

**PYRAMID SEMICONDUCTOR CORPORATION  
TERMS AND CONDITIONS OF SALE**

**1. GENERAL** - These terms and conditions apply to all bids, quotations, offers, sales and purchase orders for the sale of products by PYRAMID SEMICONDUCTOR CORPORATION, hereinafter referred to as the Seller. Except as specifically set forth in a document signed by both parties, these terms and conditions represent the sole understanding between the Seller and Customer, hereinafter referred to as Buyer, with respect to the purchase and sale of products. Any provision of Buyer's purchase order which is in any way inconsistent with or in addition to these terms and conditions of sale shall not be binding on the Seller and are specifically rejected unless Seller expressly agrees in writing. As far as order acknowledgments are concerned, these terms and conditions constitute a counter offer to Buyer and retention by Buyer of the products delivered hereunder beyond the inspection period described below shall constitute acceptance of these standard terms and conditions. Seller's failure to object to provisions contained in any communication from Buyer shall not be a waiver of these terms and conditions. In the absence of written acceptance of these terms, acceptance of and/or payment for the products covered herein shall constitute an acceptance of these terms and conditions. All orders must be approved and accepted by Seller at its home office in Sunnyvale, California. These terms shall be applicable whether or not they are attached or enclosed with the products to be sold hereunder. These terms and conditions shall not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing not a part of this Agreement by its express terms. No representation, promise or condition not expressly provided in writing and signed by authorized representatives of the Buyer and officers of the Seller shall be binding on either party. The invalidity, in whole or in part, of any provision shall not affect the validity of any other provision.

**2. PRICE AND PAYMENT -**

- a) All prices published or quoted by Seller may be changed at any time without notice. Unless otherwise specified, written quotations expire 30 calendar days from the date issued and are subject to change or termination by notice during this period. The prices quoted for the items described on said acknowledgment are firm and not subject to audit and price redetermination.
- b) Seller will invoice Buyer on the date the product is tendered to the carrier at Seller's shipping point (hereinafter referred to as the delivery date). Such invoices will be due and payable net thirty days from date of invoice, subject to credit approval.
- c) Seller retains the right to demand, at Seller's option, that sales be entered into on the express condition that Buyer establish in favor of Seller an irrevocable letter of credit confirmed by a United States Bank acceptable to Seller payable to Seller in United States dollars on presentation of a sight draft, a copy of a commercial invoice, a packing list and a bill of lading indicating delivery to a carrier of a product for delivery to Buyer or to Buyer's order.
- d) For sales to a Buyer having its principal place of business outside the United States of America, Seller reserves the right to bill in United States dollars or the currency of the country to which the product is shipped. In such event, the rate of exchange will be the New York foreign exchange spot selling rate, as quoted at 3:00 p.m. United States Eastern time in the Wall Street Journal, published for the most recent day prior to product shipment from Seller.
- e) At any time and from time to time prior to the date of delivery, Seller reserves the right to change any terms of credit extended to Buyer in the event Seller believes in good faith that there has been an adverse change in credit worthiness of Buyer and to require partial or full payment in advance. In such event, if Buyer refuses to accept such change in credit terms, the order shall be cancelled without liability arising therefrom to either party. In the event of bankruptcy or insolvency of Buyer or in the event that any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws or their equivalent, Seller may cancel any order then outstanding without liability to Seller and Sellershall receive reimbursement from Buyer for costs incurred and lost profit for product so cancelled.
- f) Overdue payments shall be subject to finance charges computed at a periodic rate of 1-1/2% per month simple interest (18% per year) or the maximum rate permitted by applicable law, whichever is less.
- g) Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. If Seller's performance is delayed by Buyer, Seller shall invoice and Buyer shall pay:
  - i) for products ready for shipment at the purchase price set forth herein and
  - ii) for the work in process at the time of delay based upon the percentage of completion. Work in process will be held for a reasonable time at Buyer's sole risk and expense and shall be completed only at Buyer's request during such time and at Buyer's cost.
- h) In the event of significant increases in the market price of metals, fuels, raw materials, equipment, and other production costs outside of the control of Seller, Seller shall have the right and Buyer the obligation to renegotiate in good faith the price of the goods hereunder not yet shipped, and if agreement in not reached, Seller shall have the right to cancel this contract without liability.

**3. F.O.B. POINT** - All sales are made F.O.B. point of shipment, Seller's facility. Title and risk of loss or damage shall pass to Buyer upon tender of the product to the carrier at the shipping point in good condition. Seller's liability as to delivery ceases upon making delivery of products purchased hereunder to carrier at shipping point in good condition. Unless written instructions from Buyer specifying the method of shipment to be used have been received and accepted by Seller, Seller will exercise its own discretion with respect to manner of shipment, insurance, and carrier to be used.

**4. DELIVERY** - It is understood by both parties that the products manufactured by Seller are state-of-the-art products at the leading edge of technology. Manufacturing of such products requires sophisticated manufacturing techniques. Delivery dates committed to Buyer by Seller are the best estimates for production deliveries available to Seller at the time of order placement. Seller will manufacture in accordance with the planned shipment date (factory committed delivery date or any mutually agreeable scheduled dates) as confirmed in Seller's Acknowledgment. HOWEVER, THE PLANNED SHIPMENT DATE IS AN ESTIMATE ONLY, AND SELLER WILL BE SUBJECT TO NO LIABILITY BY FAILURE TO PERFORM ON OR BY SUCH DATE. SELLER WILL NOT BE LIABLE FOR PROCUREMENT COSTS, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES

- i) IN THE EVENT OF A DELAY IN SHIPMENT OR DELIVERY OF PRODUCTS OR
- ii) IN THE EVENT OF NON-DELIVERY.

Seller reserves the right to make partial shipments with the consent of the Buyer, which consent shall not be unreasonably withheld, and invoices will be issued accordingly by purchase order line item. Delay in delivery or other default of any installment of any one or more product types shall not relieve Buyer of its obligation to accept and pay for the remaining deliveries.

**5. FORCE MAJEURE** - Seller shall not be liable for non-performance or delays, not otherwise excused, which occur due to causes beyond its control. These causes shall include, but shall not be limited to, acts of God, wars, riots, strikes, fires, storms, flood, earthquake, shortages of labor or material, labor disputes, vendor failures to deliver necessary materials, transportation embargoes, delays in obtaining required export licenses, acts of any government or agency thereof, judicial action or any or all other causes beyond its reasonable control including technical or yield losses where Seller has exercised ordinary care in the prevention thereof. If any such contingency occurs, Seller may at its sole discretion allocate production and delivery among Seller's customers. In the event of any such excused delay or failure of performance, the date of delivery shall, at the request of Seller, be deferred for a period equal to the time lost for reason of the delay. Seller shall notify Buyer of any such event or circumstance within a reasonable time after it learns of same. IN NO EVENT WILL SELLER BE LIABLE FOR ANY CLAIM FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

**6. TAXES** - All prices are exclusive of any present or future sales, revenue or excise tax, use, value added, import duty or similar taxes applicable to the manufacture or sale of products and shall be paid by the Buyer when applicable, and shall be added to the purchase price. In lieu of the imposition of any particular tax, the Buyer must, where applicable, provide a tax exemption certificate to Seller prior to the time of invoice preparation in a form acceptable to the taxing authorities.

**7. PATENTS** - Buyer shall hold Seller harmless against any expense or loss resulting from infringement of patents or trademarks arising from Seller's compliance with Buyer's designs, specifications, or instructions. Except as set forth above, the Seller agrees to protect and hold harmless the Buyer from any and all claims, demands, proceedings, actions, liabilities and costs resulting from any alleged infringement of patents in the United States owned by third parties by products purchased by Buyer from Seller, provided the Buyer gives to Seller prompt notice of any such claim made against the Buyer and authorizes the Seller to settle or defend any such claim, demand, proceeding or action and assists the Seller in so doing (at the Seller's expense) upon request by the Seller. Should, as a result of any such claim, demand, proceeding or action, the Buyer be enjoined from selling or using the Product, the Seller shall either (1) procure for the Buyer the right to use or sell the Product; (2) modify the Product so that it becomes non-infringing; (3) upon return of the Product provide to the Buyer a non-infringing product meeting the same functional specifications as the Product; or (4) authorize the return of the Product to the Seller and upon its receipt refund to the Buyer the cost of the Product plus transportation charges. The foregoing states the entire liability of the Seller for infringement of third parties' patents. The sale of products by Seller does not convey any license, by implication, estoppel, or otherwise, under patent claims covering combinations of said Products with other devices or elements, or the process or method of making such products. THIS PROVISION IS STATED IN LIEU OF ANY OTHER EXPRESSED, IMPLIED, OR STATUTORY WARRANTY

AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR PATENT INFRINGEMENT OF ANY KIND.

**8. ASSIGNMENT** - Neither Buyer nor Seller may assign this order, or any interest or right herein without the prior written consent of the other. Any assignment without such consent shall be void ab initio.

**9. SALE CONVEYS NO LICENSE** - Seller's products are offered for sale and are sold by Seller 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 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 its rights under such patent claims.

**10. ACCEPTANCE -**

- a) Buyer shall give notice to Seller (and the carrier where appropriate) of discrepancies between type and quantity of product ordered and product delivered, or damage to the product, within 30 days of delivery of the product to the Buyer's destination, whichever is earlier. Lacking such notice, the Buyer shall be deemed to have accepted the product as invoiced.
- b) Buyer shall accept or reject products included in each shipment within thirty (30) days from receipt (the inspection period). If Buyer fails to notify Seller in writing of its rejection and the reasons thereof within such time period, Buyer will be deemed to have accepted such shipment. In the event lot acceptance procedures have been agreed to in writing, products rejected by Buyer on that basis will be returned only on Seller's prior authorization.
- c) Product may be returned to the Seller only after prior notification and subsequent authorization upon receipt of a Return Material Authorization (RMA) Number. Product returned without a valid RMA number will be sent back to the Buyer at Buyer's expense.
- d) No credit allowances for defective devices will be made or replacements therefore shipped until it is established to Seller's satisfaction after suitable test and inspection that the device(s) was in fact defective.

**11. TERMINATION** - This order may be terminated in whole or in part on written notice by Buyer because of Seller's failure to deliver products in accordance with the terms pursuant to paragraph 4, which failure is not excused pursuant to paragraph 5.

UPON ANY SUCH TERMINATION, SELLER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO COST OF LABOR, REQUALIFICATION, DELAY LOSS OF PROFITS, OR GOOD WILL. IN ANY EVENT, SELLER SHALL BE ENTITLED TO PAYMENT FOR ALL PRODUCTS SHIPPED UP TO THE EFFECTIVE DATE OF TERMINATION.

Purchase orders issued by Buyer will represent, in good faith, Buyer's intention of procuring product from Pyramid Semiconductor Corporation. It is understood by both parties that as long as Seller delivers products meeting established quality levels mutually agreed upon between Buyer and Seller or is being used by Buyer without quality issues and products is delivered within reasonable timeframes of mutually agreed upon scheduled dates or mutually agreed upon rescheduled dates, then Buyer will not cancel or reschedule orders on backlog without prior consent of Seller at his home office in Sunnyvale, CA.

**12. LIMITED WARRANTY** - Seller warrants that any of its products furnished hereunder will at the time of shipment be free from defects in material and workmanship under normal use and service and will conform to Seller's applicable standard written specifications, or if appropriate, to specifications accepted in writing by Seller for a period of one year from the date of delivery of subject component. Seller's liability is limited to replacing or repairing or issuing credit for the defective part or component only if it has been paid for. In no event will Seller be liable for replacing other similar fully functional components on a board or part of a lot containing said defective components. Reliability failures of parts apply only to said parts and not to a complete lot, shipment, or group of parts. Seller will not be liable under the warranty unless:

- a) Seller is promptly notified in writing upon discovery of defects by Buyer.
- b) The defective product is returned to Seller, transportation charges prepaid by Buyer.
- c) The defective product is received within one year from the date of passing of title; and
- d) Seller's examination of the product discloses to its satisfaction that the alleged defects have not been caused by misuse, neglect, improper installation, repair, alteration, or accident.

This express warranty shall extend to Buyer only and not to Buyer's customer. Notwithstanding the foregoing, if any product covered by this order is designated for "developmental" or "experimental" use, no warranty whatsoever except the warranty of title shall be applicable thereto, and Buyer shall indemnify Seller for any and all claims or liability asserted against the Seller in connection with such "developmental" or "experimental" products. Seller's products are not authorized for use as critical components in life support devices or systems without the express written approval of an officer of Seller. These include devices or systems which are intended for surgical implant into the body or support and sustain life and whose failure to perform when properly used in accordance with instructions for use provided in the labeling can reasonably be expected to result in a significant injury to user. A critical component is any component in a life support device or system whose failure to perform can reasonably be expected to cause the failure of the life support device or system or to affect its safety or effectiveness. Seller's warranties will not be affected by rendering of technical advice in connection with the order or products furnished hereunder.

EXCEPT AS EXPRESSLY PROVIDED ABOVE, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**13. LIMITATION OF LIABILITY** - ANY PROVISION HEREIN TO THE CONTRARY NOTWITHSTANDING, THE MAXIMUM LIABILITY OF SELLER TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH ANY SALE, USE OR OTHER EMPLOYMENT OF ANY PRODUCT DELIVERED TO BUYER HEREUNDER, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT OR OTHERWISE, SHALL IN NO CASE EXCEED THE ACTUAL COST OF THE PRODUCTS DELIVERED PURSUANT TO THIS ORDER PAID TO SELLER BY BUYER AND SELLER SHALL IN NO EVENT BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR CONSEQUENTIAL OR SPECIAL DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY THE BUYER. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE.

**14. SPECIFICATIONS** - All standard products are subject to Seller's standard specifications. Seller reserves the right to make substitutions and modifications in the specifications of any product without notification to or approval from Buyer, provided that such substitutions or modifications do not materially affect the performance of the products or the purposes for which they can be used.

**15. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION** - Buyer acknowledges that in the course of the negotiations leading up to a contract of sale hereunder or in the performance of said contract that Buyer's employees may become privy to trade secrets and confidential information of Seller. Buyer agrees not at any time during or after its relationship with Seller to disclose said trade secrets or confidential information to any person or organization not connected with Buyer without the express written consent of Seller. Buyer further agrees to undertake all necessary and appropriate steps to maintain the secrecy of said trade secrets and confidential information of Seller. All information that is considered "Company confidential" will be so marked by both parties and will be communicated as such in verbal, written or any other forms of communications.

**16. EXPORT OF PRODUCTS** - Buyer, by accepting these products, certifies that he will not export or re-export the products furnished hereunder unless he complies fully with all laws and regulations of the United States relating to such export or re-export, including but not limited to the Export Administration Act of 1979 and the Export Administration Regulations of the U.S. Department of Commerce as well as the ITAR Regulations.

**17. GOVERNMENT CONTRACTS** - If the goods to be furnished under this contract are to be used in the performance of a U.S. Government contract or subcontract and a U.S. Government contract number shall appear on Buyer's purchase order, those clauses of the applicable U.S. Government Procurement Regulations which are mandatorily required by Federal Statute or Regulation to be included in the U.S. Government subcontracts shall be incorporated herein by reference.

**18. APPLICABLE LAWS** - The validity, performance and construction of this contract shall be governed by the laws of the State of California.