

**LITRINIUM, INC.**



## **TERMS AND CONDITIONS OF SALE**

### **1. SCOPE AND DEFINITIONS**

These Terms and Conditions of Sale (“Terms”) represent the sole agreement under which Litrium, Inc. (“Seller”) agrees to sell, to the entity named on the face hereof (“Buyer”), the products specified on the Seller’s quotation or invoice to which these Terms are attached (the “Products”). Notwithstanding Buyer’s desire to use standardized purchase order forms, order forms, acknowledgment forms and other documents which may contain terms in addition to or at variance with these Terms, it is expressly understood and agreed that other forms shall neither add to, nor vary, these Terms whether or not these Terms are referenced therein. Buyer may assent to these Terms by written acknowledgment, implication and/or by acceptance or payment of goods ordered any of which will constitute assent.

For the purpose of these Terms, the following terms have the meanings set forth below:

“Board-level Products” are larger electrical circuits that are set out on a board containing one or more Chips or Die and/or circuitry to perform a specialized function.

“Chip” is defined as an integrated circuit fully assembled into a package (e.g. QFN) that provides pins for connection to other circuits or systems.

“Die” is defined as an unassembled integrated circuit without packaging or pins for connection to other circuits or systems. Dies may be shipped on a wafer or separated from each other by scribe lines, or they may be cut, separated and placed into appropriate packaging for shipping.

“Prototype” is a Chip or Die that has not started or just started the qualification process.

“Sample” is any Product that Buyer may sample, in any stage of qualification, in small numbers.

“Software” products shall mean all software, in executable code, that is embedded, bundled or included with Chips or Die.

### **2. ALTERATION**

Alterations to any Products which Seller deems necessary to comply with specifications, changed safety standards or governmental regulations, to make a Product non-infringing with respect to any intellectual property right or other proprietary interest, or to otherwise improve a Product may be made at any time by Seller without prior notice to or consent of Buyer and such altered Products shall be deemed fully conforming.

### **3. ORDERS, RESCHEDULING AND CANCELLATION**

- 3.1. Orders and Acceptance. All of Buyer's orders are subject to acceptance by Seller and Seller reserves the right to accept or reject any order from the Buyer, in whole or in part. Buyer must initiate all orders for Products with a written purchase order submitted to Seller in the format specified by Seller that sets forth the details for the ordered Products (e.g., type and quantity ordered, delivery destination, requested shipment date). Orders must comply with the order lead-time requirements published by Seller, from time to time. Seller reserves the right to accept or reject order for any reason and to cancel any order previously accepted if Buyer is in default of any payment obligations to Seller. No partial acceptance of an order will constitute the acceptance of the entire order.
- 3.2. Minimum Order. Orders placed by Buyer must conform to Seller's minimum order quantity for each given Product. Buyer must purchase Products in the packaged quantities indicated on Seller quotations.
- 3.3. Returns. Seller will accept returns of any Products shipped by Seller in excess of the order placed by Buyer with the exception of Products sold as a Die, in which case Seller may ship up to 10% more than the requested amount due to the expected variation of the wafer yield. Seller will then invoice Buyer for such additional amount of Die without Buyer's consent. No return of Products will be accepted by Seller without a Return Material Authorization ("RMA") number, and returned Products must be in Seller's original shipping cartons complete with all packing materials or other shipping cartons approved by Seller in advance.
- 3.4. Rescheduling of Product Orders. Except as specifically agreed otherwise by Seller and Buyer, at least 60 days before the estimated Product shipment date specified by Seller, Buyer may reschedule the shipment by providing written notice to Seller that must include the following information: the number of Products for which delivery is to be rescheduled and the rescheduled shipment date. Buyer may only make one rescheduling request per order. The rescheduled shipment date may be no later than 60 days after the original shipment date. Seller may, at its sole discretion, accept reschedule requests to a negotiated period outside the standard term, whereby such reschedule allowances may be subject to rescheduling fees in an amount not to exceed 100% of the list price value.
- 3.5. Non-cancellation of Product Orders. Buyer may not cancel a Product order after acceptance by Seller.
- 3.6. Product Discontinuation. Seller will notify Buyer prior to discontinuing any Product. Buyer will be given time to place final orders ("Last Order Period") for such Products and to take delivery of the Products. Orders for discontinued Products are non-cancellable and non-reschedulable unless agreed to by Seller in writing. Seller may impose additional restrictions on orders for discontinued Products by providing Buyer with written notice of the terms at the time of the order.

### **4. TITLE AND DELIVERY**

- 4.1. All deliveries will be made Ex Works Seller's facility. Unless otherwise specified, risk will pass to Buyer upon tender to the carrier. Buyer bears the exclusive risk of loss or damage to the Products at all times after Seller has delivered such Products to the carrier. Any claim by Buyer against Seller for shortage or damage occurring prior to such delivery must be made, in writing, within five (5) days after receipt of shipment and accompanied by original transportation bill signed by the carrier noting that carrier received the Products from Seller in the condition claimed.

- 4.2. Title to Products being purchased is retained by Seller until such Products are fully paid for by Buyer and, at that time, title passes to Buyer.
- 4.3. Seller retains and Buyer hereby grants Seller a security interest in the Products, including all accessions to them until Buyer has made payment in full in accordance with the terms hereof. Buyer authorizes Seller to file a financing statement describing the Products and Buyer shall cooperate fully with Seller in executing such documents including a Uniform Commercial Code financing statement, and accomplishing such filings and/or recordings thereof as Seller may deem necessary for the perfection and protection of such security interest.
- 4.4. Seller will make commercially reasonable efforts to ship orders within the times quoted, however Buyer acknowledges that all delivery times or shipment dates are approximate and may change. Times quoted for shipment will date from receipt by Seller of the Buyer's order accompanied by all necessary information enabling work to commence, together with any import license and/or permits which may be necessary. Buyer acknowledges that time for delivery is not of the essence.

## **5. TAXES AND DUTIES**

- 5.1. Buyer shall pay all taxes (including, without limitation, any and all federal, provincial, state or local sales, use, excise, privilege or similar taxes), levies, tariffs or duties, of any kind (collectively, the "Taxes"), on the Products, or Buyer shall provide Seller with a tax exemption certificate acceptable to the taxing authorities. Buyer agrees to indemnify and hold harmless Seller for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon.
- 5.2. The prices of the Products are those specified in the applicable order. Unless otherwise agreed in writing by Seller, all prices are exclusive of Taxes, transportation and insurance costs.

## **6. CREDIT AND PAYMENTS**

- 6.1. All orders are subject to credit approval before acceptance. If Seller approves Buyer for credit, terms of payment are strict 30 days from invoice date. Late payments are subject to 1.5% interest charge per month (18% per annum). If credit is not approved by Seller, all Buyer orders must be prepaid. Seller reserves the right to require Buyer to pay outstanding invoices via wire transfer. Seller reserves the right to withhold shipment in the event Buyer is in arrears.

## **7. INFRINGEMENT INDEMNIFICATION**

- 7.1. Defense of Claims. Seller will, at its option and expense, defend Buyer and its officers, employees, directors, agents, and representatives ("Buyer Indemnified Parties") from or settle any claim, proceeding, or suit ("Claim") brought by a third party against a Buyer Indemnified Party alleging that the Buyer's use of the Products supplied by Seller infringes or misappropriates any patent if: (a) the Buyer Indemnified Party gives Seller prompt written notice of the Claim; (b) Seller has full and complete control over the defense and settlement of such Claim; (c) the Buyer Indemnified Parties provide assistance in connection with the defense and settlement of such Claim as Seller may reasonably request; (d) the Buyer Indemnified Parties comply with any settlement or court order made in connection with

such Claim (e.g., relating to the future use, sale, or distribution of any infringing Products); and (e) the alleged infringement or misappropriation is that of a patent(s) registered in U.S., Japan, China, U.K., EU and Singapore. The Buyer Indemnified Parties will not defend or settle any such Claim without Seller's prior written consent. The applicable Buyer Indemnified Party will have the right to participate in the defense of such Claim at its own expense and with counsel of its own choosing, but Seller will have sole control over the defense and settlement of the Claim.

- 7.2. Indemnification. Seller will indemnify the Buyer Indemnified Parties against and pay (a) all damages, costs, and attorneys' fees finally awarded against a Buyer Indemnified Party in any Claim under Section 7.1; (b) all amounts that Seller agrees to pay to a third party in settlement of any Claim under Section 7.1.
- 7.3. Mitigation. If Buyer's use of a Product is, or in Seller's reasonable opinion is likely to be, enjoined as a result of a Claim under Section 7.1, then Seller may, at its option (a) procure the continuing right of Buyer to use the Product; (b) replace or modify the Product in a functionally equivalent manner so that it no longer infringes; or (c) if neither (a) nor (b) is available on commercially reasonable terms, offer to repurchase the Product and refund the purchase price paid by Buyer.
- 7.4. Exceptions. Seller will have no obligation for any alleged infringement or misappropriation to the extent that it arises out of or is based upon (a) use of a Product in combination with other products (including software) if such alleged infringement or misappropriation would not have arisen but for such combination; (b) a Product that is provided to comply with designs, requirements, or specifications required by or provided by Buyer, if the alleged infringement or misappropriation would not have arisen but for the compliance with such designs, requirements, or specifications; (c) use of a Product for purposes not intended; (d) failure to use a Product in accordance with instructions provided by Seller, if the alleged infringement or misappropriation would not have occurred but for such failure; (e) any modification of a Product not made or authorized in writing by Seller where such alleged infringement or misappropriation would not have occurred absent such modification; or (f) continued use of a Product after Seller has offered to repurchase the Product from Buyer pursuant to Section 7.3 above. Buyer is responsible for any costs or damages that result from these actions.

## **8. LIMITED WARRANTY AND DISCLAIMER**

- 8.1. Seller warrants to Buyer that each Product will be free from defects in design, materials, or manufacture that cause the Product to not conform to its published technical specifications for the following periods:
  - (a) One year from the date of delivery to the Buyer for Product classified as Chips.
  - (b) Ninety (90) days from the date of delivery to the Buyer for Product classified as Die.All Products that are classified as Samples, Prototypes, Software and Board-level Products are sold "AS-IS" and Seller makes no warranties, whether express, implied or created by statute with respect to such Products. **THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF ALL SUCH PRODUCTS RESTS WITH THE BUYER.**
- 8.2. If Buyer believes, after reasonable investigation, that a Product failure is covered by the warranty in Section 8.1, Buyer will promptly contact Seller and provide sufficient information to enable Seller support personnel to determine the cause of the failure. Seller may require Buyer to return the Product in accordance with Section 8.4 for further evaluation.

- 8.3. If Seller support personnel determine in their reasonable discretion that Seller's Product failure is covered by the warranty in Section 8.1, Seller will, at its option and in accordance with this Section 8.3, (a) repair the Product; (b) replace the Product; or (c) issue a credit for the amount paid by Buyer for the Product upon return of the Product.
- 8.4. If a Product is to be returned to Seller, Buyer will, at its expense, return the Product in accordance with Seller's instructions, including first obtaining an RMA number in accordance with Section 3.3. RMA requested for a Product due to a defect claim shall be subject to warranty verification against lot numbers. If Seller reasonably determines that a returned Product conforms to the warranty in Section 8.1, Seller will invoice Buyer for, and Buyer will pay for, Seller's costs to return the Product to Buyer. If Seller reasonably confirms that a returned Product does not conform to the warranty in Section 8.1, then Seller will, at its option, at no additional cost to Buyer, (i) deliver a repaired or replacement Product to Buyer within a reasonable period or issue a credit for the amount paid by Buyer for the Product; or (ii) issue a credit for Buyer's reasonable out-of-pocket expenses actually incurred to return the Product to Seller. No return is eligible for credit unless specifically stated on the RMA documentation.
- 8.5. All Products repaired or replaced under the warranty will be warranted for the remainder of the warranty period.
- 8.6. The warranty and remedies set forth in this Section 8 will not apply to (i) any Samples, Prototypes, pre-production product, Software, or Board-level Products; (ii) any alterations or modifications of, or additions to, the Products made by parties other than Seller; (iii) use of the Products in a manner for which they were not designed or other than as specified in the applicable technical specifications; (iv) the combination, use, or interconnection of the Products with other products not supplied or not approved by Seller; (v) abnormal usage or misuse of the Products; or (vi) Buyer's or a third party's negligence. If Seller determines that any warranty claim reported by Buyer falls within any of the foregoing exceptions, Buyer will pay Seller for its services at Seller's time and materials rates then in effect.
- 8.7. This Section 8 sets forth Buyer's exclusive remedy, and Seller's entire liability in contract, tort, or otherwise for any breach of warranty for any Product sold by Seller to Buyer.
- 8.8. WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8, SELLER MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. SELLER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, AND TITLE. SELLER DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE PRODUCTS OR AGAINST INFRINGEMENT.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1. All intellectual property rights, including, without limitation, all copyrights, patent rights, trade secrets and trademarks in and to the Products shall, at all times, remain with Seller or its licensors. Buyer shall acquire no right whatsoever to all or any part of Seller intellectual property and Seller and its licensors reserve all rights not expressly granted to Buyer.
- 9.2. Buyer disclaims any rights or interest in Seller's intellectual property. Buyer acknowledges the great value of the goodwill associated with the name and trademarks of Seller. Buyer shall not, either directly or indirectly, remove, obscure, effect or permit the removal or alteration of any patent numbers, trade names or marks, copyright markings or other

proprietary rights markings, labels, serial numbers, or the like affixed to any Products or Product package or any related documentation, software, advertising, displays, media or designations.

## **10. LIMITATION OF LIABILITY**

- 10.1. TO THE GREATEST EXTENT PERMISSIBLE BY APPLICABLE LAW, IN NO EVENT AND UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), CONTRACT OR OTHERWISE, SHALL SELLER AND ITS AFFILIATES AND SUBSIDIARIES, INCLUDING THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS AND LICENSORS BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY LOSS OF USE, REVENUE, BUSINESS OR PROFIT, LOST OR DAMAGED DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR OTHER COMMERCIAL OR ECONOMIC LOSS OR FOR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.
- 10.2. UNDER NO CIRCUMSTANCES WILL SELLER'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY BUYER TO SELLER FOR THE PRODUCT GIVING RISE TO THE CLAIM DURING THE PREVIOUS 12 MONTHS. UNDER THIS AGREEMENT (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION).

## **11. CONFIDENTIALITY**

- 11.1 Confidentiality. The parties acknowledge that they may receive confidential and/or proprietary information relating to the business of the other party or its licensors, including without limitation designs, presentations, drawings, schematics, software tools, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, source code, computer programming, techniques, algorithms, processes, customer lists, library elements, standard cells, proprietary I/Os, memory compilers, technical information, characterization, design rules, formulae, physical descriptions or views, logical views or binary representations, performance and interface information, proprietary command architecture, proprietary scheme constructs (commands, format, syntax, and semantics), defects, bugs, proprietary circuit behavior information, Buyer-supplied data, circuit, logic elements technical and marketing information, know-how and/or trade secrets, which are identified as confidential and/or proprietary at the time of disclosure or that a reasonable person would consider, from the nature of the information, as confidential and/or proprietary (the "Confidential Information"). The parties will only use such Confidential Information in the performance of these Terms. The receiving party shall treat the Confidential Information as confidential to and as the property of the disclosing party and use a degree of care not less than the degree of care it uses with respect to its own information of like nature to prevent unauthorized access, use or disclosure, which in any event shall be no less than a reasonable degree of care. The receiving party will not disclose these Terms or Confidential Information, except to the receiving party's directors, officers, employees and

contractors who have a need to know for the purpose of carrying out the business relationship and who are bound by written confidentiality obligations no less protective of the disclosing party's confidential information than this Section. As soon as practicable, receiving party shall notify disclosing party of any breach of these Terms. Each party will use and maintain reasonable security measures (which measures shall be at least those used by the receiving party to protect its own Confidential Information) to protect the other party's Confidential Information. The receiving party shall not transmit, maintain, remanufacture or duplicate all, or any part of, the Confidential Information except in accordance with the terms and conditions of these Terms. The receiving party shall be directly liable for the acts or omissions of its directors, officers, employees and contractors with respect to such confidentiality obligations. The receiving party agrees to segregate all such Confidential Information from the confidential information of others in order to prevent commingling.

- 11.2 The foregoing obligation of confidentiality does not apply to information that: (a) is or becomes generally known or available through no fault of the receiving party; (b) is known by the receiving party prior to the time of disclosure and is not subject to restriction, as evidenced by receiving party's written records; (c) is independently developed by the receiving party, as evidenced by receiving party's written records; (d) is lawfully obtained from a third party, who has the right to make such disclosure without restriction; (e) is released for publication by disclosing party in writing; or (f) is required to be disclosed by law.
- 11.3 Buyer acknowledges that disclosure or use of the Confidential Information contrary to these Terms will cause Seller irreparable harm for which damages may not be an adequate remedy and further acknowledges that in addition to any other remedies that may be available to Seller at law, Seller may apply for all available equitable relief including injunctive relief.

## **12. GENERAL PROVISIONS**

- 12.1. Entire Agreement. These Terms are the entire agreement between the parties with respect to its subject matter and supersedes and replaces all prior oral or written agreements, representations, negotiations or understandings between the parties relating to such subject matter; provided, that these Terms will not apply to any person or entity that has entered, or is entering, into a distribution agreement or a master purchase agreement and any purchase of the Seller's products by such persons or entities will solely be governed by the terms and conditions of those agreements. No change, modification, supplement or amendment of these Terms shall be valid or binding unless (a) executed in writing by both parties and (b) such document specifically references the changing, modifying, supplementing or amendment of these Terms.
- 12.2. No Assignment. Buyer may not transfer or assign these Terms without the prior written consent of Seller. The parties agree that Seller is hereby entitled to assign, subcontract and/or transfer all or part of its rights and obligations under these Terms to any third party. A change in control of Buyer shall be deemed an assignment hereunder.
- 12.3. Governing Law. These Terms will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of California, U.S.A without reference to its

choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

- 12.4. Arbitration. If there is a dispute between the parties under these Terms the parties will agree upon and appoint one arbitrator no later than 20 days after the notice of arbitration is received. If the parties do not agree on an arbitrator, an arbitrator will be selected in accordance with the applicable rules of the American Arbitration Association (AAA) for the appointment of an arbitrator. The selection of an arbitrator under the rules of the AAA will be final and binding on the parties. The arbitrator will have at least 15 years of appropriate experience in the semiconductor industry and be independent of the parties. The arbitrator will conduct the arbitration in accordance with the applicable rules of the AAA. The arbitration will be held in Orange County, California. The arbitrator will limit discovery as reasonably practicable to complete the arbitration as soon as practicable. The arbitrator's decision will be final and binding on both parties. The costs and expenses of the arbitration (including prevailing parties attorneys' fees) will be borne by the losing party.. This Section 12.4 will not prohibit either party from seeking injunctive relief in a court of competent jurisdiction.
- 12.5. Notice. All notices required under these Terms shall be deemed effective when received, and sent by (a) registered or certified mail, return receipt requested, or (b) overnight mail.
- 12.6. Force Majeure. Neither party shall be responsible for delays or failure of performance hereunder other than payment, resulting from acts beyond the reasonable control of such party.
- 12.7. Waiver. No party will be deemed to have waived the exercise of any right that it holds under these Terms unless such waiver is made in writing. Failure or delay by either party to exercise any of its rights, powers or remedies hereunder shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 12.8. Export/Import. Buyer represents and warrants that (a) no relevant agency has suspended, revoked or denied Buyer's export and/or import privileges; (b) Buyer is not located in or under the control of a national or resident of, a jurisdiction where this transaction is prohibited; and (c) Buyer shall not, in any manner whatsoever, either remove, convey, export, import or transmit the Products from or to Buyer's jurisdiction in violation of the applicable laws and regulations.
- 12.9. Survival. The payment obligations, general provisions, limitations of liability, exclusions of warranties, ownership and proprietary rights and confidentiality requirements set forth in these Terms shall survive the expiration of these Terms or termination of these Terms by either party for any reason. Termination shall be without prejudice to any other right or remedy to which either party may be entitled under these Terms, or in law.
- 12.10. Severability. Should any provision or part of any provision of these Terms be found illegal, invalid or unenforceable by a court of competent jurisdiction, such provision, or part thereof, shall be read down to the extent necessary to ensure that such provision, or part thereof is not illegal, invalid or unenforceable but, if that is not possible, such provision, or part thereof, shall be deemed severed, and the remainder of these Terms shall remain in full force and effect.
- 12.11. Third Party Beneficiaries. Buyer acknowledges and agrees that Seller's licensors are third party beneficiaries to these Terms, with the right to enforce the obligations and benefit from the protections set forth in these Terms.



12.12. Remedies. Except as specifically provided in these Terms, the rights and remedies provided in these Terms and all other rights and remedies available to either party at law or in equity are, to the extent permitted by law, cumulative and not exclusive of any other right or remedy now or hereafter available at law or in equity, neither asserting a right or employing a remedy shall preclude the concurrent assertion of any other right or employment of any other remedy.