



## TERMS AND CONDITIONS OF SALE

### 1. GENERAL:

- A** The term, Seller, as used herein shall mean LOGIC Devices Incorporated. The term, Buyer, shall mean the party placing this order with Seller.
- B** Seller shall not be deemed to have any commitment or liability to Buyer until such time as Buyer has placed a written order acknowledging these terms and conditions of sale and such order has been accepted by Seller at its principal office.
- C** All orders and deliveries hereunder are subject to all of Seller's terms and conditions printed herein unless modified in writing by a duly authorized officer or employee of Seller at its principal office.

### 2. SCOPE:

- A** The terms and conditions of sale contained herein apply to all quotations, bids, offers, sales and purchase orders entered into by Seller. To the extent any such terms may conflict with any other terms of buyer or any other party, these terms and conditions of Seller shall take precedence and all others are specifically rejected unless Seller expressly agrees in writing. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed an acceptance of such provisions or a waiver of any terms and conditions hereof. 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.
- B** The terms and conditions herein provided, together with any and all other terms and conditions on any quotation, sales order or invoice, and any and all attachments thereto, constitute the entire agreement between the parties relating to the sale of products described on the face thereof and no addition or modification of any provision hereof shall be binding on Seller unless made in writing by a duly authorized officer or employee of Seller at its principal office.
- C** This contract and any rights hereunder may not be assigned or transferred without Seller's written consent, and any attempt to do so without such consent shall be void ab initio.
- D** The prices set forth herein are firm and not subject to audit, price revisions or price redeterminations except as provided in paragraph 17 hereof.

- 3. PAYMENT TERMS:** All invoices are due and payable thirty (30) days from date of invoice; thereafter, interest of eighteen percent (18) per annum may be charged pro rata. No discounts are authorized. The terms of payment may be changed or credit withdrawn at any time and Seller may require full or partial payment in advance. In the event any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, Seller shall be entitled to ship any order COD or to cancel any orders then outstanding and shall receive reimbursements for reasonable cancellation charges. 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.

- 4. TAXES:** All prices are exclusive of any present or future sales, revenue or excise tax, import duty (including brokerage fees) or other tax applicable to the products covered by this order or the manufacture or sale thereof. Such taxes when applicable shall be added to the invoice and shall be paid by Buyer unless Buyer provides Seller with proper tax exemption certificate. All tax liabilities including applicable attorneys fees or other associated fees will be the responsibility of Buyer should Buyer's claim of tax exemption not be valid. Obligation of Buyer to pay taxes will continue in force should omission occur in Seller's invoice.

- 5. EX Works:** All sales are made EX Works Sunnyvale, CA. Seller's title passes to Buyer and Seller's liability as to delivery comes upon making delivery of products purchased hereunder to carrier at shipping point in good condition. In the absence of specific instruction from Buyer, Seller shall exercise its own discretion as to the method of shipment to be used.

- 6. DELIVERY:** All stipulated delivery or shipment dates are estimates only. Seller reserves the right to make deliveries of product types in installments and the contract shall be severable as to each such installment. Delay in delivery or other default or any installment of any one or more product types shall not relieve Buyer of its obligation to accept and pay for the remaining deliveries. Except as provided in paragraph 14, 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 nondelivery. All engineering or development effort will be undertaken on a best effort basis only.

- 7. ACCEPTANCE:** Buyer shall accept or reject products included in each shipment within ten (10) business days of receipt. If Buyer fails to notify Seller in writing of its rejection and the reasons therefor within such time period, Buyer will be deemed to have accepted such shipment. In the event lot acceptance procedures haven been agreed to in writing, products rejected by Buyer on that basis will be returned on Seller's prior authorization only.

- 8. 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. Seller's sole obligation hereunder shall be limited to, at Seller's option, either crediting Buyer the purchase price of, or replacing, any products for which (i) written notice of non-conformance hereunder is received within one (1) year after shipment; (ii) after Seller's authorization, are returned to Seller's factory of origin freight charges prepaid; and (iii) after examination, are disclosed to Seller's satisfaction to be nonconforming. Any such replacement shall not extend the period within which such warranty can be asserted. This warranty shall not apply to products which Seller determines have, by Buyer or another, been subjected to operating and/or environmental conditions in excess of the maximum values therefor in the applicable specifications or otherwise have been subjected to misuse, neglect, improper installation, repair, alteration or damage. THIS WARRANTY MAY BE ASSERTED BY BUYER ONLY AND NOT BE BUYER'S CUSTOMERS OR USERS OF BUYER'S PRODUCTS AND IS EXPRESSED IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE SELLER'S PART. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR SELLER ANY OTHER LIABILITIES IN CONNECTION WITH THE SALE OF THE SAID PRODUCTS. IN NO EVENT WIL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. Sellers makes no warranty as to experimental, developmental or nonstandard products sold hereunder and no warranty as to items not manufactured by Seller but included in a product sold hereunder. To the extent permitted by its contract with the supplier of such included item, Seller shall assign to Buyer any rights it may have under such supplier's warranty. Above warranty applies for packaged products only. No warranty is granted for die or unpackaged products. Ownership of such products is transferred upon Seller shipment.

- 9. TOOLING:** Unless separately stated herein, no right to any mask or any other tooling is included in the purchase price to Buyer. Seller shall not be liable for ordinary wear and tear to Buyer furnished tools.

## TERMS AND CONDITIONS OF SALE (continued)

**10. PATENTS:** Buyer shall hold Seller harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs, specifications or instructions. Except as provided in the preceding sentence, Seller shall settle or defend any suit or proceeding brought against Buyer so far as based on a claim that any product (or part thereof) manufactured by Seller, furnished under this contract and not used in combination with other products (except conventional power supplies) whether or not furnished hereunder, constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance for the settlement or defense of same, and Seller shall pay the damages and costs awarded therein against Buyer or agreed upon in such settlement. Seller shall (at its own expense) either (i) procure for Buyer the right to continue to use said product or part, or (ii) furnish a non-infringing product, or (iii) modify it so it becomes non-infringing, or (iv) refund the purchase price and transportation costs thereof upon return authorized by Seller. The foregoing states the entire liability of Seller for patent infringements by said products or any part thereof. 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.

**11. CONFIDENTIAL INFORMATION:** No information shall be deemed to be given or received in confidence by either party unless and to the extent it is covered by a separate written agreement.

**12. HIGH RELIABILITY PRODUCTS (HI-REL):** The following terms and conditions are to be considered a part of all product orders requiring (i) one hundred percent (100%) reliability screening and/or (ii) one hundred percent (100%) reliability screening and Group B inspection and take precedence over any other inconsistent terms and conditions herein:

**A** All delivery dates are estimates only and are subject to (1) Seller's HI-REL manager with respect to applicable specifications and (2) successful, first-time passage of products submitted to environmental and/or life testing required by applicable specifications set forth herein.

**B** Shipment by Seller of a quantity of products within five percent (5%) of the quantity ordered shall constitute delivery in full but Buyer shall pay only for products actually delivered.

**C** Products shall be deemed accepted by Buyer subject only to Buyer's incoming electrical inspection after successful completion of environmental and/or life testing performed by Seller at Buyer's request.

**13. FORCE MAJEURE:** Seller shall not be liable for nonperformance or delays hereunder due to causes beyond its control. These causes shall include but are not limited to acts of God, wars, production difficulties, transportation embargoes, acts of any government or agency thereof, judicial action or any or all other causes beyond its reasonable control. 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 in writing of such event or circumstance within a reasonable period after it learns of same. In no event will LOGIC Devices Incorporated be liable for any claim for special, incidental or consequential damages.

### **14. TERMINATION:**

**A** 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 hereof, which failure is not excused, pursuant to paragraph 13. In such event, Buyer as its sole remedy, shall be compensated only as follows: Seller will be liable for the product of (1) the difference between the procurement unit price actually paid by the Buyer less the unit price of this order, but in no event to exceed ten percent (10%) of the unit price of this order, multiplied by (2) the lesser of (i) the number units unconditionally released by Buyer but remaining unshipped or (ii) the number of units actually reproposed by Buyer during the thirty (30) day period following the effective date of 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 goodwill. In any event, Seller shall be entitled to payment for all products shipped up to the effective date of termination. Termination by Buyer for default, which may entitle Buyer to procurement costs hereunder shall be effective only upon Seller's failure to correct such default within a reasonable period of time but not less than forty-five (45) days after receipt by Seller of written notice specifying that default.

**B** Buyer may terminate this order for its convenience only to the extent the products were ordered for Buyer's performance of a specific agreement with another and such agreement is terminated for the other's convenience. In such event, products in possession or control of Seller, whether or not standard, which have been screened to Buyer's specifications shall be considered as delivered to the Buyer. The quantity of products delivered and deemed delivered shall be paid for by Buyer at a unit price (including HI-REL price, where applicable) equal to Seller's standard catalog price for such quantity or, if no such price exists, then a comparable price for equivalent products. Non-standard products that are in the work-in-process inventory shall be paid for by Buyer at a price based on the percentage of completion of such inventory applied to the order price for finished goods. In addition to the above, Buyer shall also promptly pay to Seller (i) costs of settling and paying claims arising out of the termination of work under Seller's subcontracts or orders relating to the products covered hereunder; (ii) reasonable costs of settlement, including accounting, legal and clerical costs; and (iii) twenty percent (20%) of the total purchase of the products ordered hereunder, including direct and indirect costs of production, administration and reasonable profit.

**15. GOVERNMENT CONTRACT PROVISIONS:** 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 Requisition that are mandatorily required by Federal Statute or Regulation to be included in the U.S. Government subcontracts shall be incorporated herein by reference.

**16. APPLICABLE LAW:** The validity, performance and construction of this contract shall be governed by the laws of the State of California, to be determined in the County of Santa Clara.

### **17. PRICE ESCALATION CLAUSE:**

**A** The prices acknowledged are subject to adjustment at Seller's option, to reflect increases in precious metals costs. Any such addition, surcharge or adjustment will be calculated according to a formula that takes into account an independently established and publicly available index relating to the precious metal concern. Such adjustments, if any, will be invoiced as an increment to the unit price confirmed in Seller's acknowledgment and Seller's invoice will reference the base against which adjustments are made.

**B** In addition, Seller reserves the right to increase the price(s) acknowledged in the event of unforeseeable major increases in other manufacturing costs. Buyer shall the right to reject such price adjustments within ten (10) business days of receipt of written notice from Seller and in the event Seller receives such notice from Buyer, Seller shall have the right to terminate the order for remaining unshipped items. Buyer's acceptance of the increase shall be deemed conclusive in the event Buyer does not provide written rejection to Seller within the ten (10) day period.