



ON Semiconductor

# ON SEMICONDUCTOR

## Standard Terms and Conditions of Sale

1. **PRODUCT AND SALE TERMS.** The Buyer agrees to purchase and Semiconductor Components Industries, LLC, ("SCI") and its affiliates and subsidiaries, ("ON Semiconductor") agree to sell products ("Products") under the terms and conditions contained in this document. The actual Seller applicable to and obligated under a particular order will vary by location. All purchase orders issued to ON Semiconductor by Buyer shall be governed only by these terms and conditions notwithstanding any preprinted terms and conditions on Buyer's purchase order. Any additional or different terms in Buyer's documents are hereby deemed to be material alterations and notice of objection to and rejection of them is hereby given. Buyer accepts these terms and conditions by accepting delivery of the Products whether or not these terms and conditions are provided with each sales transaction. These terms are also available at [www.onsemi.com](http://www.onsemi.com).

If the Seller is a subsidiary or affiliate of SCI, the obligations of the parties run between such subsidiary or affiliate and the Buyer, and not between SCI and the Buyer. The Buyer acknowledges to have read and understood the terms and conditions herein which shall prevail over and apply to the exclusion of any terms and conditions contained or referred to in the Buyer's order or in correspondence or elsewhere or implied by trade custom, practice or course of dealing. The Buyer further acknowledges that they supersede all representations, communications and proposals, oral or written, between the parties relating to the subject matter hereof. The UN Convention on Contracts for the International Sale of Goods (Vienna, 1980) shall not apply to any purchases made hereunder.

2. **DELIVERY, TITLE & RISK OF LOSS.** Unless otherwise agreed to in writing or under any alternate local terms agreed to by ON Semiconductor, Products shall be delivered EXW (Seller's Shipping Location), in accordance with INCOTERMS 2000. ON Semiconductor will use all reasonable efforts to deliver Products to a mutually agreeable schedule. However, delivery dates are approximate only and ON Semiconductor is not liable for delays in delivery for any reason. Deliveries may be made in installments and a delay or default in delivery of any installment shall not relieve the Buyer of the obligation to accept and pay for other deliveries. Claims for shipment shortage shall be deemed waived unless presented to ON Semiconductor in writing within 45 days of shipment. Notwithstanding anything in this document to the contrary, ON Semiconductor reserves the right to adopt an equitable plan of allocation and to adjust delivery schedules accordingly in the event of shortages. Products must be scheduled for delivery within six (6) months of date of Buyer's purchase order. Shipment of Products within +/- 5% of the quantity ordered shall be deemed to constitute full delivery

3. **PRICES, QUOTATIONS AND TAXES.** Except as may otherwise be agreed to by the parties in a pricing agreement, the applicable prices shall be those prices quoted by ON Semiconductor and contained in the Buyer's purchase order accepted by ON Semiconductor. Buyer agrees to pay all applicable taxes.

4. **PAYMENT TERMS AND TITLE.** Except as otherwise agreed to between the parties in writing, payment will be due thirty (30) days from the date of delivery. All payments shall be without retention or set-off by Buyer. If the Buyer does not make payment on time, ON Semiconductor shall be entitled to charge the Buyer interest on the unpaid price at the rate of five per cent (5%) above the published Wall Street Journal Prime Rate in effect from the date on which payment becomes due until payment is made whether or not after judgment. ON Semiconductor reserves the right at any time to revoke any credit extended to the Buyer because of the Buyer's failure to pay an invoice when due or for any other similar reason and to suspend any subsequent shipments until the Buyer's account is current.

5. **WARRANTY.** ON Semiconductor warrants that its Products will, at the time of shipment and for a period of two years thereafter, be free from defects in material and workmanship, be free of all liens and encumbrances, and will conform to the ON Semiconductor's approved specifications. Buyer must advise ON Semiconductor in writing of any claims within the warranty period and obtain ON Semiconductor's return authorization, and return the Products to a facility or location directed by ON Semiconductor. If the Products are not as warranted, ON Semiconductor shall, at ON Semiconductor's option, either refund the purchase price of the Products or provide the same or equivalent replacement Products, and shall reimburse Buyer for any commercially reasonable cost of transporting the non-

conforming Products. In no event, however, shall ON Semiconductor be responsible for any non-conformance or other defects in the Products resulting from improper handling during or after shipment, misuse, neglect, improper installation or operation, repair, alteration, accident or for any other cause not attributable to defective workmanship or failure to meet specifications on the part of ON Semiconductor. This warranty shall not be expanded, and no obligation or liability will arise, due to technical advice or assistance, computerized data, facilities or services ON Semiconductor may provide in connection with Buyer's purchase. ON Semiconductor provides no warranty for ON Semiconductor products purchased through unauthorized sales channels. ON Semiconductor warrants replacement Products for the remaining term of the warranty on the originally delivered Product.

DEVELOPMENT PRODUCTS, PROTOTYPE OR OTHER NON-PRODUCTION PRODUCTS, SAMPLES OF PRODUCTION PRODUCTS AND LICENSED PROGRAMS ARE NOT WARRANTED AND ARE PROVIDED ON AN "AS IS" BASIS ONLY.

THIS WARRANTY EXTENDS TO BUYER ONLY AND MAY BE INVOKED ONLY BY BUYER FOR ITS CUSTOMERS. ON SEMICONDUCTOR WILL NOT ACCEPT WARRANTY RETURNS FROM BUYER'S CUSTOMERS OR USERS OF BUYER'S PRODUCTS. THIS WARRANTY DOES NOT APPLY TO DEFECTS ARISING AS A RESULT OF BUYER'S DESIGN OR FORMULA.

THE REMEDIES SET FORTH ABOVE ARE ON SEMICONDUCTOR'S EXCLUSIVE LIABILITY AND BUYER'S EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY OR NON-CONFORMITY OF THE PRODUCTS. THE WARRANTY SET FORTH ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED

**6. CONFIDENTIAL INFORMATION.** All materials and Products furnished by ON Semiconductor or Buyer and identified as containing confidential information must be held in confidence by the recipient using at least the degree of care the recipient uses for its own confidential information, but no less than reasonable care. Except as required by law, Recipient may not disclose such materials or confidential information except to its own employees who require use of the materials in the performance of their duties. Confidential information does not include information that is or becomes a matter of public knowledge through no fault of the recipient, information known to the recipient prior to any disclosure hereunder, information developed independently of any disclosure hereunder, information later communicated to the recipient by another without obligation of confidence or information communicated by the owner to a third party free of any obligation of confidence. All confidential information shall be held in confidence by the recipient for five (5) years after receipt.

**7. PATENT, MASK WORK RIGHT AND COPYRIGHT INDEMNIFICATION.** (a) The design, development or manufacture by ON Semiconductor of Products shall not be deemed to produce a work made for hire. Except as expressly set forth herein, all intellectual property rights arising out of Products or services sold pursuant to this Agreement shall belong to ON Semiconductor. Except for Buyer's implied license to use and sell a Product incident to its purchase and the implied license of Buyer to sell or otherwise dispose of possession of a copy of a copyrighted work from ON Semiconductor, the sale of Products does not convey any license by implication, estoppel, or otherwise in respect of a Product alone or in combination with other products. ON Semiconductor shall retain all rights in mask works to any circuit designed using ON Semiconductor's standard cell libraries, and ON Semiconductor shall retain all rights in mask works to the non-personalized portion of any gate array developed for Buyer.

(b) ON Semiconductor agrees to defend any claim, suit, or proceeding asserted against Buyer based upon a claim that any Product purchased hereunder, excluding software, directly infringes any patent, mask work right, or copyright, effective in the United States of America and to pay costs and damages finally awarded in any such suit provided that ON Semiconductor is promptly notified in writing of the claim and given, at ON Semiconductor's request and expense, sole control of the defense or response to such claim and all requested reasonable assistance by Buyer for defense of the same. If such a claim has occurred or in ON Semiconductor's sole and reasonable judgment is likely to occur Buyer agrees to allow ON Semiconductor to (i) obtain for Buyer the right to use and sell the Product, (ii) replace or modify the Product with non-infringing Product, or (iii) accept the return of the Product and refund the purchase price less reasonable wear and tear. Further, ON Semiconductor may cease shipping infringing Product without being in breach of this Agreement. This indemnity does not extend to any claims based upon any infringement or alleged infringement of any patent, mask work right, or copyright arising from; (i) the combination of any Product with other

elements if such infringement would be avoided by the use of the Product alone, (ii) the use of the Product in a manner or for an application other than that for which such Product was designed or intended, regardless of whether ON Semiconductor was aware of such use, (iii) any addition to or modification of the Product, (iv) the use of the Product in connection with manufacturing or other process, or (v) by any Product not in ON Semiconductor's catalogue or any Product made compliant to Buyer's design, instruction or specification (such claims, i.e. those set forth in (i) through (v) above, are referred to herein as "Other Claims"). THE FOREGOING STATES ON SEMICONDUCTOR'S ENTIRE LIABILITY FOR PATENT, MASK WORK RIGHT, OR COPYRIGHT INFRINGEMENT AND IS IN LIEU OF ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS EXPRESSED OR IMPLIED, IN REGARD THERETO.

Buyer agrees to defend any claim, suit, or proceeding asserted against ON Semiconductor based upon Other Claims and to pay costs and damages finally awarded from such suit provided that Buyer is promptly notified in writing of the claim and given, at Buyer's request and expense, sole control of the defense or response to such claim and all requested reasonable assistance by ON Semiconductor for defense of the same.

(c) ON Semiconductor does not warrant that Products (or licensed programs under section 8) are free of infringement of any patents, copyrights, or other proprietary rights of third parties. IN NO EVENT SHALL ON SEMICONDUCTOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS.

(d) Buyer, without the express prior written consent of ON Semiconductor, has no right to use ON Semiconductor's trademarks, trade names, corporate slogans, corporate logos, or corporate designations in the sale, lease or advertising of any products, or any product containers, component parts, business forms, sales, advertising or promotional materials, or other business supplies or materials, whether in writing, orally or otherwise.

(e) Except as stated below in LICENSED PROGRAMS, the sale of the Products furnished hereunder does not convey any license by implication, estoppel, or otherwise, under any proprietary or patent rights of ON Semiconductor covering modifications of Products furnished hereunder, or combinations of Products furnished hereunder with other elements. For the avoidance of doubt, the parties agree that the results of the efforts regarding the sale of the Products furnished hereunder by either party shall not be considered "work for hire", and that neither party acquires any rights to, or licenses to use, any such results except as expressly set forth herein.

**8. LICENSED PROGRAMS.** In the absence of a separate software agreement between Buyer and ON Semiconductor, the following terms and conditions apply to ON Semiconductor's licensed programs:

(a) Licensed programs include computer software and firmware in all forms. Title to the licensed programs delivered hereunder remains vested in ON Semiconductor or ON Semiconductor's licensor and cannot be assigned or transferred without ON Semiconductor's written authorization. Buyer agrees to respect and not to remove any copyright, trademark, confidentiality or other proprietary notice, mark or legend appearing on the software, and not to reverse engineer, disassemble, decompile, or modify any licensed programs.

(b) For standalone licensed programs, ON Semiconductor grants to Buyer a non-exclusive license to use the licensed programs for its own internal use in single computer system. Buyer may make up to five (5) copies of the licensed programs for Buyer's internal use so long as Buyer has paid ON Semiconductor's then current licensing fee and Buyer faithfully reproduces all of ON Semiconductor's copyright notices and other proprietary legends on the copies. Buyer agrees not to disclose, in any form, the licensed programs or any portion thereof to any person other than employees of Buyer.

(c) For licensed programs embedded in Products, ON Semiconductor grants Buyer a license to use such embedded licensed programs in Products subject to the terms and conditions herein.

(d) If Buyer is in default of any of the terms and conditions of this document, the rights granted herein by ON Semiconductor may be terminated on one (1) month's prior written notice. Within one (1) month after termination, Buyer will furnish to ON Semiconductor a certificate certifying that the original and all copies of the licensed programs and derivative versions thereof, in whole or in part and in any form, have been destroyed.

(e) EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE IS PROVIDED "AS IS". ON SEMICONDUCTOR EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OF CONTINUED OR UNINTERRUPTED OPERATION OF THE SOFTWARE LICENSED HEREUNDER

**9. CANCELLATION.** Buyer may cancel standard product at no charge with thirty (30) days written notice prior to ON Semiconductor's shipment date. Non-standard, application specific integrated circuits, any product unique to the customer ("Custom Product") may be cancelled at no charge with ninety (90) days written notice prior to ON Semiconductor's shipment date, except that Buyer shall remain liable for all non-transferable and non-cancellable raw materials and work in process as of the date that ON Semiconductor receives the notice. ON Semiconductor reserves the right to cancel all or any part of an order, without any liability to Buyer, if inaccurate information is supplied by Buyer on ON Semiconductor's required OEM Certification Form, or if the Buyer is in default under any of the terms and conditions of this document.

**10. RESCHEDULE.** Buyer may reschedule orders placed in accordance with the provisions of this Agreement subject to the following restrictions:

(a) STANDARD PRODUCT.

Written notice shall be given to ON Semiconductor thirty (30) days or more prior to the scheduled ship date. Only one (1) reschedule is allowed and it may not exceed six (6) months from original scheduled ship date.

(b) CUSTOM PRODUCT

Written notice shall be given to ON Semiconductor forty-five (45) days or more prior to the scheduled ship date. Only one (1) reschedule is allowed and it may not exceed six (6) months from original scheduled ship date date.

**11. EXPORT CONDITIONS.** If, at the time or times of ON Semiconductor's performance hereunder, an export license is required for ON Semiconductor to lawfully export Products or technical data, then the issuance of the appropriate license to ON Semiconductor or its subcontractor shall constitute a condition precedent to ON Semiconductor's obligations hereunder. Buyer agrees to comply with all applicable export laws, regulations and orders, including, but not limited to, all such laws, regulations and orders of the United States of America. Specifically, but without limitation, Buyer agrees that it will not resell, re-export or ship, directly or indirectly, any Products or technical data in any form without obtaining appropriate export or re-export licenses. Buyer acknowledges that the applicable export laws, regulations and orders may differ from item to item and/or time to time.

**12. RESALE PROHIBITED.** Unless expressly authorized in writing by ON Semiconductor, Buyer shall not resell Products. If Buyer breaches the terms of this paragraph, in addition to ON Semiconductor's cancellation rights, Buyer agrees to fully indemnify ON Semiconductor, its officers, employees and distributors from any and all resulting liability, including attorneys' fees and costs.

**13. LIMITATION OF LIABILITY.** IN NO EVENT SHALL ON SEMICONDUCTOR'S AGGREGATE LIABILITY FOR ANY BREACH, WARRANTY, INDEMNITY OR OTHER OBLIGATION OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SALE OF PRODUCT OR SERVICES HEREUNDER OR THE USE OF ANY ON SEMICONDUCTOR PRODUCT PROVIDED HEREUNDER, EXCEED THE PURCHASE PRICE OF THE PARTICULAR PRODUCTS OR SERVICES WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED.

IN NO EVENT SHALL ON SEMICONDUCTOR BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE AND LOSS OF GOODWILL), REGARDLESS OF WHETHER ON SEMICONDUCTOR HAS BEEN GIVEN NOTICE OF ANY SUCH ALLEGED DAMAGES, AND REGARDLESS OF WHETHER SUCH ALLEGED DAMAGES ARE SOUGHT UNDER CONTRACT, TORT OR OTHER THEORIES OF LAW

**14. EXCUSABLE DELAY.** ON Semiconductor shall not be liable for any delay or failure to perform due to any cause beyond its control or the control of its suppliers or subcontractors such as, for example, strikes, acts of God, acts of the Buyer, interruption of transportation or inability to obtain the necessary labor, materials or facilities. Delivery schedules shall be considered extended by a period of time equal to the time lost because of any excusable delay. In the event ON Semiconductor is unable wholly or partially to perform because of any such cause it may cancel its acceptance of a Buyer's order without liability to the Buyer.

**15. GOVERNING LAW.** The terms of this Agreement shall be interpreted, construed and governed in all respects in accordance with the laws of New York, U.S.A., excluding its conflict of laws provisions.

**16. DISPUTE RESOLUTION.** ON Semiconductor and Buyer will attempt to settle all claims (other than claims relating to intellectual property issues) through negotiation or non-binding mediation prior to commencement of court proceedings

#### **17. OTHER MISCELLANEOUS TERMS**

**ENTIRE AGREEMENT.** This document constitutes the entire and final agreement between ON Semiconductor and the Buyer with regard to the subject matter herein and supersedes all other communications.

**WAIVER.** Failure by ON Semiconductor to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

**NOTICES.** Any notice hereunder shall be deemed to have been duly given if sent by pre-paid first class post to the party concerned at its last known address

**AMENDMENTS.** No modifications to this document shall be binding unless expressly agreed to in writing by ON Semiconductor.

**SEVERABILITY.** If any provision of this document is held invalid all other provisions shall remain valid.

**NO ASSIGNMENT.** Neither party may assign its rights and obligations hereunder without the prior written consent of the other though ON Semiconductor is permitted to subcontract all or part of its obligations hereunder as it deems necessary.

**DATA PROTECTION.** Buyer accepts that ON Semiconductor retains data relating to Buyer and agrees that ON Semiconductor may process and/or circulate such data within the ON Semiconductor group of companies in compliance with all legal requirements

**DISCLAIMER FOR CRITICAL APPLICATIONS.** Unless expressly authorized in writing by ON Semiconductor, Products are not designed, intended or authorized for use as critical components in life support or safety devices or systems, or for any other application in which the failure of the Products could create a situation where personal injury or death may occur. Buyer agrees to indemnify and hold ON Semiconductor, its officers, employees, subsidiaries, affiliates, and distributors, harmless against all claims, costs, damages and expenses, and reasonable attorney's fees arising out of, directly or indirectly, any claims of personal injury or death associated with such unauthorized use, even if such claim alleges that ON Semiconductor was negligent regarding the design or manufacture of the part.

**ANTI PERSONNEL LANDMINES.** Products are not intended or authorized for use in anti-personnel landmines and Buyer agrees they shall not be used for such purpose. Upon request from ON Semiconductor, Buyer shall furnish a written certification that neither Buyer nor Buyer's Buyer use or permit the use of Products in anti-personnel landmines

**GOVERNMENT CONTRACT PROVISIONS.** If Buyer sells Products to the U.S. Government, ON Semiconductor makes no representations, warranties or certifications whatsoever about compliance with acquisition statutes or regulations (including, without limitation, those related to pricing, quality, origin or content), except ON Semiconductor shall comply with the following clauses applicable to subcontracts for commercial items: FAR 52.222-26, Equal Opportunity; FAR 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans; and FAR, 52.222.36, Affirmative Action for Handicapped Workers. Notwithstanding, if Buyer sells products to any other public entity, state, or local or international, or to a prime contractor or subcontractor of such entities, Buyer remains solely liable for compliance with all acquisition statutes and regulations.