



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, and its affiliates and subsidiaries, ("ON Semiconductor") agrees to sell products ("Products") under the terms and conditions contained in this document ("Terms"). The actual Seller applicable to and obligated under a particular order will vary by location. All Purchase Orders issued to ON Semiconductor by Buyer during the term of this Agreement shall be governed only by the Terms and Conditions of this Agreement 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. If the Seller is a subsidiary or affiliate of Semiconductor Components Industries, LLC, the obligations of the parties run between such subsidiary or affiliate and the Buyer, and not between Semiconductor Components Industries, LLC and the Buyer. The Buyer acknowledges to have read and understood the Terms 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 Free Carrier (FCA), Buyer's named 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. 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. In such event all subsequent shipments shall be suspended 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 three 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. If the Products are not as warranted, ON Semiconductor shall, at Buyer's option, and as Buyer's exclusive remedy, either refund the purchase price, or replace with the same or equivalent Products that meet this Warranty. 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 replace the non-conforming Products, or issue a credit equal to the purchase price, 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.

DEVELOPMENT 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 FOREGOING WARRANTY CONSTITUTES SELLER'S EXCLUSIVE LIABILITY, AND THE EXCLUSIVE REMEDY OF BUYER FOR ANY BREACH OF WARRANTY OR NON-CONFORMITY OF THE PRODUCTS. THIS WARRANTY 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. PATENT, MASK WORK RIGHT AND COPYRIGHT INDEMNIFICATION.** (a) 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 therefrom provided that ON Semiconductor is promptly notified in writing of the claim and given, at ON Semiconductor's request and expense, control of the defense or response to such claim. Buyer shall provide ON Semiconductor with reasonable assistance in the defense or response to any such claims. 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, or (iii) accept the return of the Product and refund the purchase price less reasonable wear and tear. This indemnity does not extend to any suit based upon any infringement or alleged infringement of any patent, mask work right, or copyright (i) by the combination of any Product with other elements if such infringement would be avoided by the use of the Product alone or (ii) by any Product not in ON Semiconductor's catalogue or any Product made to Buyer's design or specification. The foregoing states ON Semiconductor's entire liability for patent, mask work right, or copyright infringement.

Buyer agrees to defend any claim, suit, or proceeding asserted against ON Semiconductor based upon a claim that any Product sold hereunder, which Product was not in ON Semiconductor's catalogue or was

made to Buyer's design or specification, directly infringes any patent, mask work right or copyright effective in the United States of America and to pay costs and damages finally awarded therefrom.

(b) 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 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.

(c) 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.

**7. 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. Recipient may not disclose such materials or confidential information except to employees who require use of the materials in the performance of their duties. Confidential information does not include information in the public domain, 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 and materials containing confidential information shall be held in confidence by the recipient for five (5) years after receipt.

**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 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.

**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, custom or product unique to the customer ("Special 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 schedule date.

(b) NON-STANDARD PRODUCT, ASIC, CUSTOM PRODUCT OR PRODUCT UNIQUE TO A SINGLE CUSTOMER.

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 schedule 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 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 from the Government of the United States of America. Buyer acknowledges that the applicable export laws, regulations and orders may differ from item to item and/or time to time.

**12. 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.

**13. RE-SALE PROHIBITED.** 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 liability, including attorneys' fees and costs.

**14. DISCLAIMER FOR CRITICAL APPLICATIONS.** 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.

**15. LIMITATION OF LIABILITY.** ON Semiconductor's entire liability whether in contract or tort including negligence and the Buyer's sole remedy in respect of any default are as set out hereafter;

(i) ON Semiconductor will accept liability, without limitation, for death or personal injury resulting from the negligence of ON Semiconductor

(ii) ON Semiconductor will accept liability for direct physical damage to tangible property of the Buyer to the extent it is caused by the negligence of ON Semiconductor subject to the exclusions set out in (iv) below and up to a maximum limit of one million U.S. Dollars (\$1,000,000) in the aggregate.

(iii) Except in the case of any liability on the part of ON Semiconductor referred to in (i) and (ii) above, ON Semiconductor's total liability in respect of any one default shall not exceed the purchase price of all the Products in respect of which ON Semiconductor is in default. If a number of defaults give rise substantially to the same loss or are attributable to the same or similar cause then they shall be regarded as giving rise to only one claim hereunder.

(iv) ON Semiconductor shall not be liable for loss of profits, business, revenue, goodwill, anticipated savings, special, indirect, incidental or consequential losses even if foreseeable by or in the contemplation of ON Semiconductor or any claim made against the Buyer by any other person.

**16. ENTIRE AGREEMENT.** This document constitutes the entire and final agreement between ON Semiconductor and the Buyer and supersedes all other communications.

**17. 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.

**18. 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

**19. AMENDMENTS.** No modifications shall be binding unless made in a written amendment signed by both parties.

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

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.