



## **Advanced Semiconductor, Inc.**

An ISO 9001:2000 Certified Company

7525 Ethel Avenue, North Hollywood, CA 91605 United States of America

Tel: (818) 982-1200 Fax: (818) 765-3004 <http://www.adsemi.com/>

### **TERMS AND CONDITIONS OF SALE**

#### **1. ACCEPTANCE OF ORDERS/TERMS**

All orders are subject to acceptance by Seller. Acceptance of orders is expressly made conditional on Buyer's assent to these terms and conditions. Any terms and conditions of the Purchase Order or other similar instrument which are in addition to or inconsistent with Seller's terms and conditions shall not be binding and shall not apply, unless specifically agreed to in writing by Seller. These Terms and Conditions set forth the entire understanding between the parties with reference to the subject matter hereof.

#### **2. DELIVERY**

Seller's delivery dates represent its best estimate on the basis of current schedules.

#### **3. TERMS OF PAYMENT**

Payment of the price for goods or services are as specified in Seller's Proforma invoice or contract.

#### **4. PRICES AND TAXES**

Unless otherwise specified, the price of the goods and services purchased hereunder is exclusive of all taxes, import duties, fees, excises, and/or changes, which are now or may thereafter be imposed (whether by foreign, federal, state, municipal or other public authority), with respect to the sale of the goods and services or this order itself. If Seller is required to pay any taxes, duties or fees, Buyer shall reimburse Seller immediately upon receipt of Seller's invoice thereof.

#### **5. CHANGES**

The parties may at any time request changes to the order within the general scope of work called for. If such changes cause an increase or decrease in the price of the items and/or an extension of the delivery schedule, Buyer shall be notified to this effect and Seller shall not be obligated to proceed with such changes until it receives a change order subject to the terms of Paragraph 1 above. Any change must be approved by the Seller.

#### **6. FORCE MAJEURE**

Neither party shall be liable for any loss or damage hereunder due to unforeseen circumstances or to causes beyond its reasonable control, including without limitation strikes, lockouts, riots, wars, acts of God, fires, floods, natural disasters, inability to obtain labor, delays caused by suppliers, subcontractors or by other parties, material shortages, curtailment of or inability to obtain sufficient electrical or other energy supplies, licensing and/or exporting delays or compliance with governmental laws, regulations, or orders. Prompt notice of any such delay beyond either party's control shall be given to the other party. Any such cause shall extend delivery dates to the extent of the delay so incurred.



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### **7. SHIPMENT/RISK OF LOSS**

Unless otherwise agreed upon, all prices/shipments are F.O.B. Seller's plant. Risk of loss and title shall pass to buyer upon delivery to carrier. Buyer may select the manner of shipment and the carrier by providing Seller with written shipping instructions at the time of placing the order. In the absence of specific instructions, Seller, reserves the right to make alternative arrangements if necessary and Seller will ship by the method it deems most appropriate. When Seller obtains and is the applicant on licenses required by the U.S. Government, Seller's broker/freight forwarder will be used.

### **8. EXPORT REQUIREMENTS**

Buyer acknowledges that export from the United States of America, or re-export from another country of the goods or technical data furnished under this order may require prior approval of the U.S. Department of State or Department of Commerce. Before making any transfer, export, or re-export of such goods or data, either in their original form or after being incorporated through an intermediate process into other end goods to a third party, Buyer agrees to obtain the prior approval of such transactions from the proper U.S. Government agency in accordance with applicable U.S. laws or regulations.

### **9. CANCELLATIONS**

Orders cannot be cancelled or modified by Buyer without the written consent of Seller and in no event shall any order be modified, cancelled for any portion thereof manufactured, or in the process of manufacture, at the time request for modification cancellation is received by Seller except upon terms satisfactory to Seller which shall protect and indemnify Seller against all loss.

### **10. LIMITATION OF LIABILITY**

**SELLER'S LIABILITY ON ANY CLAIM OF ANY KIND, OR LOSS OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ORDER(S) OR FROM THE PERFORMANCE OR BREACH HEREOF, INCLUDING BUT NOT LIMITED TO ANY DEFAULT TERMINATION OR FROM THE MANUFACTURE, SALE, DELIVERY, REPAIR, USE OR RESALE OF ANY PRODUCTS(S) AND/OR SERVICES(S) COVERED BY OR FURNISHED UNDER THIS AGREEMENT SHALL IN NO CASE EXCEED THE PRICE CHARGED FOR THE PRODUCT, SERVICE OR PART WHICH GIVES RISE TO THE CLAIM. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WITH RESPECT TO ANY SUCH CLAIM, ANY PRODUCT(S), SOLD OR ANY SERVICE(S) RENDERED.**

### **11. ASSIGNMENT**

Buyer shall not assign this Agreement in whole or in part without the prior written consent of Seller which consent shall not be unreasonably withheld.



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### **12. WARRANTY**

**Seller warrants the products against defects in workmanship and materials for a period of maximum 12 months or as specified in the Proforma invoice or contract, under normal use and service from date of shipment and to no further extent. Seller's obligation under this warranty is limited to replacing or repairing or giving credit for any of said products which shall, within thirty (30) days after failure be returned to Seller's place of origin, transportation charges prepaid and which are, after examination, determined by Seller to be defective. This warranty shall not apply to any product which shall have been repaired or altered, except by Seller or which shall have not been maintained in accordance with any handling or operating instructions supplied by Seller, or which shall have been subjected to extensive physical or electrical stress, misuse, abuse, negligence, improper installations supplied by power supplies or accidents. The aforementioned provisions do not extend the original warranty period of any product which has either been repaired or replaced by Seller. Buyer shall contact Seller for an authorized Return Material Authorization number and notification that Seller has obtained the appropriate import license, if a license is applicable. NO PRODUCT WILL BE ACCEPTED BACK, UNLESS AN RMA NUMBER ISSUED BY SELLER IS INCLUDED ON THE OUTSIDE OF THE PACKAGE.**

**SELLER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO BUYER FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES FOR LOSS OF WHATEVER NATURE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THE SALE BY SELLER OR THE RESALE OR USE BY BUYER OF ANY PRODUCT(S) AND/OR SERVICE(S) DELIVERED HEREUNDER. THIS WARRANTY IS STATED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, OR OTHERWISE MADE INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON SELLER'S PART IN CONNECTION WITH THE SALE OF SAID PRODUCTS, AND SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR SELLER ANY OTHER OBLIGATION OR LIABILITIES IN CONNECTION WITH THE SALE OF THE PRODUCTS.**

### **13. PROPRIETARY INFORMATION**

**All of the information, know-how, drawings, designs, specifications and other documents prepared by Seller and particularly within Seller's knowledge and which may be furnished to Buyer and designated as proprietary will not be used by Buyer other than for construction, operation or maintenance of the products without the prior written authorization of Seller. Buyer shall indemnify and hold Seller harmless from any loss, liability or expense suffered by Seller as a result of the Buyer's negligent disclosure to third parties.**



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### **14. APPLICABLE LAW**

**This order, and the Terms and Conditions of Sale, and the performance hereunder shall be construed and enforced in accordance with the laws of the State of California, United States of America.**

### **15. ARBITRATION**

**Any controversy or claim arising out of or related to this order shall be settled by arbitration in the City of North Hollywood, State of California in accordance with the Commercial Arbitration Rules of the American Arbitration Association by an arbitrator appointed in accordance with those rules. The determination by the arbitrator shall be final and binding and shall be enforceable in any court or competent jurisdiction. The prevailing party shall be entitled to an award of its attorneys' fees and costs.**

### **16. WAIVER**

**A waiver of any of the terms or conditions hereof shall not be deemed a continuing waiver, but, shall apply solely to the instance to which the waiver is directed.**

### **17. ENTIRE AGREEMENT**

**The terms and conditions as set forth herein, together with any other document incorporated by reference, constitute the entire agreement between Buyer and Seller with respect to any order. No modification hereof, shall be of any force and effect unless in writing and duly signed by authorized representatives of each party.**