

**TERMS & CONDITIONS OF SALE**

(Plessey Semiconductors Ltd described below as "Seller")

**1. SCOPE**

These terms and conditions of sale ("Terms") shall apply to all Purchase Orders (Orders) from Buyer accepted by Seller. Such acceptance by Seller is conditional upon Buyer's acceptance of the Terms which may occur by Buyer providing written acknowledgement, or by implication or by acceptance or use of product(s) ("Product(s)") and/or Services (as defined in Section 9 below) ordered from Seller.

The Terms contained herein and in the balance of Seller's Sales Order Acknowledgement shall comprise the entire agreement between the parties relating to the subject matter hereof and shall over-ride and supercede any provisions on Buyer's Order which are in addition or inconsistent therewith.

Provisions, terms and conditions within any Order or other document submitted by Buyer to Seller are hereby expressly rejected and shall not be binding upon Seller without its specific written consent. Buyer agrees that Seller's failure to object to any such provisions, terms or conditions shall not constitute acceptance by Seller thereof or of any waiver of or modification to provisions hereof.

No modification hereof shall be valid unless in writing and signed by a person authorized by Seller. The provisions hereof shall not be supplemented by any trade usage or any course of prior dealings or acquiescence in any course of performance.

**2. ORDERS**

All Orders are subject to acceptance by Seller. Seller reserves the right to accept or reject any Order in whole or in part and, without prejudice to any other remedy, to cancel any unfulfilled Order or to suspend Services under or shipment of any unfulfilled Order in the event of any breach by Buyer of its obligations hereunder including any action/inaction which delays Seller's performance hereunder.

**3. TAXES**

All taxes, levies and duties of any nature whatsoever applicable to Products and Services supplied hereunder shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the relevant taxing authority. Unless otherwise specified, the prices shown do not include VAT or any other taxes.

**4. PRICES AND PAYMENT**

All prices are subject to change without notice except prices in a current written quotation from Seller which shall be honoured as stated therein. All Orders are also subject to credit approval before shipment. Where Buyer has established credit, payment shall be due thirty (30) days from date of invoice. Overdue accounts shall bear interest at a rate of 5% (five percent) per annum over the HSBC Bank UK base rate in force during the period of payment default.

Payments are to be paid in United States Dollars unless otherwise specified in the relevant invoice or Sales Order Acknowledgment. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. If, in Seller's judgment, Buyer's financial condition at any time does not justify payment terms as then enjoyed, Seller may cancel or suspend provision of Services or shipment of any unfulfilled Order unless Buyer agrees to, and immediately pays for such Products or Services to be provided or, in the case of all Products and Services ordered but not shipped or provided, agrees to pay in advance as applicable, or both, at Seller's option. If, despite any default by Buyer, Seller elects to continue to make shipments or provide Services, Seller's action shall not constitute a waiver of any default by Buyer or prejudice Seller's legal remedies in respect of such default.

**5. TITLE AND DELIVERY**

Delivery dates are approximate. Seller shall use reasonable efforts to fill all Orders according to the shipment schedule provided by Seller at time of acceptance of the applicable Order; but in no event shall Seller guarantee shipment according to such schedule or be liable for damages due to delays in delivery. However, in accordance with law, should there be a serious delay in delivery (otherwise than as a result of force majeure under Section 11 below), Buyer may give written notice to Seller to deliver within a reasonable period; should Seller fail to so deliver, Buyer shall have the right to terminate any undelivered portion of the Order subject to the delay.

Buyer shall attach to all Orders the necessary information to permit Seller to commence its work, together with any import licenses and/or permits and related certificates which may be necessary and which shall be supplied by Buyer at Buyer's expense.

All shipments shall be made by Seller Free Carrier (or "FCA") (as defined in the ICC Inco terms 2000), at Seller's production and/or distribution facilities as may be specified by Seller from time to time unless otherwise specified in Seller's Sales Order Acknowledgment. Title to the Products shall pass to Buyer upon delivery by Seller to the carrier. Liability for loss or damage in transit or thereafter shall pass to Buyer upon Seller's delivery of the Products to the carrier for shipment to Buyer. In the absence of specific instructions, Seller shall select the carrier. Any Products held or stored for Buyer shall be at Buyer's risk and expense if, at Buyer's request, a shipment is postponed more than thirty (30) days after the due delivery date. Claims against Seller for shortages of Products delivered must be made within thirty (30) days after arrival of shipment to the destination specified in the Order. Claims against Seller relating to shipping or the carrier must be made within seven (7) days after such arrival date. Unless otherwise agreed in writing, Seller may make partial shipments and the Terms herein contained shall apply separately for each shipment.

**6. WARRANTY AND LIMITATION OF LIABILITY**

a. Subject to the limitations and exclusions below, Seller warrants solely to Buyer that:

- (i) commercial production standard LED emitters will be free from defects in material and workmanship and substantially conform with Seller's applicable specifications for twelve (12) months from shipment to Buyer and
- (ii) LED products will be free from defects in material and workmanship and substantially conform with Seller's applicable specifications for six (6) months from shipment to Buyer

Seller provides no warranty for (a) prototypes of Products, (b) Products subject to development or experimental work, or (c) samples of production products all of which being supplied "AS IS, WITH ALL DEFECTS".

Seller shall have no liability under this warranty unless:

- (i) Seller receives written notice from Buyer promptly following discovery of any suspected non-conforming Products which clearly describes the suspected non-conformance;
- (ii) Buyer, upon Seller's written authorization, immediately returns at Buyer's expense to Seller any suspected non-conforming Products in the form in which originally shipped; and
- (iii) Seller's tests determine that such Products do not substantially conform.

In no event shall Seller be responsible for any non-conformance or other defect in Products arising as a result of improper handling during or after shipment; exposure to environmental or operating conditions not within those stipulated in Seller's applicable specifications; improper installation, application or storage; misuse, tampering, disassembly; test, repair, modification, accident, negligence, defects, problems, or failures caused by the Buyer's product into which the Product is incorporated or by third party products, or any other cause not attributable to Seller's conduct. This warranty extends to Buyer only.

Seller's liability for breach of this warranty shall be limited to, at Seller's option, the repair or replacement, or crediting Buyer the purchase price paid for, Products returned during the applicable warranty period and determined by Seller to be subject to warranty relief.

BUYER'S EXCLUSIVE REMEDY AND SELLER'S SOLE OBLIGATION AND ENTIRE LIABILITY SHALL BE AS STATED IN THIS LIMITED WARRANTY AS AGREED LIQUIDATED DAMAGES (AND NOT AS A PENALTY) IN LIEU OF ALL OTHER OBLIGATIONS AND LIABILITIES OF SELLER TO BUYER WHATSOEVER AND HOWSOEVER ARISING IN ANY WAY RELATED TO THE SALE OR SUPPLY OF THE PRODUCTS, THEIR USE OR OTHERWISE WHETHER ARISING IN CONTRACT, TORT, UNDER STATUTE OR OTHERWISE. THIS LIMITED WARRANTY IS THE EXCLUSIVE WARRANTY PROVIDED BY SELLER. ALL OTHER REPRESENTATIONS, GUARANTEES, CONDITIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, RELATED TO THE SALE OR SUPPLY OF PRODUCTS OR THEIR USE BY BUYER OR OTHERS, INCLUDING WITHOUT LIMITATION ANY IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE SO FAR AS PERMITTED BY LAW, SPECIFICALLY DISCLAIMED.

Buyer shall indemnify, defend and hold Seller harmless from all claims, demands, actions, proceedings and liabilities for all losses, damages and injuries from any third parties, whether arising in tort or otherwise, based upon or arising out of Buyer's use or resale of any Products (whether incorporated in Buyer's products or otherwise).

- b. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THESE TERMS, BUT SUBJECT TO THE PROVISIO BELOW, SELLER IN NO EVENT SHALL BE LIABLE IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE FOR ANY LOSS, DAMAGE OR INJURY (IRRESPECTIVE OF CAUSE) TO ANY PERSON OR PROPERTY OR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN RESPECT OF ANY LOSS, DAMAGE OR INJURY RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATIONS HEREUNDER OR FROM NEGLIGENCE OF SELLER, ITS EMPLOYEES OR AGENTS OR IN ANY WAY RELATED TO ITS ACCEPTANCE OF ANY ORDER, THE SALE OR SUPPLY OF PRODUCTS OR SERVICES, THEIR USE OR OTHERWISE WHETHER FOR LOSS OF PROFITS, BUSINESS REVENUES OR OTHERWISE EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S MAXIMUM AGGREGATE LIABILITY TO BUYER IN NO EVENT SHALL EXCEED THE AMOUNT PAID BY BUYER FOR RELEVANT PRODUCTS/SERVICES UNDER THIS ORDER, PROVIDED THAT, nothing in these Terms detracts from any Buyer right or Seller obligation which either party is prohibited from seeking to exclude or limit by law, and in particular Seller does not exclude or limit its liability for death or personal injury caused by its negligence.

**7. SELLER'S OWNERSHIP OF CELLS, PHOTOMASKS, ETC.**

Unless agreed otherwise in writing by Seller, Seller shall retain title to and possession of all its proprietary technology, including but not limited to any integrated circuits, cells, designs, design elements, photomasks, tools, models, patterns, dies, molds, jigs, fixtures, manufacturing processes and know-how, developed, made or obtained by or for Seller or used by Seller for furnishing Products, Custom Products (as defined in Section 9 below) and Services under any Order accepted by Seller. Seller may use this technology, in whole or in part, even if developed expressly for use in Custom Products, in any Products.

**8. CUSTOM PRODUCTS AND SERVICES**

For products manufactured in whole or in part to Buyer's designs, specifications or instructions (collectively Custom Products. Seller warrants only to Buyer that Custom Products when shipped to Buyer shall substantially conform to such designs, specifications and instructions accepted in writing by Seller. This warranty is subject to the limitations and exclusions set out in Section 6 (Warranty and Limitation of Liability) above (except the first sentence of Section 6(a) which does not apply to Custom Products).

Seller provides no representation, guarantee, condition or warranty, expressed, implied or statutory, with respect to:

- (i) the correctness or applicability of Buyer's designs, specifications or instructions for Custom Products or
- (ii) the functionality or performance of Custom Products or any products derived from or using any Custom Products.

Development and engineering design services, including but not limited to those with associated non-recurring engineering charges, as well as other than normal product testing provided by Seller (collectively Services) are supplied on a reasonable efforts basis. Seller retains sole discretion to assign and control its staff in the performance of Services. Development times and milestones provided by Seller for Services are estimates only. No representation, guarantee, condition or warranty, expressed, implied or statutory, is made by Seller with regard to the success, timeliness or successful result of the Services. Design changes may be necessary to correct unanticipated deficiencies resulting from manufacturing process, functional, operational or other anomalies. Revisions, modifications or testing requested by Buyer beyond the scope of an Order as accepted by Seller may result in additional charges to Buyer.

**9. SUBSTITUTIONS AND MODIFICATIONS**

Seller reserves the right to modify the specifications of Products designed by or for Seller without notice provided that the modification will not materially affect the performance, form, or fit of the affected Products.

**10. FORCE MAJEURE**

Neither Buyer nor Seller shall be liable for failures in performance, including delay or non-shipment, resulting from acts or events beyond its reasonable control. Such acts or events shall include, but not be limited to, acts of God, civil or military authority, civil disturbance, fire, strikes, lockouts or slowdowns, factory or labour conditions, errors in manufacture, inability to obtain necessary labour, materials or manufacturing facilities, delayed issuance of export control licenses, or other "force majeure" events beyond the reasonable control of the non-performing party. In the event of such delay, the date of shipment shall, at the request of Seller, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time.

**11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

Buyer shall indemnify, defend and hold Seller harmless against any expense and loss resulting from:

- (i) any claim of actual or alleged infringement or contributory infringement of any patent, copyright, mask work, or other industrial or intellectual property rights of any other person granted or used at the time of acceptance of the applicable Order (collectively Worldwide Specified IPRs) arising from compliance by Seller with Buyer's designs, specifications or instructions; and
- (ii) any claim of actual or alleged infringement or contributory infringement of any Worldwide Specified IPRs which relates to the use or sale of any of the Products 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 Products or Services unauthorized by Seller or to the use or sale of any product, equipment, device, machine or process which includes any of the Products or the combination of Products with other products not supplied by Seller unless authorized or carried out by Seller.

The sale or supply of Products and Services by Seller shall neither convey nor grant, except as otherwise provided in Section 7 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 Products with other products, equipment, devices or machines or processes in which any of the Products may be used.

Subject to the foregoing and the limitations set forth below, Seller shall defend Buyer against suit or claim of actual or alleged infringement or contributory infringement of any European Member State or USA patent, copyright, mask work, or other industrial or intellectual property rights of any other person granted or used at the time of delivery of the applicable Order (collectively Specified IPR's) against Buyer that any of the Products made to Seller's design by or for Seller infringe any Specified IPRs provided:

- (i) Seller is notified promptly in writing by Buyer of any notice of such claim;
- (ii) Seller is given full authority and control of the defence of such claim and all negotiations for its settlement or compromise; and
- (iii) Buyer has not made and shall not make any admission in respect to such alleged infringement.

In the event any of the Products become, or in Seller's opinion, are likely to become the subject of a claim of infringement of any Specified IPRs, or if the use of any of the Products is enjoined in any such infringement suit, Seller shall at its option and expense either procure for Buyer the right to continue use of such Products, replace such Products with non-infringing products, modify such Products so that they become non-infringing, or accept the return of the affected Products and refund Buyer the depreciated purchase price thereof. In no event shall Seller's total liability to Buyer under the foregoing indemnity exceed the purchase price of the allegedly infringing Products paid by Buyer.

Seller makes no express or implied condition, representation or warranty that the Products or Services will not infringe any patent, copyright, mask work or other industrial or intellectual property rights. The foregoing states the entire liability of Seller with respect to infringement of patents, copyrights, mask works and other industrial or intellectual property rights by the Products and Services.

**12. CANCELLATION AND RESCHEDULING**

Unless agreed otherwise in writing by Seller, the following cancellation and rescheduling terms shall apply to all Orders:

- (i) Orders for Products (other than Custom Products) may not be cancelled or requested to be rescheduled by Buyer within thirty (30) days of their original scheduled shipment date(s) ("OSS Date(s)") except that Orders for such Products subject to a Seller last time buy notice may not be cancelled or requested to be rescheduled by Buyer at any time;
- (ii) Orders for Custom Products may not be cancelled or requested to be rescheduled by Buyer within ninety (90) days or their manufacturing cycle time as indicated by Seller in its quotation or Sales Order Acknowledgement, whichever is greater, of their OSS Date(s);
- (iii) Orders for Services, including tooling, may be cancelled or requested to be rescheduled by Buyer at any time subject however in the case of cancellation, to payment by Buyer to Seller of that portion of the purchase price for the Services equal to the portion of the Services performed by the date of receipt of written notice of cancellation by Seller with the amount payable by Buyer being deemed to represent a reasonable estimate of Seller's liquidated damages and not a penalty; and
- (iv) Seller shall determine its scheduled shipment date(s) for each Order requested to be rescheduled, as permitted, by Buyer, which date(s) will be used to compute Buyer's cancellation and rescheduling rights in accordance with the above terms for such rescheduled Order.

Cancellation charges shall be due and payable within thirty (30) days of receipt of Seller's invoice for same.

**13. ASSIGNMENT**

Buyer may not assign or transfer its rights to any Order accepted by Seller, by operation of law or otherwise, without the prior written consent of Seller. Seller's affiliated companies may participate in Seller's performance hereunder.

**14. GOVERNING LAW**

The laws of England, excluding conflict of law rules, shall govern any Order accepted by Seller and both Buyer and Seller accept the exclusive jurisdiction of the English courts. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) shall not apply to any such Order.

The terms of the Contracts (Rights of Third Parties) Act 1999 shall not apply to any contract incorporating these terms and conditions to confer on any party (other than Buyer and Seller) any benefit or right to enforce any term of such contract.

If Buyer fails to perform any of its obligations under any Order accepted by Seller, Buyer shall pay Seller all costs and expenses incurred by Seller in enforcing Seller's rights relating to such Order, whether by formal proceedings or otherwise, including all lawyer's fees, in addition to any other remedy available to Seller.

**15. WAIVER**

No waiver by either party of any breach of any of these terms and conditions by the other party shall be deemed to constitute a waiver of any other breach nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a party hereunder shall be binding upon such party only if in writing and signed by such party.

**16. EXPORT CONTROLS**

Buyer agrees that any export or re-export by it of Products or Services purchased hereunder shall be in strict compliance with all applicable export control laws and regulations. Buyer agrees to promptly inform Seller if information provided by Buyer to Seller or the resulting Products or Services are subject to export control laws or regulations.

**17. REPACKAGING**

This Section applies if the Products are imported into the United States. The requirements of 19 U.S.C. 1304 and 19 C.F.R. Part 134 provide that Buyer and all subsequent purchasers or re-packers must ensure that the Products or their containers be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the Products or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the Products.