

MAXIM INTEGRATED PRODUCTS, INC.
WAFER 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. Buyer's failure to object to provisions contained in any communication from Seller, or Buyer's acceptance of Wafers or services under an Order, shall not constitute acceptance of Seller's terms and conditions of sale nor be deemed a waiver of any of the provisions contained herein. Conditions stated in Seller's acknowledgement or acceptance of an Order or in any quotation or invoice will not be binding unless expressly agreed to in writing by an authorized representative of Buyer. Seller shall be deemed to have assented to all terms and conditions contained herein upon Seller's acknowledgment of an Order or commencement of performance pursuant thereto.

1. **DEFINITIONS.** As used in this Agreement, the following terms will have the following respective meanings:

"Order" means a written order placed by Buyer to Seller for the purchase of Wafers specifying the quantity, diameter, grade, delivery date and shipping instructions. "Processes" means Seller's wafer production processes used to produce silicon Wafers under any Order. "Wafer" means a round slice of silicon manufactured by Seller to Buyer Specifications for use by Buyer to produce integrated circuits. "Specifications" means Buyer technical specifications [San Jose, Beaverton, San Antonio Fabs] and 37-100005 (Dallas) [General] Wafer Composition Specification #62-3266 incorporated herein by reference and any additional Buyer requirements or instructions set forth in an Order. "Quality and Reliability Criteria" means Seller's manufacturing Process quality and reliability specifications, including, without limitation, wafer geometry, surface perfection and cleanliness, as set forth in Seller's specification attached to Seller's quote and which are to be followed by Seller in manufacturing Wafers under any Order.

2. **ACCEPTANCE OF ORDERS.** Seller will supply Buyer a schedule of first commit exit-factory dates within five (5) business days of receipt of an Order. Seller will ensure that the first commit lot exit-factory date will meet Buyer's requested delivery date, unless otherwise agreed upon in writing. Seller agrees to produce Wafers that meet Seller's Quality and Reliability Criteria and Buyer Specifications. Specifications may only be changed by written mutual agreement of Buyer and Seller.

3. **PRICES.** Buyer shall pay Seller for Wafers manufactured by Seller in accordance with Buyer Specifications at the prices indicated on the Order. If the price is omitted from the Order, Seller shall invoice Buyer at the last price quoted by Seller to Buyer and mutually agreed upon. Unless otherwise specified on the face of an Order, prices include all applicable federal, state and local taxes and cost of delivery of Wafers DDP (Incoterms 2000), Buyer destination, freight and cartage prepaid, unless otherwise agreed upon by the parties in writing. Seller shall credit Buyer for any tax refund or credit adjustments received by Seller on taxes paid to Seller by Buyer with respect to Wafers provided under an Order. Seller's prices shall not be higher than last quoted or charged to Buyer unless otherwise agreed in writing. If Buyer and Seller agree in writing to reduce the number of steps in the manufacture of any Wafer, then the Purchase Price for such Wafer shall be reduced accordingly.

4. **PAYMENT.** Payment will be made within 30 days from Buyer's receipt of Seller's correct and valid invoice for Wafers 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 the 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 Wafers or a waiver of any right of Buyer to test or inspect the Wafers. Notwithstanding the foregoing, Buyer shall not be obligated to pay invoices for Wafers on which a Return Material Authorization number has been issued or for which a Return Material Authorization request is pending.

5. **DELIVERY.** Time is of the essence for any Order. Failure by Seller to meet delivery dates specified in Buyer's Order may result in substantial damages to Buyer due to commitments to its customers and will constitute a material breach of this Order. Buyer 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 Wafers by prepaid air freight at Seller's expense until Seller's deliveries are in accordance with the requirements of the Order. Buyer will not be liable to Seller for any cost, expenses or loss whatsoever occasioned by a cancellation 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 Wafers on the specified delivery dates. Title and risk of loss shall pass to Buyer upon Seller's delivery of Wafers to Buyer. Seller shall not ship Wafers earlier than the delivery date specified in the Order unless otherwise agreed. Seller will promptly notify Buyer in writing of any delivery delays or pull-ins in Wafer exit-factory dates, and supply to Buyer at least weekly or at any time upon specific request, a Work in Progress (WIP) report. Any changes to such report must be mutually agreed upon. The average cycle time shall be at least as short as those Wafers supplied to other Seller customers in similar volumes.

6. **QUANTITIES.** Seller will furnish the specific quantity of Wafers 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, and Buyer may return excess shipments at Seller's expense.

7. **PACKAGING AND SHIPPING INSTRUCTIONS.**

A. **Packaging.** All Wafers are to be suitably packed or otherwise prepared for shipment to secure lowest transportation rates and to meet carrier's requirements. 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.

B. **Marking.** 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, and the container having the packing list will be labeled on the exterior "Packing List Enclosed." Upon establishment of quantity per shipping and/or intermediate container, future orders for that part will be packed in that quantity.

C. **Consolidation.** 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.

D. **Certificate of Analysis and Certificate of Compliance.** A Certificate of Analysis and Certificate of Compliance must be provided to Buyer with each shipment.

8. **INSPECTION.** Prior to shipment of Wafers, Seller shall carefully inspect and test all Wafers for compliance to applicable Buyer Specifications and Seller Quality and Reliability Criteria. 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 Wafers shall be made after delivery to the final destination, however Buyer's failure to accept or reject Wafers or detect defects during inspection does not relieve Seller from its responsibility to provide Wafers in accordance with Buyer Specifications and Order requirements. Buyer reserves the right to inspect Seller's facilities at any time during the term of the Order to confirm that Seller is satisfying its obligations of testing, inspection and quality control.

In accordance with ISO quality control systems and related certification, a physical inspection of Seller's facility may be required for Buyer and/or Buyer's customer to satisfy certification requirements. Upon written notice from Buyer or Buyer 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.

9. **REJECTIONS.** If any of the Wafers and/or services furnished under an Order are found at any time to be defective in design, material or workmanship or otherwise not in conformance with the requirements of an Order, Buyer, in addition to remedies under all applicable warranties or otherwise, may at its option correct or have the nonconformity corrected or reject and return such Wafers and/or discontinue such services. Seller will pay or reimburse Buyer promptly for all costs for inspection of any rejected item. Such Wafers and/or services shall not be replaced or continued without the prior written authorization of Buyer. Buyer may accept, without prejudice, a portion of any shipment, and, at its option, have Seller repair or replace any nonportion of the shipment at Seller's expense. Seller shall remove rejected Wafers promptly at Seller's own risk.

10. **WARRANTY.** Seller warrants that: (a) Wafers will conform to the Specifications, drawings, requirements, samples or other descriptions furnished or specified by Buyer or adopted by Buyer and those furnished or specified by Seller and accepted by Buyer, including Seller's Quality and Reliability Criteria; (b) all items will be of merchantable quality, of good workmanship, and free from defects; (c) unless otherwise specified herein, all Wafers are new and have not been previously used; (d) the Wafers are fit for use for their ordinary intended purposes as well as any special purpose specified by Buyer; (e) 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) that 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) that the Wafers, 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 Wafers 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.

Buyer at its option may: (a) return defective or nonconforming Wafers to Seller, at

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Seller's risk, for credit and Seller shall pay Buyer for all packing, handling and transportation expenses; (b) demand that Seller pay Buyer promptly for expenses incurred in remedying the defective or nonconforming Wafers; or (c) demand that Seller, upon notification from Buyer, expeditiously replace any defective or rejected Wafers, at Seller's expense. Buyer may offset against Seller's account any expenses incurred to remedy any defective or rejected Wafers and all handling and transportation expenses incurred with respect to those Wafers.

11. **INDEMNITY.** Seller agrees and will defend, protect, indemnify and hold harmless Buyer and its officers, directors, employees, agents, customers, successors and assigns from and against all claims, liabilities, losses, costs and expenses (including attorneys' fees and costs of suit and testing and inspection), damages, demands, judgments, causes of action, suits and liability in tort or contract arising out of or in any way connected with the Wafers or services provided to Buyer under any Order including, without limitation: (i) personal injury, death or property damages of any person if directly or indirectly attributable to any act or omission of Seller, its employees, agents and subcontractors; (ii) the work, services, materials or supplies to be performed or supplied by Seller for purchases made by Buyer under the Order; (iii) any claims by third parties alleging that the services or any other Wafers or processes provided under any Order or agreement between Buyer and Seller infringe upon any patent, copyright, trademark, trade secret or other proprietary right whether such are provided along or in combination with other Wafers or processes; (iv) any violation by Seller of any applicable governmental laws, rules, ordinances or regulations; or (v) breach by Seller of any of its obligations under the Order. Seller shall not settle any suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs, including attorney fees that may be incurred by Buyer enforcing this indemnity.

12. **ASSIGNMENT.** Seller will not delegate any duties, nor assign any rights or claims under this Order, or for breach thereof, without the prior written consent of Buyer. Any attempted delegation or assignment will be void. All claims for monies due or to become due from Buyer will be subject to deduction by Buyer or for any setoff or counterclaim arising out of this Order or any other Order with Seller, whether the setoff or counterclaim arose before or after any attempted assignment by Seller.

13. **NOTICE OF LABOR DISPUTES.** Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of an 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. See Armed Services Procurement Regulations 7-104.4 for reference.

14. **CONFIDENTIALITY.** Any knowledge or information that Buyer discloses to Seller under an Order, in tangible or intangible form, including, without limitation, specifications, reprints, equipment, prototypes, forecasts, technical or business information, will be deemed confidential, proprietary information of Buyer; 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 such information shall remain the property of Buyer and placement of an Order shall not be deemed a granting of any right, license, or authorization, express or implied, in or to Buyer confidential, proprietary information. Seller will not divulge such information to any person other than its employees on a need to know basis and will use such information solely in performing its obligations to Buyer under the Order and not for the benefit of any third party. This obligation shall not extend where such information:

- a. was in the public domain at the time it was disclosed or later becomes public knowledge at a future date, other than as a result of Seller's breach of its obligations set forth herein;
- b. was in Seller's possession or was known to Seller without restriction at the time of its disclosure as evidenced by competent written proof of Seller;
- c. is shown to be developed independently by or for the Seller without use of or reference to Buyer's confidential, proprietary information, as evidenced by written documentation in Seller's possession; OR
- d. becomes known to Seller on a nonconfidential basis from a source other than Buyer without breach of an obligation of confidentiality (contractual, legal, fiduciary or other).

Unless otherwise agreed in writing, information in whatever form disclosed in any manner or at any time by Seller to Buyer shall not be deemed confidential or proprietary.

15. **MODIFICATIONS.** There can be no modification, amendment or rescission of an Order without the written agreement of Buyer and Seller. Any changes to processes, manufacturing methods or 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. Buyer reserves the right to and Seller agrees to accept changes to the Order, including, without limitation, changes to quantities, packing, testing, destinations, specifications, designs and delivery

schedules. If an Order change affects delivery or price, Seller will notify Buyer immediately and an equitable adjustment in prices or other terms hereof, based on reasonable and unavoidable costs incurred by Seller as a result of such change, will be agreed upon in a written amendment to the affected Order. Seller will notify Buyer immediately in writing if it changes its manufacturing locations and Seller shall pay for all related qualification costs associated with Buyer's qualification of a new foundry.

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. Seller commits to meet Buyer requirements in accordance with such forecast. Seller guarantees capacity to meet Buyer's requirements at all times.

17. **CANCELLATION/RESCHEDULE.** Buyer may cancel or reschedule an Order in whole or in part, at any time without liability by giving written notice to Seller. 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. In the event Seller becomes insolvent or makes an assignment for the benefit of creditors, or a trustee, receiver, or liquidator is appointed for all or a portion of Seller's property, or any voluntary or involuntary petition in bankruptcy is filed by or against Seller, Buyer may terminate any Order without further obligation or liability of whatsoever to Seller.

18. **GOVERNING LAW.** This Order 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 jurisdiction and venue over all controversies arising out of or related to this Order. 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 the terms and conditions of this Agreement.

19. **REMEDIES.** The remedies reserved in this 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 this 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.

20. **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.

21. **COMPLIANCE WITH LAWS.** Seller warrants that the Wafers and services supplied pursuant to the Order shall comply fully with all applicable federal, state, and local laws, orders, rules and regulations, including without limitation applicable employment, tax, export control, safety and health and environmental laws, relating in any way to the production, manufacture, sale and delivery of Wafers, including without limitation those affecting limiting prices, production, purchase, sale and use of materials. Upon Buyer's request, Seller will provide a certificate of compliance with respect to such laws, order and regulations.

22. **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 this 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 Wafers provided under the Order or the contracting or subcontracting of services or work hereunder.

23. **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.

24. **LIMITATION OF LIABILITY. BUYER'S TOTAL LIABILITY FOR DAMAGES UNDER AN ORDER SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE GOODS OR SERVICES OF THE AFFECTED ORDER GIVING RISE TO THE CLAIM.**

25. **SEVERABILITY.** In the event any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and an Order shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

26. **INDEPENDENT CONTRACTOR.** Seller and Buyer expressly understand and agree that Seller is an independent contractor in the performance of each and every part of an Order, is solely responsible for all of its employees, agents and will indemnify Buyer, its officers, directors, employees, agents, customers, successors and assigns, from any and all claims, liabilities, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever that may arise on account of Seller's activities or those of its employees, agents.