

**INTERTELL**  
**TERMS AND CONDITIONS OF SALE**  
**Effective 01 FEBRUARY 2008**

**Article 1. General**

Intersil Corporation or one of its subsidiaries, as applicable, ("Seller"), in the interest of processing orders in a prompt and efficient manner has established this set of Terms and Conditions of Sale to conform to current business and legal requirements. These Terms and Conditions of Sale shall apply to all quotations, order acknowledgements, and sales of Products (as defined in Article 3 below) whether or not they are provided with each transaction. A copy of these Terms and Conditions of Sale are available at [www.intersil.com](http://www.intersil.com). Seller's failure to object to conflicting provisions, or additional provisions not contained herein, in any communication from Buyer shall not be deemed a waiver of these terms and conditions.

**Article 2. Scope**

"Buyer" shall mean the party placing the purchase order. Seller's offer to sell as stated herein, whether or not in response to Buyer's Purchase Order, is expressly conditioned upon Buyer's acceptance of Seller's Terms and Conditions of Sale. Buyer's taking delivery of all, or any part, of a Product shipment is evidence of such acceptance. Any and all of Buyer's terms and conditions which are different from or in addition to those contained herein or on Seller's quotation form are hereby rejected, and of no effect.

**Article 3. Definitions**

The following terms as used herein are defined as follows:

- (A) "Contract" is the agreement formed by a valid offer and acceptance for the purchase of Products, and includes these terms and conditions of sale.
- (B) "Custom" or "Semiconduct Products" are those Products manufactured in whole or in part to Buyer's specifications and identified by a distinctive custom type or part number.
- (C) "Developmental Products" are those Products which have not been manufactured in production quantities or commercially introduced and do not bear a distinctive type or part number.
- (D) "Products" include, without limitation, integrated circuits, discrete devices, hybrid circuits, and electronic modules (including in packaged or unpackaged form) purchased directly by Buyer from Seller or through Seller's authorized distribution channels. Unpackaged Products are Products sold in die and/or wafer form without connection to a lead frame.
- (E) "Purchase Order" means a written or electronic (e.g., E-mail or EDD) communication from the Buyer for the purchase of Products.
- (F) "Standard Products" are those Products which are manufactured to Seller's specifications for sale to all customers.

**Article 4. Prices**

- (A) Purchase Order - Buyer is required to provide a written Purchase Order to include at a minimum, product, quantity, price and requested delivery date.
- (B) Billing - All billings for Products will be at Seller's quoted or established prices for the quantities ordered, which may be adjusted to the standard book cost, as applicable.
- (C) Order Scheduling - Orders may be placed for shipment over a period of up to 12 months following the date of the Purchase Order. Seller reserves the right to cancel any Contract for which no authorization to ship Product has issued within three (3) months from the Purchase Order date. Seller reserves the right to reject any revision to an existing open purchase order when, in its option, any such revision substantially alters the scope of the original order.
- (D) Price Adjustment - Seller reserves the right to change or withdraw prices at any time for its Products without advance notice. Backlog and distributor inventory may be re-valued and adjusted as needed.  
If Buyer fails within 12 months of the order receipt date to release and accept delivery of the quantity of Product upon which the billing price was based, the purchase price will be determined by the quantity actually released and shipped and Buyer will be billed for any price difference.
- (E) Taxes - International, federal, state and local excise, sales, use, value-added and similar taxes and tariffs if applicable ("Taxes") are to be borne by Buyer unless Buyer provides Seller with a properly executed tax exemption certificate. Unless otherwise specified or required by law, all prices will be quoted and billed exclusive of Taxes which will be billed as separate, additional items on Seller's invoice.
- (F) Seller does not participate in U.S. Government contracts that require certification of current cost or pricing data. Accordingly, no form SF-1411 will be provided. Orders shall only be accepted on the basis of: (i) competition (FAR 15.804-3(b)); or (ii) qualification for a cost or pricing data exemption (FAR 15.804-3(c)); or (iii) granting a waiver by a U.S. Government representative (FAR 15.804-3(f)); or (iv) qualification for CAS exemption under 48 CFR 9903.201-1.

**Article 5. Minimum Order Release**

Minimum order and shippable quantities as defined by product specific minimum line quantities (MLQ's) as listed in Seller's current Cost and Resale or OEM Price List. The MLQ's are multiples of the standard pack. Exceptions to the MLQ requirement must be specifically negotiated between Buyer and Seller. Orders for less than MLQ will be automatically increased to meet minimum requirements. If not in standard pack increment, orders will be increased or decreased to standard pack quantities in accordance with previous Seller/Buyer agreements.

**Article 6. Delivery, Title and Risks**

- (A) Except as otherwise expressly agreed by Seller on the Order Acknowledgement or Seller's shipping documents, all sales are FCA, Seller's shipping point (Incoterms 2000). Seller's title and risk of loss pass to Buyer upon making delivery of Products purchased hereunder to the carrier at the shipping point, per the most current scheduled delivery date. All Products held by Seller at Buyer's request beyond the scheduled delivery date shall be at Buyer's risk of loss.
- (B) Seller reserves the right to make deliveries in installments. Partial shipments will be billed as made and payments therefor are subject to the terms of payment noted below. All delivery indications are estimated and are dependent in part upon prompt receipt of all necessary information to service an order. Seller reserves the right to allocate inventories and production when such allocation becomes necessary. **IN NO EVENT WILL SELLER BE LIABLE FOR ANY PREMIUM TRANSPORTATION, REPROCUREMENT, OR OTHER COSTS OR LOSSES INCURRED BY BUYER AS A RESULT OF SELLER'S FAILURE TO DELIVER PRODUCT IN ACCORDANCE WITH INDICATED DELIVERY SCHEDULES.**
- (C) Seller will endeavor to meet scheduled delivery dates but shall be excused from performance and not be liable for delay in delivery or non-delivery attributable in whole or in part to (i) any cause beyond Seller's reasonable control including but not limited to, act of government, whether in sovereign or contractual capacity, judicial action, war, civil disturbances, insurrection, sabotage, terrorism, material or manufacturing unavailability, act of a public enemy, labor difficulties or disputes, failure of or delay in delivery by Seller's suppliers or carriers, commercial impracticability (irrespective of conjunctural foreseeability at time of contracting), shortages of energy, raw materials, labor, or equipment, inadequate yield of product despite Seller's reasonable efforts, accident, fire, flood, storm or other vis major, or (ii) Buyer's fault or negligence.

**Article 7. Substitution and Discontinuation of Products**

- (A) Seller may modify the specifications of Products of its own design at any time without notice and may substitute delivery of such Products provided such modification does not in Seller's sole judgment materially affect form, fit or function.
- (B) Seller is not obligated to continue production of any Product. All orders placed for discontinued Products are non-cancelable and non-returnable, except with respect to those units found to be subject to adjustment under Article 9 herein.

**Article 8. Payment**

- (A) Subject to prior approval and extension of credit by Seller, Buyer shall pay the net invoiced amount in United States currency or the currency specified on the Order Acknowledgement or Seller's shipping documents within thirty (30) days from date of Seller's invoice. Any payments or part thereof remaining unpaid after thirty (30) days shall, in the absolute discretion of Seller, carry interest thereon at the rate of two percent (2%) per annum above the prime interest rate published in the Wall Street Journal as of the date on which payment was due, calculated on a daily basis. Seller reserves the right at any time to withdraw previously approved credit and in such event Buyer shall comply with the new payment terms as a condition for delivery.
- (B) Buyer shall make payment without regard to inspection of the Products.

**Article 9. Warranties**

- (A) Seller warrants that its Products are free from defects in material and workmanship and possess the electrical characteristics as set forth in, and will perform in accordance with, the applicable data sheet or agreed upon written specifications in effect at the time of sale, when operated within the temperature and all other operating condition limitations set forth therein.
- (B) The foregoing shall apply only to failures to meet said warranties which appear and are reported to Seller within one (1) year from the date of shipment.
- (C) Seller's warranty does not apply if, and Seller shall have no liability for Products returned by Buyer as to which Seller's examination discovers that: i) the Product has been exposed to unusual or excessive environmental, mechanical, electrical or thermal stress during the course of installation or use; or ii) the absolute maximum ratings are exceeded for any reason including, but not limited to, equipment variations, environmental variations, the effects of changes in operating conditions due to variations in device characteristics, improper equipment design, improper device installation or applications; or iii) Product malfunction is the result of misuse, abuse, improper installation or application, alteration, accident, or negligence in use, storage, transportation or handling; or if the original identification markings on the Product have been removed, defaced or altered; or iv) Product is "burned in" and/or tested for Buyer by anyone other than Seller unless such procedures have Seller's prior written approval; or v) the Product is classified as other than a commercial production unit, e.g., a design verification unit, sample, preproduction unit, developmental unit, prototype unit, incomplete (with notice) or "failures" (i.e. out of specification with notice) unit. All warranty claims are subject to verification by Seller.
- (D) The liability of Seller hereunder is solely and exclusively limited to replacement, repair or credit at the purchase price at Seller's option for any Product which is returned by Buyer during the warranty period set forth in Section 9(B) herein and which is found by Seller to be subject to adjustment under this warranty.
- (E) The foregoing warranties extend to Buyer only, and not to Buyer's customers or to users of Buyer's products. These warranties are the only warranties made by Seller and shall not be enlarged by representations, descriptions, course of dealing, trade usage, rendering of technical advice, service, samples, models, or otherwise.
- (F) EXCEPT FOR ANY WARRANTY EXPRESSLY INCLUDED HEREIN, SELLER MAKES NO OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR SHALL THIS WARRANTY BE ENLARGED BY A COURSE OF PERFORMANCE, COURSE OF DEALINGS, USAGE, TRADE, OR SAMPLES.
- (G) Notwithstanding anything herein to the contrary, Seller shall have no liability for any defects in any Unpackaged Products, or for failure of the Unpackaged Products to meet the technical specifications in the finished Product data sheet. Further, the warranty of this Article 9 shall not apply to any Unpackaged Products sold hereunder.

**Article 10. Warranty Returns**

- (A) In order to avoid administrative difficulties that result from unauthorized returns, Buyer shall request a formal Return Authorization (RA) from Seller through Seller's Sales Representative office or Customer Return Services before returning Product for any reason. Seller shall not be responsible for packing, inspection or labor costs in connection with the return of Products. Nor shall Seller be responsible for return of any Product without authorization.
- (B) Buyer may return the affected Products C.I.P. Seller's plant upon receipt of the RA from Seller. Buyer must return product with original paperwork. The RA numbers must be prominently displayed on the outside packing. Returned items should be packaged to prevent damage during transit in original containers, if possible. Buyer shall give Seller a detailed statement of alleged deficiencies and shall otherwise comply with Seller's instructions contained in the RA.
- (C) Seller shall have no liability for Products returned or otherwise disposed of by Buyer where Seller is unable to verify the alleged deficiency as provided in Article 9. Additionally, Seller will not accept Product returns that are received more than sixty (60) days after the issuance of an RA number to Buyer. Such returned Product will be returned to Buyer at Buyer's expense.

**Article 11. Patent Infringement**

- (A) Subject to the following provisions, Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that Products manufactured and supplied by Seller to Buyer constitute direct infringement of any duly issued United States patent and Seller shall pay all damages and costs finally awarded therein against Buyer, provided that Seller (1) is promptly informed and furnished a copy of each communication or notice in connection with such suit or proceeding and the alleged infringement, and (2) is given authority, information and assistance (at Seller's expense) necessary to defend or settle such suit or proceeding. Seller shall not be obligated to defend or be liable for costs and damages for any infringement arising out of (i) compliance with specifications of Buyer and/or an industry standard, ii) any additions to or modifications of the Products by Buyers; (iii) use of the Products in combination with other goods or with each other after delivery by Seller; (iv) use of the Products; or (v) methods of manufacturing Products. Seller shall not be obligated to defend or be liable for costs and damages for any suit claiming that the Products infringe a patent in which Buyer, or any subsidiary or affiliate thereof, has a direct or indirect ownership interest in such patent.
- (B) In the event a patent infringement suit, proceeding, or claim is brought or made against Products sold hereunder or if any Products manufactured and supplied by Seller to Buyer are held to infringe a United States patent and Buyer is enjoined from using such Products, Seller at its sole option and expense will either (i) procure for Buyer the right to continue using such Products free of any liability for patent infringement, or (ii) replace such Products with non-infringing but otherwise conforming Products, or (iii) refund the purchase price for any such Products returned by Buyer to Seller. Upon performing one of the foregoing options, Seller's defense and indemnification obligations shall terminate. Seller shall continue to provide Buyer commercially reasonable necessary assistance with such suit, proceeding or claim at Buyer's sole cost.
- (C) If a claim of alleged infringement is made prior to completion of delivery by Seller under this Contract, Seller may decline to make further shipments without being in breach of this Contract, and provided Seller has not been enjoined from selling such Products to Buyer, Seller agrees to supply same to Buyer at Buyer's option whereupon Buyer shall defend and indemnify Seller (on the same basis as would otherwise have been required of Seller to Buyer hereunder) for any continuing infringement arising therefrom subsequent to Buyer's exercise of such option.
- (D) If any suit or proceeding is brought against Seller based on a claim that Products manufactured and/or supplied hereunder by Seller constitute direct infringement of any duly issued United States patent, and such claim arises from any of the reasons in Paragraph A(i) through A(iv) above then Buyer shall defend and indemnify Seller on the same basis as would otherwise have been required of Seller to Buyer hereunder.
- (E) THE FOREGOING INDEMNITY AND DEFENSE OBLIGATIONS (1) EXTEND ONLY TO BUYER OR SELLER, RESPECTIVELY; (2) ARE SUBJECT TO THE LIMITATIONS IN ARTICLE 13 HEREIN; (3) STATE THE SOLE AND EXCLUSIVE LIABILITY AND REMEDY OF THE PARTIES HERETO FOR INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION; AND (4) ARE IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, IN REGARD HERETO. BUYER'S AND SELLER'S DEFENSE AND INDEMNIFICATION OBLIGATIONS SHALL TERMINATE UPON THE INDEMNITOR EXHAUSTING MONIES FOR ITS DEFENSE AND INDEMNIFICATION OBLIGATIONS HEREIN AT LEAST EQUAL TO THE LIABILITY CAP IN ARTICLE 13 HEREIN. SUBSEQUENTLY, THE INDEMNTEE SHALL BE SOLELY LIABLE FOR ALL FUTURE DEFENSE AND INDEMNIFICATION COSTS. INDEMNITOR SHALL CONTINUE TO PROVIDE COMMERCIALY REASONABLY NECESSARY ASSISTANCE (WITH ANY INFRINGEMENT SUIT, CLAIM OR PROCEEDING) TO INDEMNTEE AT INDEMNTEE'S SOLE COST.

**Article 12. Termination and Cancellation**

- (A) Buyer shall not terminate, suspend performance under, or issue a "hold" order on the Contract in whole or in part without Seller's written consent hereto. Buyer's liability for termination, suspension, or "hold" shall include Seller's charges therefor beyond the price of finished goods delivered and/or held for Buyer's disposition, such charges including but not limited to costs for work in process and other adjustment of the billing price to Seller's established price applicable to the quantity actually delivered plus an amount equal to twenty percent (20%) of the purchase price for the undelivered Product.
- (B) Orders for Products designated as Non-Cancelable, Non-Returnable ("NCNR") may not be cancelled nor rescheduled. Orders for Standard Product may not be cancelled or rescheduled within thirty (30) calendar days from Buyer's most current requested delivery date. Orders for Semiconduct and Custom Products may not be cancelled or rescheduled within ninety (90) calendar days from Buyer's most current requested delivery date, or else they shall be subject to a charge to Buyer to be reasonably determined by Seller based on such factors as whether the Product was manufactured specifically for Buyer, Seller's ability to change its production schedule within the period of the notice provided by Buyer, whether Seller acquired or allocated particular supplies or equipment to meet Buyer's order, etc. Orders rescheduled with less than the above specified notice may, at Seller's option, be treated as terminated and subject to the termination charges set forth above. Buyer may reschedule an order a maximum of three times.
- (C) Neither party shall cancel this Contract for breach of any of its provisions by the other party without giving such other party advance written notice thereof and a reasonable time in which to cure the alleged breach, except in the event of (i) insolvency of such other party, or (ii) failure of Buyer to make timely payment. Upon cancellation the parties shall be entitled to rights and remedies available at law or under this Contract, except to the extent excluded or limited by this Contract.
- (D) Seller, without cancelling this Contract, may decline to make further deliveries hereunder in the event of a breach by Buyer, but should Seller elect to continue delivering despite the breach such action shall not constitute a waiver of Buyer's breach or in any way affect Seller's remedies therefor.

**Article 13. Limitation of Buyer's Remedies and Damages**

- (A) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR TO ANY PARTY CLAIMING UNDER BUYER WHETHER AS A RESULT OF BREACH OF CONTRACT, AN EQUITABLE CLAIM, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAILURE OF A REMEDY TO ACCOMPLISH ITS PURPOSE OR OTHERWISE, FOR SPECIAL, INCIDENTAL, COLLATERAL, PUNITIVE, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO: LOSS OF PROFITS OR REVENUE; LOSS OF USE OF THE PRODUCT; DAMAGE TO ASSOCIATED EQUIPMENT, REWORK, RECALL COSTS, DOWNTIME OF PLANT OR EQUIPMENT; ANCILLARY COSTS FOR THE PROCUREMENT OF SUBSTITUTE GOODS; COST OF SUBSTITUTE EQUIPMENT OR PRODUCTS; OR CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.
- (B) Notwithstanding anything herein to the contrary, the cumulative financial obligations of Seller for defense and/or indemnification of any kind, whether based upon breach of contract, warranty, tort (including negligence) or provision of law, for any loss or damage arising out of, or resulting from the Contract, or from its performance or breach, or from any Product furnished hereunder, shall in no event exceed the aggregate monies actually paid during the past six years by Buyer to Seller for the Product which gives rise to the claims.

**Article 14. Source Inspection; Indemnification; Authorization**

- (A) Source inspection by Buyer or Buyer's customer shall be subject to Seller's prior authorization and reasonable charges based on impact thereof on Seller's resources.
- (B) Buyer shall indemnify and hold Seller harmless from any and all suits, damages, and expenses for any personal injury, death, or loss or damage to the property of Seller, its employees or agents during or in connection with any visit to Seller's plant regarding this Contract.

**Article 15. US Export Laws**

Seller's obligations are subject to the export administration and control laws and regulations of the U.S. Government. Buyer shall comply fully with such laws and regulations in the export, resale or disposition of products. Seller is not liable for any delays or the failure to obtain the necessary export license.

**Article 16. Use of Product in Life Support and Certain other Applications**

EXCEPT UPON THE PRIOR EXPRESS WRITTEN APPROVAL OF SELLER'S CHIEF EXECUTIVE OFFICER, SELLER'S PRODUCTS ARE NOT INTENDED OR AUTHORIZED FOR USE IN ANY SAFETY-CRITICAL APPLICATIONS SUCH AS LIFE SUPPORT OR ANY OTHER APPLICATION WHERE THE FAILURE OF THE PRODUCT COULD REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY, LOSS OF LIFE, OR SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE.

Buyer's use of Products for such applications without such approval are at Buyer's own risk, and Buyer shall indemnify and hold Seller harmless from all liability and costs (including court costs and attorney's fees) resulting from claims, demands, or actions brought against Seller by anyone on account of any injuries (including death) or property damage caused directly or indirectly from the use of Seller's Products as components in any of the above noted applications.

**Article 17. Miscellaneous Terms**

- (A) Buyer shall not assign this Contract or any right or interest therein without the prior written consent of Seller. Any assignment in contravention of the foregoing shall be null and void.
- (B) The Contract supersedes all previous communications, transactions, and understandings, whether oral, or written, and constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification or deletion of, or addition to these terms shall be binding on Seller unless made in writing and signed by Seller.
- (C) This Contract shall be in all respects construed and governed by the laws of the State of Florida, USA, notwithstanding any choice of law or treaty provisions to the contrary. Any conflicting rights under the law where Buyer is located are waived by Buyer. The United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not apply to any sale hereunder. This Contract shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.
- (D) A ruling by any court that one or more of the provisions contained in the Contract is invalid, illegal or unenforceable in any respect shall not affect any other provision of the Contract so long as the material substance of the transactions contemplated herein is not affected in any manner adverse to any party.
- (E) Except as otherwise expressly stated on the individual Product datasheet, Products are not certified by the Federal Aviation Administration ("FAA") nor the International Civil Aviation Organization ("ICAO").
- (F) All disputes, controversies or differences arising in connection with the validity, execution, performance, breach, non-removal or termination of the Contract shall be finally settled by a non-jury trial conducted in either Santa Clara County, California or Brevard County, Florida, at Seller's sole discretion.
- (G) Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations herein are reasonable, material, bargained for basis of any Purchase Order or Contract and they have been taken into account and reflected in determining the consideration to be given by each party under any Purchase Order or Contract and in the decision by each party to enter into such Contract.