

## GENERAL TERMS AND CONDITIONS OF SALE

**1. Governing Terms.** These General Terms and Conditions of Sale ("Terms") apply to all offers or quotations made by and/or orders accepted by Samsung C&T America, Inc. ("Seller"). These Terms and the provisions of any quotation, offer, agreement or invoice to which these terms are stated to apply (collectively, "Agreement") constitute the whole agreement between Seller and the person or entity named in this Agreement as buyer ("Buyer") as to the purchase and sale of the goods identified herein ("Goods"), and shall supersede all prior written terms, conditions, or agreements, oral or written with respect to their subject matter. Seller hereby gives notice that it objects to any additional or different terms or conditions proposed by Buyer in any purchase order or other document, and unless otherwise agreed to in writing by an authorized representative of Seller, such terms or conditions are hereby rejected and of no effect, even if Seller has not expressly objected to such terms or conditions, or they are specified subsequent to this document. Buyer's agreement to comply with these Terms is a condition of doing business with Seller and, Buyer's acceptance of any offer or quotation of Seller, or performance or undertaking of any obligation to Seller shall be deemed an acceptance of these Terms.

**2. Price & Availability.** Stated prices and availability of Goods are subject to change without notice, at all times, prior to Seller's acceptance of Buyer's order, and in the event that, after Seller's acceptance, but prior to delivery of all Goods, Seller's costs are increased on account of any governmental acts, laws or regulations, the price of any then undelivered Goods shall be increased accordingly. Unless otherwise stated herein, prices do not include, and Buyer shall be liable for, any taxes, duties, or other governmental charges assessable on account of this Agreement.

**3. Taxes.** All taxes, excise fees, duties, imposts, and inspection fees, now or hereafter imposed by federal, state, or local governments, in respect to or measured by the Goods or the manufacture, storage, delivery, transportation, receipt, exchange, sale, or inspection thereof, shall be for the account of Buyer, and Buyer shall reimburse Seller, upon receipt of invoice thereof, of any such amounts legally required to be paid and paid by Seller in respect of the Goods delivered by it. All personal property taxes assessed by any governmental authority upon the value of any Goods covered by this Agreement shall be paid by the party having title to the Goods at the time of assessment.

**4. Payment.** Payment terms are F.O.B. point of shipment, net thirty (30) days (U.S., Mexican, or Canadian accounts) or net letter of credit (all other foreign accounts), unless otherwise stated herein. All amounts shall be paid in full, and Buyer shall have no right to setoff any amounts from payments due hereunder. All payments shall be payable in legal tender of U.S.A. Acceptance by Seller of bank drafts, checks or other media of payments is subject to collection. In the event that payment for the Goods is not made when due, without prejudice to any other rights and remedies of Seller Buyer agrees that it shall be liable to pay Seller: (i) a service charge on the unpaid balance at the rate of one

and one half percent (1.5%) per month (or if said rate exceeds the rate permitted by law, then at the highest rate permitted by law) until payment in full is made; and (ii) Seller's costs of collection of such overdue amounts including reasonable attorney's fees. The acceptance by Seller of any payment in less than the full amount shall not be a waiver of any rights of Seller. Buyer hereby grants Seller a security interest in the delivered Goods and proceeds thereof to secure payment of the purchase price. Seller may recover for each delivery as a separate transaction, without reference to any other delivery. Partial shipment and/or lawful transshipment shall be permitted.

**5. Termination/Insolvency.** If Buyer fails to pay any invoice or otherwise is in material default of this Agreement or any other contract with Seller, or in the event of the bankruptcy, insolvency, liquidation or appointment of receiver of Buyer (or analogous occurrence), any and all payments due from Buyer to Seller under this Agreement shall become due and payable. Without prejudice to any other rights and remedies of Seller, Seller further reserves the right to cancel this Agreement or retain or take possession of the Goods or to withhold further deliveries and/or stop Goods in transit until the default is remedied (in which event, if Seller elects, the Agreement shall be deemed extended for a period of time equal to that during which deliveries are deferred), or take any other action to protect Seller's rights. On the occurrence of any of the foregoing, Buyer agrees to indemnify and hold harmless Seller for all its costs and losses arising therefrom.

**6. Shipment.** All shipping dates are approximate. Unless otherwise stated herein, risk of loss and title passes to Buyer when the Goods are delivered to the carrier at shipping point. Seller shall not be liable for loss or damage during shipment. Buyer shall furnish Seller with such shipping instructions as Seller may request. Seller shall not be obligated to tender delivery of any quantities for which Buyer has not given shipping instructions as herein provided. Buyer acknowledges that the Goods may require special handling, storage, transportation, treatment or use to comply with applicable safety and environmental laws and regulations and will take all reasonable action to comply with these laws and avoid damages to persons, property or the environment. Buyer will unload and release all transportation equipment promptly so Seller incurs no demurrage, other expense or loss. Unless specific tolerances are set forth herein, Seller shall have the right to deliver such quantities of the Goods ordered within limits reasonable in trade practice and Buyer shall be obligated to accept and pay for the quantity actually delivered. In the event of a failure to deliver within a reasonable time after the shipping date, Buyer's sole and exclusive remedy shall be to cancel its order. Such cancellation shall be effective upon five (5) days written notice, and Buyer shall accept any Goods shipped by Seller prior to the effective date of cancellation.

**7. Delivery in Installments.** Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein. Each installment shall be separately invoiced and paid when due, without regard to subsequent deliveries. Delay in delivery of any installment

shall not relieve Buyer of its obligation to accept remaining deliveries.

**8. Credit.** Seller reserves the right at any time to decrease, limit or revoke any credit extended to Buyer. Seller may suspend or cancel shipments hereunder if Buyer's credit limit is exceeded or revoked, or at Seller's option, continue shipments provided payment for any such shipments shall be due in cash on or before delivery.

### **9. Warranty & Indemnification.**

**A). Unless otherwise specified herein Seller makes no express or implied warranties (including warranties of merchantability, fitness for any particular purpose, or non-infringement) except that the Goods shall meet any specifications stated herein.** Buyer agrees that it has not been induced to enter, nor has it relied in entering, into this Agreement on any oral or written representation, promise or warranty made by Seller, its employees or agents other than as expressly set out in this Agreement.

**B). Buyer assumes all risk and liability for loss, damage or injury to person(s) or property resulting from Buyer's possession, use or sale of the Goods, alone or in combination with other goods or substances.** Buyer agrees to indemnify, defend, and hold Seller harmless from and against all losses, liabilities, claims, causes of actions costs and expenses (including reasonable attorney's fees), relating to or arising out of Buyer's negligence or misconduct or breach of this Agreement or infringement of any trademark, patent, copyright or design if the Goods are made from designs, specifications, or drawings furnished by Buyer. **In no event shall Seller be liable for any special, consequential, incidental or punitive damages, including without limitation, lost profits, whether or not based upon Seller's negligence or breach of warranty or strict liability in tort or any other cause of action, and even if Seller has been advised of the possibility of such damages.**

### **10. Claims.**

**A). No claim by Buyer of any kind, whether based on negligence, warranty, or any other theory and whether relating to Goods delivered or for non-delivery shall be greater in amount than the purchase price of the Goods in respect of which such damages are claimed.** Demurrage, if incurred, will be due by Buyer to Seller upon receipt of invoice.

**B). All claims for shortages, defective, or damaged Goods must be made in writing within 15 days after receipt of delivery, and prior to any modification to the Goods, or such claims shall be deemed waived. No claims shall stand if Buyer modifies or alters the Goods.**

**C). Buyer shall be responsible for all shipping costs incurred in returning any allegedly non-conforming Goods. Any Goods found by Seller not to be non-conforming shall be, at Seller's option, returned to Buyer for payment in full.**

**D). Seller's sole and exclusive liability under any claim shall be to replace or, at Seller's option, to give Buyer a pro rata credit for any part of the Goods paid for by Buyer which fail to conform to the description hereof as determined by Seller, in each case subject to the return to Seller of the non-conforming Goods in the same condition as they had been delivered to Buyer.**

**E). Allegedly non-conforming Goods may not be returned to Seller without a written return authorization. In order to obtain a return authorization, Buyer must submit to Seller in writing a detailed claim containing at least the invoice number, sale date, and description of non-conformity. Seller may refuse returns that do not reference Seller's return authorization number.**

**11. Export Control Laws.** Buyer shall comply in all respects with U.S. laws, regulations and administrative requirements applicable to this Agreement concerning the export or re-export of any United States origin Goods including, but not limited to, the International Traffic in Arms Regulations, the Export Administration Regulations, and the regulations and orders issued and/or administered by the U.S. Department of the Treasury, Office Of Foreign Assets Control in relation to export control, anti-boycott and trade sanctions matters.

**12. Force Majeure.** Seller shall not be liable for failure to deliver, or delays caused by events beyond Seller's reasonable control, including, without limitation, acts of God, strikes, lockouts, earthquakes, hurricanes or weather conditions, wars, terrorist acts, fires, civil disturbance, breakdowns or delays of carriers or suppliers, or governmental acts or regulations. In such case, Seller may extend the shipping date, ratably distribute Goods, or cancel any order or this Agreement.

**13. Notices.** All notices hereunder shall be in writing and shall be deemed duly given if personally delivered or if mailed (by certified or registered mail, or by reputable courier service) to the party concerned at its address set forth herein (or as subsequently changed in a notice given in accordance herewith).

**14. Law/Jurisdiction.** The laws of the State of New York, without regard to its conflicts of law principles, govern all matters arising under or relating to this Agreement. All trade terms used herein shall be interpreted in accordance with the latest Incoterms. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any disputes arising out of or relating to this Agreement shall be exclusively filed and resolved in the appropriate state or federal court in New York, New York. The parties hereto consent to the exclusive venue and jurisdiction of such courts and waive any claims of improper venue or forum non conveniens with respect thereto.

**15. Miscellaneous.** Any assignment or subcontracting of rights or delegation or performance of this Agreement without the prior written consent of Seller shall be void. In the event any one or more of the provisions of this Agreement shall be held to be void, illegal or unenforceable in any respect, such voidance, illegality or unenforceability shall not affect any other provisions hereof. The rights and remedies set forth herein are not exclusive and are in addition to any other rights and remedies available. No failure or delay in exercising any right or remedy under this Agreement operates as a waiver or estoppel of any right, remedy or condition. The headings in this Agreement are for convenience only and do not affect this Agreement's interpretation. No modification or waiver of this Agreement shall bind either party unless signed by its authorized representative.