

NANOTECH SEMICONDUCTOR Ltd.  
STANDARD TERMS AND CONDITIONS OF SALE

All purchases by Buyer from Nanotech Semiconductor, Ltd., (hereinafter referred to as "Seller") and sales by Seller to Buyer shall be governed exclusively by these terms and conditions of sale. Notwithstanding the 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 not add to nor vary these terms whether or not these terms are referenced therein. Buyer may assent to Seller's Terms and Conditions of Sale by written acknowledgment, implication and/or by acceptance or payment of goods ordered any of which will constitute assent.

1. **TERMS AND PAYMENTS:** Seller's standard terms of payment are Net thirty (30) days from date of invoice, payable in U.S. Dollars. No discounts are authorized. Pending credit approval, Seller may require payment in advance by cash, certified check, C.O.D., or irrevocable Letter of Credit (L/C). All sales are subject to prior approval of Seller's Credit Department. The amount of credit or terms of payment may be changed by Seller at any time for any reason. If Buyer fails to make payment when due or defaults in any way, Seller (1) reserves the right to withdraw credit and thereby suspend or cancel performance under any or all Purchase Orders or (2) reschedule in accordance with Article 7C. Each shipment shall be separately invoiced and paid for without regard to other shipments.
2. **TAXES:** All prices are exclusive of National or local sales, use, excise, or similar taxes applicable to the sale or to the products sold. Any such tax(es) shall be separately itemized on Seller's invoice(s) and paid by Buyer, or, in lieu thereof, Buyer shall furnish Seller a properly executed tax exemption certificate prior to shipment.
3. **MINIMUM BUY QUANTITIES:** Buyer acknowledges that certain products offered by Seller and contained in Seller's price list are subject to minimum buy quantities.
4. **DELIVERY:** All deliveries will be made in accordance with the delivery terms designated on the front of Seller's Acknowledgment. Claims against Seller for shortages must be made within 10 days after receipt of shipment. Prices include packaging in accordance with Seller's standard practice. Seller may make deliveries in installments with appropriate partial invoicing issued there for. Delivery stated represents Seller's best estimate of when the products will be shipped. Seller is not liable for losses or added costs due to delivery delays.
5. **INSPECTION:** Products furnished hereunder shall be inspected by Seller at Seller's plant for conformance to applicable specifications in accordance with Seller's standard procedure for Quality Assurance, Inspection and test of such products.
6. **FORCE MAJEURE:** Seller shall not be liable in damages for failure to deliver or for delay in delivery arising out of causes beyond its reasonable control including, but not

limited to, acts of God or of the public enemy, acts of any Governmental authority, fires, floods, unusually severe weather, epidemics, quarantine restrictions, strikes, labor disputes or shortages of labor, freight embargoes, or inability to secure necessary parts and materials. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS) DUE TO ANY FAILURE TO DELIVER OR DELAY IN DELIVERY HOWEVER CAUSED.

## 7. CANCELLATION/RESCHEDULING

A. CANCELLATION FOR DEFAULT: Both Buyer and Seller reserve the right to cancel this Agreement by written notice for default, without prejudice to their other rights and legal position, under the following conditions: 1) Filing of a petition in bankruptcy or assignment for the benefit of creditors by the other party or the adjudication of such other party a bankrupt, or the appointment of a receiver for the business of the other party; 2) Material breach by the other party of the provisions of this Agreement, which breach has not been cured within sixty (60) days written notice of said breach.

B. CANCELLATION FOR CONVENIENCE: Buyer may cancel this Agreement in whole or in part, by written notice to Seller strictly in accordance with the provisions contained herein. In the event of such cancellation, Buyer will be subject to pay a percentage of the purchase price of products, in accordance with the following schedule:

### (1) Standard products:

- (a) Purchase Orders or Purchase Order line items scheduled for delivery within zero to thirty (0 to 30) days of the original scheduled date are non-cancelable. Buyer agrees to accept delivery and pay 100% of the purchase price of such Purchase Order line item(s).
- (b) Purchase Orders or Purchase Order line items scheduled for delivery within thirty to sixty (30 to 60) days of the original scheduled date are cancelable. Buyer agrees to pay 50% of the purchase price of such Purchase Order line item(s).
- (c) Purchase Orders or Purchase Order line items scheduled for delivery outside of sixty (60) days of the original scheduled date are cancelable.

(2) Custom products: Purchase Orders or Purchase Order line items for custom products scheduled for delivery within zero to sixty (0 to 60) days of the original scheduled date are non-cancelable. Buyer agrees to accept delivery and pay 100% of the purchase price of such Purchase Order or Purchase Order line item(s) for custom products. For such products canceled more than sixty (60) days prior to scheduled delivery date, Buyer agrees to pay 100% of the purchase price for all such products which Seller has completed prior to receipt of Buyer's notice of cancellation and, in addition, to reimburse Seller for its costs incurred for work in process and for the purchase of materials and services related to the canceled products. Seller shall make every reasonable effort to minimize cancellation charges.

**C. RESCHEDULING:** (1) If Buyer fails to make payment when due or if Buyer requests, Seller will, at its discretion, on a one-time only basis, and at no charge to the Buyer, reschedule Purchase Order(s) or Purchase Order line item(s) for standard device products, custom device products, or custom board products, that are scheduled for delivery less than thirty (30) days, sixty (60) days, or ninety (90) days, respectively, from the failure to pay or Buyer's written request, to a reschedule date to be determined by Seller. (2) Seller will, at Buyer's written request, reschedule delivery of any: (i) standard device product scheduled for delivery in excess of thirty (30) days of Seller's receipt of Buyer's request to reschedule; (ii) custom device product scheduled for delivery in excess of sixty (60) days of Seller's receipt of Buyer's request to reschedule; or (iii) custom board product scheduled for delivery within ninety (90) days of Seller's receipt of Buyer's request to reschedule. All rescheduled custom device and board products become non-cancelable. Except at Seller's option, in no event may any order be rescheduled earlier than the Seller's then current lead-time. Reschedules shall not exceed sixty (60) days from the original date of shipment, or Seller's then current lead-time if it occurs later. If any Purchase Order or line item previously rescheduled in accordance with (1) above, is rescheduled a second time, Buyer acknowledges that the entire Purchase Order or line item is subject to cancellation by Seller.

#### 8. END OF LIFE REQUIREMENTS:

Seller reserves the right to discontinue manufacture of any product ("End of Life Product"). Any product designated as an End of Life Product will be identified to Buyer in writing. Buyer acknowledges that orders placed for End of Life Products cannot be cancelled or rescheduled and are non-returnable, except with respect to non-conforming product in which case the provisions of Article 10 will apply.

**9. PRODUCT CHANGES:** Seller reserves the right at any time and without notice to Buyer, to make changes in the product(s) which do not adversely affect the form, fit or function of the product(s).

**10. WARRANTY:** Seller warrants that each product furnished under this Agreement will, at the time of initial shipment, be in conformity with Seller's published specifications and free from defects in material and workmanship. Seller will at Seller's option repair or replace any product that does not conform to this warranty or take back the nonconforming product and refund the monies paid by Buyer for such product provided Seller is notified of the nonconforming product as follows: (i) within one (1) year from initial shipment of any of Seller's standard product or any CMOS integrated circuit device (unless separate warranty terms are designated on the front of Seller's acknowledgment containing these terms), excluding Evaluation Kits; (ii) within ninety (90) days for any Evaluation Kit, or (iii) within thirty (30) days after discovery by Buyer that such product does not conform, whichever is earlier. Buyer shall notify Seller in writing of any defects and obtain Seller's approval pursuant to the clause entitled "Product Returns", before returning any product. The warranty on repaired or replacement product shall be the greater of ninety (90) days from the time of shipment or the remaining term of the original warranty.

Transportation charges on any product returned from Buyer to Seller shall be at Buyer's expense, and on any product returned from Seller to Buyer shall be at Seller's expense. The warranty provided herewith shall be void in the event the product (1) fails, malfunctions or is damaged as a result of improper handling, installation, maintenance, removal, modification or repair; or (2) is accidentally damaged, subjected to abuse (including electrostatic discharge) or improper use; or (3) is altered or damaged such that Seller is unable to verify the defect with its normal test equipment.

FOR ALL SELLER'S PRODUCTS, EXCEPT AS TO TITLE, THERE ARE NO WARRANTIES EXPRESS OR IMPLIED, OR ANY AFFIRMATION OF FACT OR REPRESENTATION, EXCEPT AS SET FORTH HEREIN. UNLESS STATED OTHERWISE HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING SHALL CONSTITUTE THE ONLY WARRANTY GRANTED BY SELLER.

11. **PRODUCT RETURNS:** Returns of any type, including warranty repair returns, must be approved by Seller in writing and all return documentation must contain Seller's return authorization identification number. Returned shipments not approved by Seller, or not properly identified, will be refused by Seller. The request for return approval must include serial number, part number, lot number and date code, when possible, and full identification of products to be returned. Products returned by Buyer must be identified as to the nature of defect or problem. Proper handling procedures must be used in the packing and shipping of all returned products. Products must be returned in the same or equivalent container in which they were shipped with the Returned Materials Authorization ("RMA") number clearly visible on the package. Buyer retains title to products returned for repair.

12. **DIE SALES PRODUCTS:** The recommended maximum duration that die mounted on film should remain on that film is **6 months** from the date of wafer mount. This wafer mount or expiry date will be indicated on the wafer carrier.

Exposed die or wafers should not be kept for more than eight hours in the atmosphere of the production area. They should be transferred to a suitable storage container when not in use in production or at the end of the production shift.

When not in process, devices should be stored in an inert (dry air or nitrogen) environment, preferably in the original shipping container or one suitable for the storage of bare die or wafers.

The following storage conditions are recommended for Nanotech die devices:

Atmosphere: 99% Nitrogen or dry air

Temperature: 17°C - 28°C

Humidity: RH<30% (A minimum of 7%RH is desirable to avoid electrostatic

damage)

Particle Count: ISO 14644-1 Class 6

In short-term storage environments, the humidity conditions are normally satisfied by supplying the environment with a continuous purge of filtered dry air or dry nitrogen. However, care should be taken to ensure that any static charge build-up resulting from the dry atmosphere does not damage die or wafers.

13. TECHNICAL ASSISTANCE: Seller's warranty shall not be enlarged, and no obligation or liability shall arise out of Seller's rendering of technical advice, facilities or service in connection with Buyer's order or the products furnished.

14. LIMITATION OF LIABILITY: NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE HEREIN, SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, REMOTE OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFITS) ARISING FROM OR CAUSED, DIRECTLY OR INDIRECTLY BY THE USE OF PRODUCT BY CUSTOMER, OR BY THE PERFORMANCE OR FAILURE OF THE SELLER TO PERFORM UNDER THIS AGREEMENT, OR BY ANY OTHER ACT OR OMISSION OF SELLER, OR BY ANY OTHER CAUSE. FURTHER, IN NO EVENT WILL SELLER'S TOTAL LIABILITY TO BUYER FOR ANY CAUSE EXCEED THE SUM PAID TO SELLER BY BUYER FOR THE PRODUCTS SOLD HEREUNDER.

15. PATENT INDEMNITY: Unless provided otherwise in these terms and conditions, Seller shall hold harmless Buyer from costs, loss, damage and liability, except indirect and consequential damages, which may be incurred on account of a finding of infringement of any United Kingdom patent by the product furnished to Buyer under this Agreement, and Seller shall, at its own expense, defend all claims, suits or actions alleging such infringement of patents, against Buyer, Buyer's agents or its customers, provided Seller is promptly notified of such claims, suits and actions, given all evidence in Buyer's possession, and given reasonable assistance in and sole control of the defense thereof and all negotiations for its settlement or compromise. In the event of such a claim of infringement, Seller's obligation under this contract shall be fulfilled if Seller: (i) obtains a license for Buyer to continue the use or to sell the infringing product purchased from Seller, or (ii) refunds the purchase price paid to Seller by Buyer for such infringing product and removes such product, or (iii) replaces or modifies the infringing product so as to be commercially substantially equal but non infringing. Buyer agrees that the foregoing indemnification shall not apply and moreover, shall be extended to Seller for any claim of U.S. patent infringement which may be brought against Seller which arises because of compliance by Seller with Buyer's particular hardware or software design requirements, specifications, instructions, or the incorporation of Seller's software or product into Buyer's product or design, which is accused of infringing. Buyer grants to Seller the benefit of any license to Buyer under any patent that may be the subject of an infringement allegation hereunder, to the extent permitted by said license. Seller shall have no liability for any costs, loss or damages resulting from: the use of any product

furnished hereunder in combination with any other product not supplied by Seller; the willful acts of Buyer; or any settlement or compromise incurred or made by Buyer without Seller's prior written consent. Seller shall not have any liability to Buyer under any provision of this section if the patent infringement claim or finding is based upon the use of any software or hardware not furnished by Seller, or if the products are used in a manner for which the products were not designed. The above states the entire liability of Seller with respect to infringement of patents by any software or by the hardware or products utilizing such software, or by operation of such hardware or products, and is in lieu of all warranties, express, implied or statutory, in regard thereto.

16. CONFIDENTIALITY: Each party covenants and agrees that it will, notwithstanding that this Agreement shall have terminated or expired, keep in confidence and prevent the use or disclosure to any person or persons all technical information and data (hereinafter referred to as ""data"") which is designated in writing, or by appropriate stamps, or legend by the disclosing party, to be of a proprietary or confidential nature, and is received from the other under this Agreement and which pertains to proprietary or confidential data regarding its technological techniques, inventions or research and development, provided; however, that neither party shall be liable for disclosure of any data if the same: (A) was in the public domain at the time it was disclosed; or (B) was known to the party receiving it at the time of disclosure; or (C) is disclosed inadvertently, despite the exercise of the same degree of care as each party takes to preserve and safeguard its own proprietary information, but in no event, less than a reasonable degree of care; or (D) is disclosed with the prior written approval of the disclosing party; or (E) is disclosed after three (3) years from the date of this Agreement; or (F) was independently developed by the receiving party; or (G) becomes known to the receiving party from a source other than the disclosing party without breach of this Agreement by the receiving party; or (H) is required by law to be released.

17. ATTORNEYS FEES: In the event that any action is brought to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to the amount of any judgment, its attorneys fees and expenses.

18. APPLICABLE LAWS: This Agreement shall be governed by and construed in accordance with the laws of England, and is subject to all other applicable governmental laws and regulations, including but not limited to applicable regulations and requirements of any British regulatory agency concerning the export of products. This Agreement shall become effective only if and when all necessary permits or licenses required for export of such products or other performance required hereunder shall have been obtained.

In the event any of the provisions of this Agreement become subject to revision or nullification by ruling of an appropriate court of competent jurisdiction, the remaining terms and conditions contained herein shall continue in full force and effect.

19. ASSIGNMENT: This Agreement may not be voluntarily assigned in whole or in part, by either party without the prior written consent of the other party, except upon the merger, consolidation or other transfer of all or substantially all of the assets of either

party. Either party may, however, assign this Agreement to its wholly or majority owned subsidiaries without the prior written consent of the other, as long as the transferor remains liable hereunder.

**20. TITLE AND SECURITY INTEREST:** Title to articles sold hereunder shall pass from Seller to Buyer in accordance with the terms designated on the front of Seller's Acknowledgment, or as otherwise agreed to in writing by the parties. However, notwithstanding passage of title, Seller reserves a purchase money security interest in the Products in the amount of the purchase price of such Products to secure Buyer's obligations hereunder. Buyer hereby appoints Seller as its agent and Attorney-in-Fact to execute any financing statements under the Uniform Commercial Code and any appropriate amendments thereto on Buyer's behalf which Seller deems necessary to protect Seller's interest in the Products.

**21. PRICES:** The prices reflected in Seller's acknowledgment may be adjusted to the prices in effect at the time of delivery.

**22. LIFE SUPPORT POLICY:** Seller's products are not designed, intended, authorized or warranted to be suitable for use in life support applications, devices or systems. Buyer agrees not use the purchased products for life support applications, and further agrees to defend, indemnify, and hold harmless Seller and its agents from and against any and all actions, suits, proceedings, costs, expenses, damages, and liabilities including attorney's fees arising out of or in connection with the breach of Buyer's representation in this Article 21.

**23. ENTIRE AGREEMENT:** This Agreement embodies the entire agreement between the parties hereto and supersedes all other prior agreements between the parties in connection with the sale of products described herein. This Agreement cannot be modified, supplemented or rescinded except in writing and signed by both parties. Neither party shall be bound by or liable to the other for any representation, promise, or inducement made by any agent or person in the other's employ, not embodied in this Agreement.