordance with Order requirements.

8. **WARRANTY.** Seller warrants and certifies that: (a) the Goods will conform to the specifications, drawings, sample or other descriptions furnished or specified by Buyer or furnished by Seller and accepted by Buyer; (b) all items will be merchantable, of good workmanship, and free from defects; (c) unless otherwise specified herein, all Goods and its components are new and have not been previously used; (d) the Goods are fit for use for their ordinary intended purposes as well as any special purpose specified by Buyer; (e) and all items and the sale thereof do not, and the use of the same for their ordinary intended purpose as well as any special purpose specified will not constitute infringement or contributory infringement of any patent, or infringement of any copyright or trademark, or violation of any trade secret; (f) Seller has good title to the items free from all encumbrances; (g) the price or prices to be paid do not exceed applicable ceiling prices established by law, regulation or order of any governmental authority; and (h) the Goods, if produced in the United States, were or will be produced in compliance with the Fair Labor Standards Act of 1938, as amended or supplemented. These warranties will survive any inspection, delivery, acceptance or payment by Buyer for the Goods and are in addition to, and shall not be construed as restricting or limiting any warranties of Seller, express or implied, that are provided by law or exist by operation of law. In addition to the warranties above, Seller shall extend all warranties that it receives from its vendors to Buyer and Buyer customers.

If any of the Goods and/or services furnished under the Order are found at any time to be defective in design, material or workmanship, including latent defects, or otherwise not in conformance with Seller's warranty or the requirements of the Order, Buyer, in addition to other remedies under all applicable warranties or otherwise, may at Buyer's option (i) require Seller to promptly correct any defective or nonconforming Goods by



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repair or replacement at the location specified by Buyer or (ii) return such defective or nonconforming Goods to Seller at Seller's expense and recover from Seller the Order price. Seller will pay or reimburse Buyer promptly for all costs incurred by Buyer with regard to any defective or nonconforming Goods and/or services.

9. **INFRINGEMENT.** Seller agrees to indemnify, hold harmless and defend Buyer, its subsidiaries and affiliates and their respective officers, directors, agents and employees from any and all loss, expenses, damage, liability, claims or demands for actual or alleged infringement of any patent, trademark, copyright or trade secret arising from the purchase, use or sale of Goods or services furnished under the Order, except where such infringement or alleged infringement arises by reason of a design originally furnished to Seller by Purchaser. If the Goods or services or any part thereof or any use thereof be held to constitute infringement and the use enjoined, Seller shall promptly and at its own expense either: (1) procure for Buyer the right to continue using the Goods or services; or (2) replace same with noninfringing Goods or services satisfactory to Buyer or (3) modify the Goods or services in a way satisfactory to Buyer so they become noninfringing.

10. **INDEMNITY.** SELLER AGREES TO INDEMNIFY AND HOLD HARMLESS BUYER, ITS SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES, AND BUYER CUSTOMERS FROM ANY AND ALL LOSSES, EXPENSES, DAMAGES, LIABILITY, CLAIMS OR DEMANDS ARISING OUT OF OR INCIDENTAL TO THE PERFORMANCE, MANUFACTURE, DELIVERY OR INSTALLATION OF GOODS OR THE FURNISHING OF SERVICES UNDER BUYER'S ORDER, INCLUDING WITHOUT LIMITATION ANY RECALL, LATENT DEFECTS, REPLACEMENT OR CORRECTION OF THE GOODS, DEATH OR INJURY TO ANY PERSON, PROPERTY DAMAGE OR LOSS OR ANY ACT OR OMISSION OF SELLER, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS.

11. **ASSIGNMENT.** Seller will not delegate any duties, nor assign any rights or claims under the Order, or for breach thereof, without the prior written consent of Buyer. Any attempted delegation or assignment will be void.

12. **NOTICE OF LABOR DISPUTES.** Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of the Order, Seller will immediately give notice of that dispute to Buyer. Seller agrees to insert the substance of this clause in any lower tier subcontract and to require that in the event its lower tier subcontractors' timely performance is delayed or threatened by delay by any actual or potential labor dispute, the lower tier subcontractor will immediately notify its next higher tier contractor of all relevant information with respect to those disputes. .

13. **CONFIDENTIAL INFORMATION.** Any knowledge or information that Buyer discloses to Seller under Buyer's Order, including, without limitation, specifications, technical or business information, forecasts, or schedules, shall be deemed Buyer confidential, proprietary information; and Seller shall not disclose such information, including without limitation, denial or confirmation, relative to the Order without the prior written consent of Buyer. All tools, equipment, dies, drawings or other materials paid for or furnished by Buyer under the Order shall be and remain the sole property of Buyer.

14. **PROOF OF PAYMENT.** If requested by Buyer, Seller will furnish affidavits and instruments certifying that payment has been made for all labor, materials and services furnished in the performance or filing of the Order, as well as all releases and indemnities required at the time for payment and written guarantees with respect to the labor, materials

and services supplied by Seller. These documents will be in such form and substance as may be required by or from Buyer.

15. **MODIFICATIONS.** No modification, amendment or rescission of the Order may be made without the prior written agreement of Buyer. Any changes to qualified critical materials are subject to Buyer's prior written approval, and substitutes will not be accepted unless authorized in writing by Buyer's duly authorized management. Any overrun quantities will be subject to Buyer's prior written approval. Buyer reserves the right to and Seller agrees to accept reasonable changes to the Order, including, without limitation, changes to quantities, packing, testing, destinations, specifications, designs and delivery schedules, but these changes will be authorized only by Buyer's written Order. If an Order affects delivery or price, Seller will notify Buyer immediately and an equitable adjustment in prices or other terms hereof will be agreed upon in a written amendment to the Order.

16. **FORECASTS.** Any Buyer forecasts furnished under an Order are presented in good faith and are nonbinding on Buyer. Buyer shall only be liable for actual Order releases made by Buyer's Purchasing Department.

17. **GOVERNING LAW.** The Order and the transactions contemplated thereby shall be construed in accordance with, and disputes shall be governed by the laws of the State of California, excluding its conflict of law rules. The Superior Court of the County of Santa Clara or the United States District Court for the Northern District of California shall have exclusive jurisdiction and exclusive venue over all controversies arising out of or related to the Order and the transactions contemplated thereby. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and shall not apply to these Terms and Conditions of Purchase.

18. **REMEDIES.** The remedies reserved in the Order are cumulative and additional to any other further remedies at law or in equity; however, in no event will Buyer be liable to Seller for incidental or consequential damages. All of the terms of the Order are material terms and no waiver of or exception to any of the terms, conditions or provisions contained in the Order shall be valid unless specifically agreed to in writing by Buyer.

19. **NON-WAIVER DEFAULT.** Each shipment made under any Order shall be treated as a separate sale and transaction, but in the event of any default by Seller, if Buyer elects to continue to accept shipments, its action shall not constitute a waiver of any default by Seller or in any way affect Buyer's legal remedies for any such default.

20. **COMPLIANCE WITH LAWS.** Seller shall comply fully with all applicable federal, state, municipal and local laws, orders and regulations, including without limitation applicable employment, tax, export control and environmental laws, relating in any way to the production, manufacture, sale and delivery of the Goods, including without limitation those affecting limiting prices, production, purchase, sale and use of materials.

21. **EQUAL EMPLOYMENT OPPORTUNITY.** The provisions of Section 202 of Executive Order 11246 and the Rules and Regulations issued pursuant to Section 201 therein are hereby incorporated by reference, and Seller represents by acceptance of the Order that Seller will comply with such Executive Order and rules, regulations and amendments thereto to the extent the same are applicable to the manufacture and sale of Goods provided under the Order or the contracting or subcontracting of services or work hereunder.



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22. **FORCE MAJEURE.** Neither party shall be liable for delay in performance or failure to perform in whole or in part the terms of this Agreement due to strike, labor dispute, war, riot or civil commotion, acts of the public enemy, fire, flood or other acts of God, or causes beyond the reasonable control of such party. The period for performance for the party affected by such a cause shall be extended by the duration of the condition.

23. **TERMINATION.** In the event that Seller becomes insolvent or bankruptcy proceedings are instituted against it or on its behalf, or if Seller makes an unauthorized assignment for the benefit of creditors, such events shall be deemed a material breach hereunder, entitling Buyer to immediately terminate any agreement hereunder, to cease performance hereunder, and to avail itself of any and all legal or equitable remedies it may have against Seller. Seller agrees to give written notice to Buyer of such insolvency or bankruptcy proceedings at least thirty (30) days prior to such proceedings.

24. **DISCONTINUED GOODS.** In the event that Seller permanently discontinues any Goods covered under Buyer's Order, Seller will give at least six (6) months prior written notice of such discontinuance for standard Goods and nine (9) months prior written notice for sole source or custom Goods. Seller shall accept Orders from Buyer for quantities of discontinued Goods required by Buyer during the notice period(s). The unit price for ordered quantities of the discontinued Goods shall be at the unit price(s) listed in Buyer's Order. Discontinued Goods are not subject to termination or cancellation by Buyer and will be considered Buyer's firm, final orders for such Goods. In the event that Buyer purchases Goods hereunder with a purchase price exceeding \$2,500.00/unit or an annual purchase price total of at least \$25,000.00, Seller will give Buyer at least three (3) years prior written notice of such discontinuance.

In the event that continuous improvements of the Goods cease or are made obsolete by Seller hereunder, Buyer may, at its sole discretion, pursue any means necessary to perpetuate the life cycle and continued improvement of the Goods. Seller and Seller's agents will provide Buyer with the necessary hardware and software details required, including, but not limited to artwork, schematics, vendor names, bills of material and software source code(s).

25. **ISO 9000.** In accordance with ISO 9000 quality control systems and related certification, a physical inspection of Seller's facility may be required for Buyer's customer to satisfy certification requirements. Upon written notice from Buyer's customer, Seller agrees to make its facilities and procedures reasonably available for a site inspection for physical audit, if required for customer to meet ISO certification requirements.

26. **EXPORT CONTROL CLASSIFICATION NUMBER.** If applicable, Seller shall provide Buyer at time of sale with the appropriate U.S. Export Control Classification Number for your product, as determined on the Commerce Control List of the Export Administration Regulations of the U.S. Bureau of Industry and Security of the Department of Commerce. Seller agrees to assist Buyer if it is necessary to obtain an export/reexport license.