



**CHiL Semiconductor Corporation**  
**Terms and Conditions for Standard Goods**

- A. As used herein the term “Seller” shall mean CHiL Semiconductor Corporation, the term “Buyer” shall mean the party placing a purchase order with Seller, the term “Seller’s Specifications” shall mean Seller’s product data sheet for the Goods at the time of the order, and “Goods” shall mean the items ordered by Buyer hereunder.
- B. No contractual relationship between Seller and Buyer shall arise until such time as Buyer has placed an order which has been accepted by Seller.
- C. Clerical errors are subject to correction.
- D. All quoted prices are subject to change on thirty (30) days notice to Buyer.

**1. SCOPE**

The terms and conditions contained herein (“Terms”) shall apply to all quotations and offers made by, and purchase orders accepted by, Seller. By the placement of an order to purchase Goods hereunder, Buyer agrees to the Terms. The Terms may in some instances conflict with some of the terms and conditions on Buyer’s issued purchase order or otherwise specified by Buyer or the Terms may cover matters not addressed in Buyer’s order. Accordingly, acceptance of Buyer’s order is made only on the express understanding and condition that insofar as the Terms conflict with any terms and conditions of Buyer’s order or cover matters not addressed in Buyer’s order, the Terms shall govern, irrespective whether Buyer accepts the Terms by written acknowledgement, implication, or acceptance and payment for Goods. Seller’s failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions of this Section 1. Any changes in the Terms must specifically be agreed to in writing signed by an officer of Seller before becoming binding on either party. Any terms and conditions different from or in addition to the Terms shall be of no force or effect in connection with the sale of the Goods and Seller hereby objects to and rejects in their entirety all such terms and conditions, as Seller’s agreement to sell the Goods is expressly made conditional upon the use of the Terms.

**2. PRICES, TAXES AND QUOTATIONS**

Prices listed on Seller’s website or on printed literature are subject to change without notice. The applicable prices shall be those quoted by Seller, contained in Buyer’s purchase order and accepted by Seller. Prices do not include charges for shipping and handling and are exclusive of any present or future sales, revenue or excise tax, VAT, GST, shipping charges, duties (including customs and brokerage fees) or

other tax and levy applicable to the manufacture or sale of any Goods. Buyer shall pay and shall be responsible for all applicable charges, taxes, levies, duties and fees imposed at any time whatsoever on orders placed hereunder, other than with respect to taxes on Seller’s net income.

**3. PAYMENT TERMS**

Payment terms shall be net thirty (30) days from the date of invoice. All payments shall be in US Dollars. All amounts which are not timely paid by Buyer shall be subject to a late charge equal to one and one-half percent (1.5%) per month (or, if less, the maximum allowed by applicable law). If Buyer fails to make payment for Goods as herein provided or if, in Seller’s opinion, a change in Buyer’s financial condition or other circumstances has created reasonable concerns as to Buyer’s creditworthiness, Seller may at any time, in its sole discretion, limit or cancel the credit of Buyer as to time and amount and demand payment in full before delivery of any Goods. In such event, all subsequent shipments shall be suspended until Buyer’s account is current.

**4. ORDER CANCELLATION**

Except as provided herein, all orders for standard Goods are non-cancelable and are non-returnable. Shipments that are within thirty (30) days of the original shipment date shall not be rescheduled or cancelled, shipments that are more than thirty (30) but less than ninety (90) days within the original shipment date can be rescheduled in an amount plus or minus 50% of the original scheduled shipment and orders which are more than ninety (90) days prior to the originally scheduled shipment can be completely rescheduled or cancelled. Any orders for non-standard Goods are always non-cancelable. Cancellation charges for standard Goods shall be reasonably determined by Seller based on such factors as whether the Goods were manufactured specifically for Buyer, Seller’s ability to change its production schedule within the period of the notice provided by Buyer, whether Seller procured or allocated particular supplies, services or equipment to meet Buyer’s order and other such factors as reasonably determined by Seller.

**5. TITLE AND DELIVERY**

All Goods shipped to the Buyer shall be packaged in Seller’s standard containers or, at Buyer’s expense, in accordance with instructions provided by Buyer, and shall be shipped to Buyer’s named location, or to the location specified in the applicable purchase order. Seller shall deliver the Goods to Buyer, when ordered by Buyer on reasonable notice to Seller, in accordance



with INCOTERMS 2000 - EXW (Ex Works Seller's manufacturing location). Title and risk of loss shall pass to Buyer upon delivery to Buyer's specified carrier for shipment. The date of the bill of lading or other receipts issued by the carrier shall be conclusive proof of the date and shipment of the Goods. All customs duties, freight, insurance and other shipping expenses, as well as any other special packing expenses requested by Buyer, shall be borne by Buyer. Buyer will satisfy all import formalities pertaining to shipment of Goods to destinations outside the United States.

## **6. INSPECTION AND ACCEPTANCE**

Upon delivery, Buyer may elect to inspect the Goods to determine their conformance to Seller's Specifications. Buyer shall have thirty (30) days after delivery to notify Seller of any deficiencies and request replacement of the Goods. Failure to notify Seller, of nonconforming Goods within such period shall be deemed an unqualified acceptance. At that time, Buyer's only recourse or remedy for nonconforming Goods shall be Seller's standard warranty as set forth in Section 7. Buyer's inspection and acceptance tests shall not exceed the inspection and test procedures customary in the industry for the Goods and shall be at Buyer's expense. No return of goods will be accepted by Seller without a Return Material Authorization ("RMA") Number and returned Goods must be in the original manufacturer's shipping cartons complete with all packing materials.

## **7. LIMITED WARRANTY**

Seller warrants to Buyer that the Goods shall conform to the applicable Seller's Specifications and be free from defects caused by defective material and faulty workmanship for a period of one (1) year from the date of shipment to Buyer. If the Goods do not comply with such warranty within such period, Buyer shall provide notice thereof to Seller within such period, Seller shall provide a RMA Number to Buyer, Buyer shall ship such Goods to Seller and Seller shall, at Seller's option, promptly repair, replace, or credit to Buyer's account the amount paid for such Goods. Seller shall bear the cost of shipping and shall bear the risk of loss of such Goods while in transit, provided that the failure of the Goods to comply with such warranty is not caused by (i) any modification to the Goods by Buyer; (ii) mishandling of the Goods by Buyer; (iii) any use outside of Seller's Specification; or (iv) misuse, neglect, damage by rain, fire, casualty or accident or any other cause not attributable to defective material or workmanship or failure to meet Seller's Specifications. This warranty does not apply if the Goods are classified as other than a commercial production unit, (e.g., a design verification unit, sample, reproduction unit, developmental unit, or prototype unit).

The foregoing constitutes Buyer's sole remedy and Seller's sole liability for breach of warranty. EXCEPT AS PROVIDED IN SUCH WARRANTY, THE GOODS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY EXPRESSLY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **8. CONFIDENTIAL INFORMATION**

Each party shall treat as confidential all proprietary or trade secret information of the other party, shall not use such information except as required in connection with its proper performance hereunder, and shall not disclose such information to any third party other than its own employees in connection with such proper performance, provided that such employees are under an obligation of confidentiality. Without limiting the foregoing, each of the parties shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of information disclosed to it by the other party under this Agreement, but in no event less than a reasonable degree of care. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's information. All such information and materials containing such information shall be held in confidence by the recipient for five (5) years after receipt.

## **9. CHANGES TO SELLER'S SPECIFICATIONS**

Seller reserves the right to change Seller's Specifications (including all statements and data appearing in Seller's catalogs, data sheets and advertisements) without notice. If such changes to Seller's Specifications are made, Seller assumes no obligation to provide the changes for Goods previously ordered.

## **10. NOTICES**

All notices required or permitted hereunder shall be in writing and shall be delivered (a) by facsimile, (b) personally, or (c) mailed by certified or registered mail, return receipt requested and postage prepaid, addressed to the addresses provided in this Section 10. Delivery by facsimile is effective upon receipt of successful fax transmission and shall be followed by delivery by mail as provided herein. Notice by personal delivery is effective upon receipt of the notice. Notice sent by mail shall for all purposes of this Agreement be treated as being effective three (3) days after mailing. All notices to Seller shall be sent to CHiL Semiconductor Corporation, Attn: Legal Department, One Highwood Drive, Suite 302,



Tewksbury, MA 01876 USA. All notices to Buyer shall be sent to its then current principal place of business.

## 11. RESTRICTED APPLICATIONS

The Goods are not authorized for use in safety-critical applications, such as life support, when a failure of the Goods would reasonably be expected to cause personal injury or death. Similarly, the Goods are not designed or intended for use in military or aerospace applications or environments. In addition, there may be other specific applications where required industry specifications are not part of Seller's Specifications. In all such circumstances, Buyer shall be solely responsible for and shall fully indemnify Seller against any and all such use.

## 12. INTELLECTUAL PROPERTY INDEMNIFICATION

Subject to Section 13, Seller will pay any damages, liabilities and costs finally awarded against Buyer, or agreed to by Seller as a settlement, and will defend Buyer against any claim, suit or proceeding brought against Buyer to the extent such claim, suit or proceeding is based on any allegation that the Goods purchased by Buyer directly infringe any United States, Canadian, Japanese or European Union patent, copyright or trade secret; provided that Seller is given (a) prompt written notice of any such claim, suit or proceeding by Buyer; (b) the opportunity to assume the sole control and defense of such claim, suit or proceeding; and (c) reasonable assistance by Buyer in connection therewith.

In the event Seller believes Buyer's use of the Goods is likely to be enjoined, or if such an injunction actually occurs, Seller, at its option and expense, may (a) obtain a license to permit Buyer to continue to use such Goods; (b) replace or modify such Goods to make them non-infringing; or (c) refund to Buyer the purchase price therefor on a depreciated basis with a three (3) year Goods life.

Seller shall have no liability for any costs, losses or damages resulting from Buyer's willful acts or any settlement effected by Buyer without Seller's prior written consent. Seller shall have no obligation to indemnify Buyer under this Section 12 to the extent that the infringement alleged is based upon (a) Buyer's use of the Goods in combination with any other items; (b) Buyer's use of the Goods in a manner other than for that designed or intended by Seller; (c) Buyer's modification of the Goods; or (d) Seller's compliance with Buyer's instructions or specifications as to design. Buyer shall indemnify and hold harmless Seller against any damages, liabilities or costs arising

out of or in connection with any of the circumstances described in the immediately preceding sentence.

This Section 12 states the entire liability of Seller and the sole remedy of Buyer for the infringement of any intellectual property rights.

## 13. LIMITATION OF LIABILITY

SELLER'S TOTAL LIABILITY FOR DAMAGES HEREUNDER, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, INDEMNIFICATION, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID BY BUYER TO SELLER FOR THE GOODS IN QUESTION. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE PURCHASE AND SALE OF THE GOODS.

## 14. EXPORT CONTROL

Buyer shall not export or re-export any Goods other than in complete compliance with all applicable United States laws and regulations governing such matters. Buyer shall indemnify and hold harmless Seller from any failure of Buyer to comply with this Section 14.

## 15. MISCELLANEOUS PROVISIONS

(a) Waiver. No waiver of any provision of the Terms shall be of any force or effect unless in writing and signed by the party to be charged therewith.

(b) Force Majeure. Seller shall have no liability for loss or damage due to delays resulting from any cause beyond its reasonable control, including, without limitation, government law or regulation, acts of God, acts or omissions of Buyer, weather, labor difficulties, public disturbance, transportation difficulties, problems with suppliers or any other similar or related cause. Any such cause shall extend the time for Seller's performance to the extent of the delay so incurred.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Any dispute arising between the parties shall be subject to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts and service of process in connection with any such proceeding may be made in the manner permitted by the laws of the Commonwealth of Massachusetts.



(d) Non-Assignment. Buyer shall not assign or transfer its order hereunder or the Terms in whole or in part. A change in control of Buyer shall constitute an assignment for such purposes.

(e) Severability. In the event any provision of the Terms shall be determined by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, such provision shall be enforced to the maximum extent legally permissible and such determination shall have no effect on the other provisions of the Terms.

(f) Entire Agreement. The Terms constitute the entire agreement between the parties concerning the subject matter hereof and any orders for Goods placed by Buyer. The Terms may be amended or revoked only by a written instrument executed by both parties.