

**MICROSEMI CORPORATION**  
**SALES ORDER TERMS AND CONDITIONS**  
**APPLICABLE ONLY WHEN MICROSEMI IS SELLING PRODUCTS**



**1. GENERAL.** (a) These Terms and Conditions, as may be changed by Seller (defined below) from time to time, constitute an integral part of any offer to sell, or any sale, made by Microsemi Corporation as well as any of its direct and indirect subsidiaries (each a "Seller") to sell or supply goods and services to any person or entity ("Buyer") and shall govern the sale and supply of the goods and services. Any additional or different terms or conditions proposed by Buyer in any purchase order or otherwise are hereby rejected. Buyer's acceptance of all of the terms and conditions herein is an express condition to the formation of any contract of sale between Buyer and Seller. (b) No order by Buyer, regardless of whether a deposit has been accepted, shall be binding upon Seller until a credit review has been completed and the order has been accepted by an officer of Seller at its corporate headquarters in Aliso Viejo, California, regardless of Seller's point of manufacture or point of shipment. (c) If a contract is not earlier formed by mutual agreement in writing signed by an officer of Seller based at its corporate headquarters in Aliso Viejo, CA., acceptance of any goods and services shall be deemed acceptance of the terms and conditions stated herein.

**2. PRICES.** (a) Unless otherwise stated in writing signed by an officer of Seller based at its corporate headquarters in Aliso Viejo, CA, all prices quoted by Seller are based on U.S. dollars, Incoterms 2010 EXW (Ex Works) basis (Buyer shall be liable to pay Seller's charges for transport, packaging and insurance), and are effective for thirty (30) days from the date of quotation. (b) Transportation shall be by common carrier, at Buyer's risk and expense, with the charges therefore added to the quoted prices. (c) Should Buyer postpone the delivery date, Seller shall have the right to adjust the price of the undelivered goods and services to Seller's price at the time of shipment of the goods and performance of services. (d) Unless otherwise agreed to in writing signed by an officer of Seller based out of Seller's corporate headquarters in Aliso Viejo, CA, Seller reserves the right to adjust its prices for any goods scheduled for shipment more than sixty (60) days after Seller's acceptance of Buyer's order. (e) All of Seller's published prices or quoted prices are subject to change without notice.

**3. TAXES.** Any sales, use or manufacturer's tax which may be imposed upon the sale or use of goods and services, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction, shall be in addition to the quoted prices and shall be paid by Buyer. If Buyer is exempt from any taxes, Buyer shall furnish to Seller an appropriate tax exemption certificate, in a form acceptable to the taxing authority or authorities having jurisdiction over such tax matters.

**4. DOMESTIC TERMS OF PAYMENT.** (a) Unless otherwise agreed to in writing signed by an officer of Seller based out of its corporate headquarters in Aliso Viejo, CA., the payment terms on orders for shipments made to the continental United States are "net thirty" (30) days from the date of invoice. All charges are payable in U.S. dollars. (b) A service charge of 1 1/2 percent per month, not to exceed the maximum rate allowed by law, may be charged on any portion of Buyer's outstanding balance that is not paid within thirty (30) days after invoice date.

**5. TERMS OF SHIPMENT.** All shipments are made Incoterms EXW (Ex Works), according to Incoterms 2010 as issued by the International Chamber of Commerce. Shipments are made in a commercially reasonable manner as determined by the Seller. Title and risk of loss or damage shall pass to Buyer at the Ex Works named site. Partial and/or installment shipments are authorized and shall be paid for when due. Shipment schedules are approximate and Seller will use commercially reasonable efforts to complete shipment as indicated. Sub-assemblies for the equipment may be shipped from different Ex Works named sites and integrated during installation.

**6. PURCHASE PRICE SECURITY INTEREST.** (a) It is agreed by Buyer and Seller that, as to the goods which are the subject of any contract of sale and all accessions thereto and proceeds thereof, a purchase money security interest shall attach with Seller as secured party, and with

respect to goods which are resold in any form by Buyer, Seller shall be the assignee of any security interest which Buyer retains or obtains in such goods until Buyer has made payment in full therefore in accordance with the terms hereof. (b) Buyer shall be in default (i) if it fails to make any payment as provided for herein; (ii) if bankruptcy, receivership or insolvency proceedings are instituted by or against Buyer; or (iii) if Buyer makes any assignment for the benefit of creditors. (c) Upon Buyer's default, Seller shall have all the rights and remedies of a secured creditor as well as those of a seller of goods, under the Uniform Commercial Code and any other applicable law, including but not limited to, the right to take possession of the goods. (d) Seller may remedy any default and may waive any default without waiving the default remedied or without waiving any prior or subsequent default. (e) Buyer agrees to cooperate fully and assist Seller in perfecting and/or continuing Seller's security interest and to execute such documents and accomplish such filings and/or recordings thereof as Seller may deem necessary for the protection of Seller's interest in the goods. (f) The making of any contract of sale by Buyer and Seller shall be consummated by their signing thereof and this security interest shall be deemed in full force and effect.

**7. TERMINATION AND CANCELLATION.** (a) Except for Purchase Orders for goods and services of Seller's subsidiary known as Microsemi Frequency and Time Corporation ("FTD"), Buyer may terminate a Purchase Order in whole or, from time to time, in part upon sixty (60) days advance written notice for standard goods and one hundred twenty (120) days advance written notice for custom goods. In any such event Buyer shall be liable for termination charges, which shall include a price adjustment based on the quantity of goods actually delivered, and all costs, direct or indirect, incurred or committed for any sales contract together with anticipated profits, purchase orders placed for goods of FTD may not be canceled. (b) Unless otherwise agreed upon in a writing signed by an officer of Seller based out of Seller's corporate headquarters in Aliso Viejo, CA, Seller may cancel all quantities not shipped to Buyer within twelve (12) months of Purchase Order date. In the event that Seller does not ship all quantities or complete delivery of services because of any action or requisite inaction on the part of Buyer and elects to cancel any quantity not so shipped, Buyer shall be liable for termination charges as provided herein. (c) If in Seller's sole and absolute discretion, Buyer's financial condition does not justify the terms of payment specified herein, Seller may, without any liability to Seller, cancel any sales contract for goods and services or require Buyer to immediately pay for all goods and services which have been delivered and pay in advance for all goods and services to be delivered.

**8. NON-WAIVER OF DEFAULT.** In the event of any default by Buyer, Seller may decline to supply further services or make further shipments of goods. If Seller elects to continue to make shipments or supply goods and services, Seller's action shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies for any such default.

**9. U.S. GOVERNMENT CONTRACTS.** If the goods and services to be furnished under any sales contract between the Buyer and the Seller are to be used in the performance of a U.S. Government contract or subcontract, any U.S. Government procurement regulations shall not be incorporated herein by reference (except as may be specified in a separate document signed by an officer of Seller based in Seller's corporate offices in Aliso Viejo, CA). Unless otherwise specifically agreed upon in writing, certified cost or pricing data will not be provided and CAS, Defective Pricing, and Audit requirements will not apply for goods and services purchased hereunder.

**10. CONTINGENCIES.** Seller is not liable, either wholly or in part, for nonperformance or a delay in performance due to force majeure or contingencies or causes beyond the reasonable control of Seller, including but not limited to, shortage of labor, fuel, raw material or machinery or technical or yield failure. Seller may, in its sole and absolute discretion, allocate production and deliveries in the event of shortage of goods.

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**11. WARRANTY.** The warranties set forth in this paragraph are given in lieu of and expressly disclaim any and all other warranties, express, implied or statutory, including but not limited to any implied warranties of merchantability or fitness for a particular purpose, non-infringement and of any other warranty obligation on the part of Seller, except as expressly set forth immediately below. Seller warrants the goods and services against faulty workmanship or the use of defective materials; for a period set forth herein below; and that at the time of delivery, Seller has title to the goods free and clear of any and all liens and encumbrances. These warranties are the only warranties made by Seller and can be amended only by a written instrument signed by an officer of Seller at its corporate headquarters in Aliso Viejo, California. Seller's warranties shall irrevocably expire immediately after the following periods from date of shipment: All Unassembled Semiconductor Devices (Die or Wafer Form) - thirty (30) days; Assembled Semiconductor Devices and Electronic Components or Systems - one (1) year; repaired or replacement parts for Electronic Systems - 90 days; services - thirty (30) days. Seller provides no warranty for (i) Software (The term "Software" as used in these terms and conditions means computer programs in machine readable code, provided on magnetic tape, disk, semiconductor device or other storage media and includes all documentation used to describe, maintain and use such programs as well as any improvements, revisions, updates and enhancements provided at the option of Seller from time to time) or Software development systems which are supplied free of charge to facilitate Buyer's use of associated goods, (ii) prototypes of goods, (iii) evaluation boards for goods or (iv) goods subject to development or experimental work, all of which being supplied "as is, with all defects." Continued use or possession of the goods after expiration of the applicable warranty period stated above shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of Buyer. Any mechanical alteration of the goods or/including any repair or attempted repair, additional testing or screening shall void any warranty obligation, implied or statutory, unless such screening was approved by Seller. Seller's warranties as herein above set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of, Seller's rendering of technical advice or service in connection with Buyer's order of the goods furnished hereunder.

**12. PATENT INDEMNITY.** (a) Buyer shall indemnify, defend and hold harmless Seller against any expense and loss resulting from: (i) any claim of actual or alleged infringement or contributory infringement of any U.S or Canadian patent, copyright mask work, or other industrial or intellectual property rights of any other person granted or used at the time arising from compliance by Seller with Buyer's designs, specifications or instructions; (ii) any claim of actual or alleged infringement which relates to the use or sale of any of the goods or the provision of any of the services in a manner or for a purpose not specified by Seller or to any modification of the goods or services unauthorized by Seller or to the use or sale of any goods, equipment, device, machine process which includes any of the goods so supplied; or (iii) any infringement occurring after Buyer has received notice of such claim or other communication alleging the infringement unless Seller has given written permission for such continuing infringement. (b) The sale or supply of goods and services by Seller shall neither convey nor grant, except as otherwise provided above, any right, title, interest or license, by implication, estoppel, or otherwise, under any patent, copyright, mask work, or other industrial or intellectual property rights covering combinations of the goods with other goods, equipment, devices or machines or processes in which any of the goods may be used. (c) Due to the complexity of manufacturing techniques for electronic components and of the intellectual property rights pertaining thereto, Seller is not able to declare that its goods do not infringe the intellectual property rights of third parties. In the event that a third party makes a claim alleging that goods delivered to Buyer infringe such third party's intellectual property rights, Seller may at its option (but shall not be obligated to) defend the claim or seek a compromise. If any goods become the subject of an unfavorable judgment, Seller may, at its option, modify the goods in such a way as to avoid infringement. If such a solution shall be impracticable for economic and/or technical reasons, Seller may demand the return of the goods supplied and shall reimburse the Buyer up to a maximum equal to the

amount paid by the Buyer for the goods deemed to infringe and so returned the lesser of the value for use to date or book value. If the infringement by either party's goods is alleged prior to completion of delivery of the goods under the contract of sale, Seller may decline to make further shipments without being in breach of the contract of sale. The above provisions constitute the entire undertaking of Seller towards Buyer in the event of any intellectual property right claim of a third party with regard to goods supplied by Seller.

**13. DISCLAIMER OF LIABILITY.** (a) In no event shall Seller be liable for any loss of use, revenue, profit, or for any direct, indirect, special or consequential damages arising out of, connected with, or resulting from the sale, supply and use of goods and services. (b) If an unauthorized return is initiated by the Buyer, Seller will not be liable for any freight or handling charges incurred. The goods sold hereunder have been subject to limited testing and should not be used in conjunction with mission-critical equipment or applications. Any performance specifications are believed to be reliable but are not verified, and Buyer must conduct and complete all performance and other testing of the goods, alone and together with, or installed in, any end-goods. Buyer shall not rely on any data and performance specifications or parameters provided by Seller. It is the Buyer's responsibility to independently determine suitability of any goods and to test and verify the same. The information provided by Seller covering any goods and services hereunder is provided "as is, where is" and with all faults, and the entire risk associated with such information is entirely with the Buyer.

**14. SELLER'S DISCLAIMER FOR LIFE SUPPORT APPLICATIONS.** Except as otherwise specifically agreed with Buyer in a writing signed by an officer of Seller based at its corporate headquarters in Aliso Viejo, CA, Seller's goods are not designed, intended, or authorized for use as components in systems intended for surgical implant into the body, in other applications intended to support or sustain life, or for any other application in which the failure of the Seller's product could create a situation where personal injury or death may occur (collectively, "Life Support Applications").

**15. BUYER'S INDEMNITY FOR LIFE SUPPORT APPLICATIONS.** Buyer agrees to indemnify and hold Seller, and its officers, employees, subsidiaries, affiliates, agents, sales representatives and distributors harmless against all claims, costs, damages and expenses, and attorneys' fees and costs arising, directly or indirectly, out of any claims of personal injury, death or otherwise associated with the use of the goods in Life Support Applications, even if such claim includes allegations that Seller was negligent regarding the design or manufacture of the goods.

**16. DESIGNS AND TRADE SECRETS.** Any drawings, data, designs, software programs or other technical information supplied by Seller to Buyer in connection with the sale of goods or provision of services shall remain Seller's property and be held in confidence by Buyer. Such information shall not be reproduced or disclosed to others without Seller's prior written consent in each particular instance from an officer of Seller at its corporate headquarters in Aliso Viejo, California.

**17. ASSIGNMENT.** Buyer shall not assign this Agreement, any contract of sale, any purchase order, any interest therein or any rights thereunder without the prior written consent of Seller from an officer of Seller at its corporate headquarters in Aliso Viejo, California.

**18. MODIFICATION.** This Agreement may not be changed, modified or amended, except in a writing signed by an officer of Seller based at its corporate headquarters in Aliso Viejo, CA. For purposes of this Agreement and, by way of example only, any quote, purchase order, change order, order acknowledgment, invoice or any other document created in connection with this Agreement, the Parties hereby agree that the Uniform Electronic Transactions Act (1999), and any iteration or version thereof or any State-enacted equivalents or variations thereto shall have no effect on this Agreement and unequivocally disclaim the applicability of the same.

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**19. EXPORT.** These commodities may be subject to U.S. Government export controls. Diversion contrary to U.S. Law is prohibited; export may require validated export licenses. Buyer agrees to comply with U.S. economic sanctions laws and export control laws and will not re-sell or retransfer any Microsemi products or any other material provided by Microsemi to you hereunder to countries targeted at any time by comprehensive U.S. economic sanctions, these countries currently including Cuba, the Crimean Region of Ukraine, Iran, North Korea, Sudan, and Syria.

**20. COMPLIANCE WITH LAWS.** Buyer agrees that it will comply with, and will use reasonable endeavors to ensure that any third party used by Buyer to fulfill its obligations will comply with, all laws, rules, regulations, decrees, or official governmental orders of the US and UK relating to anti-bribery, anti-corruption and/or anti-money laundering, and any other anti-corruption laws, applicable to the Seller or its ultimate parent company in connection with this transaction.

**21. DESTINATION RESTRICTIONS.** (a) Restricted Destinations. – Any goods that are sold to Buyer will not be knowingly sold, supplied or delivered, directly or indirectly to any destination that at the time of sale or delivery is an embargoed destination under the laws or policy of the United States or the European Union, including Cuba, Iran, Sudan, North Korea, and Syria, or to any person or entity subject to sanctions under U.S. or EU laws. (b) Final Destination Documents. – Seller may at any time require the Buyer to provide any relevant documents for the purpose of verifying the final country of destination of the goods and the Buyer undertakes to advise the Seller, upon request, of the country of destination of the goods.

**22. REMEDIES.** If Seller breaches its warranties as contained herein, or any other provision hereof, Seller's sole and exclusive maximum liability shall be (at Seller's option) (a) with respect to services, to re-perform or re-supply the services or credit Buyer's account, provided that Seller is promptly notified in writing upon discovery by Buyer during the service warranty of any alleged deficiencies; and (b) with respect to the goods, to repair the good after receipt of the good at Seller's plant, provide a replacement of the good to Buyer or credit Buyer's account for any such goods which are returned by Buyer during the applicable warranty period set forth above, provided that (i) Seller is promptly notified in writing upon discovery by Buyer that such goods failed to conform to the contract of sale with a detailed explanation of any alleged deficiencies, (ii) such goods are returned to Seller, Ex Works Seller's plant from which goods were shipped, and (iii) Seller's examination of such goods shall disclose that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, improper testing or unauthorized repair. If such goods fail to conform to the applicable warranty, Seller shall reimburse Buyer for transportation charges paid by Buyer for such goods. If Seller elects to repair the good or provide a replacement, Seller shall have a reasonable time to provide or repair such goods, and repair, replacement or credit shall constitute fulfillment of all liability of Seller to Buyer whether based in contract, tort, indemnity, statutory provision or otherwise. No offset or other deduction of any kind shall be permitted from any amount due hereunder and all amounts due hereunder shall be paid in full to Seller. Buyer's only remedy relating to amounts owned to Buyer or claims that Buyer may have will be to assert such claims.

**23. ALTERNATE DISPUTE RESOLUTION (ADR).** (a) Any dispute between the Parties arising from or related to the subject matter of this Agreement will first be discussed by the high-ranking executives of each company, each of whom shall be fully authorized to settle the dispute. If such dispute cannot be resolved by such high-ranking executives, then the dispute shall be mediated before an impartial, neutral Mediator mutually agreed to by the Parties within twenty (20) days following failure to resolve the dispute. Any Mediation fee shall be divided equally between the Parties. If any Party commences Arbitration without first attempting to resolve the matter through Mediation, then in the discretion of the Mediator, that Party shall not be entitled to recover attorneys' fees, even if they would otherwise

have been available to that Party. (b) Any disputes arising hereunder, which the parties cannot resolve in good faith within three (3) months of the date of written request for Mediation, shall be submitted to a mutually acceptable impartial and neutral arbitrator of the Judicial Arbitration and Mediation Services (JAMS) for Arbitration in accordance with its rules and procedures. (c) Each party shall be responsible for all costs associated with the preparation and representation by attorneys, or any other persons retained thereby, to assist in connection with any such Arbitration. However, all costs charged by the mutually agreed upon Arbitration entity shall be equally shared by the parties. (d) The party seeking Mediation and/or Arbitration as provided herein agrees that the venue for any such Mediation and Arbitration shall be selected by the other party and that such venue must be in Los Angeles, California; New York, New York; or Chicago, Illinois; whereby the applicable law and provisions of the Evidence Code of the State selected thereby shall be applicable and shall govern the validity, construction and performance of this Agreement.

**24. APPLICABLE LAW AND VENUE.** Except as provided in Section 21 above, if legal action is commenced by either party, the validity, construction and performance of this Agreement, and the legal relations between the parties shall be governed by the State of California, and the venue for such legal action shall be Orange County, California. Seller may commence any action to collect moneys due on account of goods purchased by Buyer hereunder in any court having competent jurisdiction of the subject matter in dispute without resorting first to any alternative dispute resolution.

**25. RIGHT TO SEEK INJUNCTIVE RELIEF.** Nothing in this Agreement will be deemed to prevent either Party from seeking injunctive relief or any other provisional remedy in an appropriate case in any court of competent jurisdiction of the subject matter in dispute as necessary to protect either Party's trade name, proprietary information, trade secrets, trademarks, know-how, or any other intellectual property rights.

**26. LIMITATION OF LIABILITY.** In no event will Seller have any liability to Buyer, Buyer's customer or any other third party, for any incidental, special, exemplary, consequential or punitive damages, lost profits, lost revenue, or any other indirect damages in connection with the sale and supply of goods and/or services by Seller, regardless of whether the basis of such liability is in contract, tort, or any other legal or equitable theory. These limitations will apply notwithstanding the failure of the essential purpose of any limited remedy. In no event will Seller's total cumulative liability for claims or causes arising out of these Terms and Conditions or the transaction contemplated thereby, exceed the lesser of (i) the sum paid to Seller by Buyer for the services supplied to Buyer or goods manufactured for or delivered to Buyer under the applicable purchase order, or (ii) Two Hundred Fifty Thousand Dollars. The existence of more than one claim against the particular the services supplied to or goods manufactured for or delivered to Buyer under a purchase order shall not enlarge or extend this limit.