



## INTEGRATED MEMORY LOGIC GENERAL TERMS AND CONDITIONS OF SALE

These General Terms and Conditions of Sale (“Terms”) are entered into by and between IML International and/or its present and future affiliates and subsidiaries (“Seller”) and the individual, company or entity placing a purchase order for any of Seller’s products (“Buyer”). These Terms shall become effective when Buyer has placed an order which has been accepted by Seller.

1. THESE TERMS, AS AMENDED FROM TIME TO TIME, APPLY TO ALL SELLER’S QUOTATIONS AND PURCHASE ORDERS PLACED BY BUYER. SOME OF THE TERMS SET OUT HERE MAY DIFFER FROM THOSE IN BUYER’S PURCHASE ORDER AND SOME MAY BE NEW. SELLER’S ACCEPTANCE OF BUYER’S ORDER IS EXPRESSLY CONDITIONED ON BUYER’S AGREEMENT TO THE TERMS HEREIN, IN LIEU OF ANY TERMS IN BUYER’S PURCHASE ORDER OR OTHER BUYER DOCUMENTATION, IRRESPECTIVE OF WHETHER THE BUYER ACCEPTS THESE TERMS BY A WRITTEN ACKNOWLEDGMENT, BY IMPLICATION OR BY ACCEPTANCE AND PAYMENT FOR PRODUCTS ORDERED. SELLER’S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION OR DOCUMENTATION FROM BUYER SHALL NOT BE DEEMED A WAIVER OF THE TERMS HEREIN. NO ADDITION TO OR MODIFICATION OF ANY PROVISION ON THE FACE OR REVERSE OF THESE TERMS OR ON ANY PURCHASE ORDER SHALL BE BINDING UPON SELLER UNLESS MADE IN A SEPARATE WRITTEN INSTRUMENT AND SIGNED BY A DULY AUTHORIZED OFFICE OF SELLER
2. PRICES. Irrespective of any prices quoted by Seller or listed on Buyer’s purchase order, a purchase order is accepted only at the prices shown on Seller’s acknowledgement. Any order that can be cancelled and rescheduled pursuant to Section 8(a) may be subject to a price change. All listed or quoted prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product.
3. TAXES. Unless otherwise specifically provided herein, the amount of any present or future sales, revenue, excise or other tax applicable to the products covered by this order or the manufacture or sale thereof, shall be added to the purchase price and shall be paid by Buyer, or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to the relevant taxing authorities. In the event Seller is required to pay any such tax, fee, or charge, at the time of sale or thereafter, Buyer shall reimburse Seller therefor.
4. PAYMENT.
  - (a) All invoices are due and payable thirty (30) days from the date of invoice. All payments shall be made in U.S. dollars. Shipments, deliveries, and performance of work shall at all times be subject to the approval of Seller’s credit department and Seller may at any time decline to make any shipments or deliveries or perform any work except upon receipt of payment or upon additional terms and conditions or security satisfactory to such department.
  - (b) If, in the judgment of Seller, the financial condition of Buyer at any time does not justify continuation of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance and, in the event of the bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, Seller shall be entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges.
  - (c) Each shipment shall be considered a separate and independent transaction, and payment therefor shall be made accordingly. If shipments are delayed by Buyer, payments shall become due on the date when Seller is prepared to make shipment. If the work covered by the purchase order is delayed by Buyer, payments shall be made based on the purchase price and the percentage of completion. Products held for Buyer shall be at the risk and expense of Buyer.
5. SHIPMENT. Shipments of goods shall be delivered FOB Seller’s (or Seller’s subcontractors’) plant, and title and liability for loss or damage thereto shall pass to Buyer upon Seller’s tender of delivery of the goods to a carrier for shipment to Buyer, and any loss or damage thereafter shall not relieve Buyer of any obligation hereunder. Buyer shall reimburse Seller for taxes and any other expenses incurred or licenses or clearances required at port of entry and destination. Seller may deliver the products in installments. Unless otherwise agreed, all items shall be packaged and packed in accordance with Seller’s normal practice. In the event of any default by Buyer, if Seller elects to continue to make shipment, its action will not constitute a waiver of any default by Buyer or in any way affect Seller’s legal remedies for any such default.
6. SHIPPING DATES. All shipping dates are estimates only and are dependent upon prompt receipt of all necessary information from Buyer. Seller will use commercially reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer’s requested delivery schedule but shall not be liable to Buyer for failure to meet any delivery schedule or for the costs or procurement of substitute goods. Delivery of a quantity that varies from the quantity specified in the Buyer’s order shall not relieve Buyer of its obligation to accept delivery and pay for the goods orders. Delays or changes in schedules due to Buyer directed actions are subject to price adjustments.
7. INSPECTION. Buyer shall notify Seller in writing of any visible defects, quantity shortages, incorrect product within seven (7) days of its receipt of the shipment. Failure of Buyer to so notify Seller within such time period shall be deemed a conclusive acceptance of the product and an unqualified waiver of any rights to return products on the basis of visible defects, shortages or incorrect shipments. Upon expiration of the foregoing time period, Buyer’s only recourse or remedy for non-conforming or defective goods shall be Seller’s warranty as provided in Section 10 herein. No material shall be returned without Seller’s consent and Seller’s return material authorization (RMA) form must accompany such returned material.
8. ORDER CANCELLATION.
  - (a) Buyers Cancellation. For Seller’s standard products, Buyer may cancel or reschedule a product without penalty if the cancellation is more than thirty (30) days from the earliest requested ship date. Cancellations within 30 days from the earliest requested ship date must be approved in writing by a Seller sales manager and may be subject to special charges. For nonstandard parts, custom products, or standard parts with minimum usage, Buyer may cancel or reschedule more than ninety (90) days from the earliest requested ship date, except that Buyer shall accept delivery of all such products which are completed at the time of cancellation or rescheduling. Those nonstandard products which are in the work-in-process inventory at the time of cancellation or rescheduling, shall be paid for by Buyer at a price equal to the completed percentage of the product multiplied by the price of the finished product. Buyer also shall pay promptly to Seller the costs of settling and paying claims arising out of the termination of work under Seller’s subcontracts or vendors and any accounting, legal, and clerical costs arising out of the cancellation.
  - (b) Seller’s Cancellation. In addition to Seller’s cancellation rights under Section 4(b), any order that can be cancelled or rescheduled

by Buyer pursuant to Section 8(a) may be cancelled or rescheduled by Seller if notice is given to Buyer.

9. **BUYER WARRANTY.** Buyer warrants that it is buying products from Seller for its own internal use and not for resale.

10. **LIMITED WARRANTY.**

(a) **Product Warranty.** Seller warrants that the products to be delivered hereunder will be free from defects in material and workmanship under normal use and service for a period of one (1) year from date of shipment to Buyer. Seller's obligations under this Section 10(a) are limited to replacing or repairing or giving credit for, at its option, any of such products which shall be returned to Seller's factory of origin, transportation charges prepaid by Buyer, and which are, after examination, disclosed to Seller's satisfaction to be thus defective. **THIS WARRANTY IS EXPRESSED IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, STATUTORY, OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES IN CONNECTION WITH THE SALE OF THE PRODUCTS.** The warranty in this Section 10(a) shall not apply to any of such products which shall have been repaired or altered, except by Seller, or which shall have been subjected to misuse, negligence, or accident. The foregoing provisions do not extend the original warranty period of any product which has either been repaired or replaced by Seller pursuant to this Section 10(a).

(b) **Unencapsulated Units.** **BUYER ACKNOWLEDGES AND AGREES THAT NO WARRANTY, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY TO ANY PURCHASE ORDERS FOR THE DELIVERY OF SEMICONDUCTOR DEVICES WHICH ARE NOT FINISHED AND FULLY ENCAPSULATED. ALL SUCH DEVICES ARE SOLD AS IS WHERE IS.**

11. **INFRINGEMENT.**

(a) **Indemnification.** With respect to products manufactured solely to Seller's own designs and specifications, Seller will defend any suit or proceeding brought against Buyer so far as such suit or proceeding is based on a claim that any product furnished hereunder or part thereof, alone and not in combination with any other product, constitutes an infringement of any U.S. patent or U.S. copyright, provided Buyer gives Seller prompt notice of any such claim in writing and authorizes Seller to settle or defend any such claim, suit or proceeding and assists Seller in so doing (at Seller's expense) upon request by Seller. Seller will, subject to the limitations of liability provided herein, pay all damages and costs awarded against Buyer.

(b) **Limited Remedies.** If the use of a product is enjoined, Seller will, in its sole discretion and at its own expense, either (a) procure for Buyer the right to continue using the product; (b) replace the product with a non-infringing product; (c) modify the product so that it becomes non-infringing or, if Seller is unable to reasonably do any of the above; (d) accept the returned product and provide Buyer, at Seller's option, a refund or credit equal to the depreciated value.

(c) **Exclusions.** Seller shall not be liable for any costs or damages and Buyer will indemnify, defend and hold Seller harmless from any expenses, damages, costs or losses resulting from any suit or proceeding based upon a claim arising from (a) compliance with Buyer's designs, specifications or instructions; (b) a modification

of the product by a party other than Seller; or (c) the use of any product or any part thereof furnished hereunder in combination with any other product

(d) **THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF AND REMEDY FOR THE PARTIES HERETO FOR INFRINGEMENT OF ANY KIND AND IS IN LIEU OF ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY.**

12. **LIMITATION OF LIABILITY.**

**TO THE MAXIMUM EVENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SELLER OR ITS LICENSORS, MANUFACTURERS OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, LOST DATA, LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING FOR LOSS OF PROFITS ON CONTRACTS), LOSS OF THE USE OF MONEY, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS, LOSS OF OPPORTUNITY, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.**

**THE LIMIT OF LIABILITY FOR ANY CLAIMS SHALL NOT EXCEED THE AMOUNT PAID ON ACCOUNT BY BUYER FOR THE PRODUCTS GIVING RISE TO SUCH CLAIMS. BUYER SHALL BE DEEMED TO ASSUME ALL LIABILITY FOR ANY AND ALL DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE OR MISUSE OF THE PRODUCTS BY BUYER, ITS EMPLOYEES, CUSTOMERS AND OTHERS.**

**EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY AND DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS HEREIN ARE MATERIAL, BARGAINED FOR BASES OF ANY PURCHASE ORDER OR CONTRACT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER ANY PURCHASE ORDER OR CONTRACT AND IN THE DECISION BY EACH PARTY TO ENTER INTO SUCH PURCHASE ORDER OR CONTRACT.**

13. **APPLICABLE LAW.** This Agreement shall be governed by and enforced in accordance with California law as applied to contracts entered into in California by California residents to be performed entirely within the State of California. The rights and obligations of the parties shall not be governed by the provisions of the U.N. Convention on Contracts for the International Sale of Goods, 1980. Any action arising out of any dispute between any of the parties to this Agreement with respect to any of the transactions contemplated by this Agreement shall be brought in either the Superior Court for the City and County of Santa Clara or the United States District Court for the Northern District of California, and each of the parties hereto hereby submits itself to the jurisdiction of such courts for purposes of any such action. Buyer agrees that service upon Buyer in such action or proceeding may be made by first class mail, certified or registered, to such Buyer's address last appearing on the records of Seller.

14. **ASSIGNMENT.** Buyer may not assign this order, or any interest or right herein without the prior written consent of Seller. Seller shall have the right at all time to assign its rights, in whole or in part, under these

Terms or to subcontract any part of the work or services to be provided under the Terms as its deems necessary or desirable.

15. **PRODUCT CHANGES.** Seller reserves the right, at its sole discretion and without notice, to discontinue manufacturing or supplying any product. Seller also reserves the right, at its sole discretion and without notice, to change or improve any product or specifications at any time. Seller assumes no obligation to provide any change on products previously purchased or to continue to supply discontinued or discounted products. Seller may substitute products manufactured to such modified specifications for those orders specified herein provided such products substantially conform to the order.
16. **LIFE SUPPORT.** Seller's products are not authorized for use as critical components in life support devices or systems without the express written approval of an officer of Seller. As used herein, (a) life support devices or systems are devices which (i) are intended for surgical implant into the body, or (ii) directly support or sustain life and whose failure to perform when properly used can be reasonably expected to result in significant injury to the user; and (b) a critical component is any component in a life support device or system whose failure to perform can be reasonably expected to cause the failure of the life support device or system or to affect its safety or effectiveness.
17. **PROPRIETARY INFORMATION.** Buyer agrees not to use or disclose drawings, specifications, technical information or other data furnished by Seller and identified by Seller as confidential or proprietary, or that Buyer should otherwise reasonably know to be confidential or proprietary, without the prior written consent of the Seller. Buyer agrees and acknowledges that any improvement or modification to such confidential or proprietary information shall be the sole property of Seller, regardless of whether any such improvement or modification was the creation of Buyer and Buyer agrees to assign and hereby does assign any of its rights in such improvements or modification to Seller.
18. **EXPORT REGULATIONS.** Buyer acknowledges that Seller will provide Buyer with technical data/technology, services, and/or, products, in finished or unfinished state that may be subject to U.S. export controls under the laws and regulations of the United States (collectively "Export Controlled Technology"). U.S. export control laws and regulations include, but are not limited to, the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. §§ 120 et seq., and/or the Export Administration Regulations, 15 C.F.R. §§ 730 et seq. Buyer warrants and agrees that it shall not export or reexport any Export Controlled Technology or any technical data/technology or product derived from the Export Controlled Technology, except pursuant to a U.S. government license or other approval, or upon determination that such export may be lawfully exported without prior approval under a license exception, exemption, or other authority. Buyer acknowledges and understands that Seller may need to apply for export licenses in order to ship Export Controlled Technology to Buyer. Buyer agrees to provide such information, assurances, documentation or take such other steps as necessary to assist Seller in obtaining any export licenses, including, but not limited to, execution of end-user certifications, document marking, and supplemental agreements with respect to control and handling of Export Controlled Technology. In compliance with U.S. regulations regarding Technology and Software under Restriction ("TSR"), Buyer hereby agrees that, without express approval of Seller (pursuant to issuance of an export license from the Bureau of Industry and Security), Buyer will not reexport or release any technology, direct product of the

technology, software, or source code related to the technology provided by Seller to Buyer to a national of a country specified in Country Groups D:1 or E:2 as set forth in 15 C.F.R. Part 740, Supplement No. 1 and as amended. Seller shall have no responsibility for delayed delivery or non-delivery resulting from (i) any governmental action under U.S. or other applicable law suspending or revoking a necessary export license or authorization, or (ii) any failure by Buyer to furnish reasonable assurance, upon request, of its compliance with applicable export requirements, or (iii) obtaining a necessary export license for the goods to be shipped hereunder.

19. **FORCE MAJEURE.** Seller shall be excused from performance and shall not be liable for any delay in delivery or for nondelivery, in whole or in part, caused by the occurrence of any contingency beyond the reasonable control of Seller, including but not limited to, war (whether an actual declaration thereof is made), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof affecting the terms of this contract or otherwise, judicial action, labor dispute, accident, defaults or suppliers, fires, explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical or yield failures where Seller has exercised ordinary care in the prevention thereof. If any such contingency occurs, Seller may at its sole discretion allocate production and delivery among Seller's customers.
20. **SEVERABILITY.** In the event any one or more of the provisions contain herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and these Terms shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
21. **SALE CONVEYS NO LICENSE.** Seller's products are offered for sale and are sold by Seller subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent, mask work or copyright, or any assembly, circuit, combination, method or process in which any such products are used. Seller expressly reserves all its rights under such patents, mask works or copyrights.
22. **LIMITATION ON ACTIONS.** No action against the Seller for breach hereof shall be commenced more than one (1) year after the accrual of the cause of action.
23. **RELATIONSHIP OF THE PARTIES.** Seller and Buyer expressly understand and agree that Buyer is an independent contractor in the performance of each and every part of this order, is solely responsible for all of its employees, agents and will indemnify Seller from any and all claims, liability, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever that may arise on account of Buyer's activities or those of its employees or agents.
24. **ENTIRE AGREEMENT.** The Terms herein constitute the entire agreement between the parties relating to the sale of the products described on the face hereof and supersedes all previous communications, representations or agreements, either oral or written, with respect to the subject matter hereof and no representation or statements of any kind made by any representative of Seller, which are not stated herein, shall be binding on Seller.