



## **LSI ADL Technology Inc. TERMS OF SALE**

1. Prices: Prices are based on the specifications and quoted quantities, and include LSI ADL specified packaging. The price of tooling, stencils, and non-recurring engineering activities will be shown separately. Prices shall remain fixed for the term of the Agreement, subject to LSI ADL's right to revise Prices (i) to account for any variations on the market prices of components, parts and raw material (collectively "Components"), including any such variations resulting from shortages and (ii) in the event of a change in the specifications or quantities ordered.

2. Payment Terms. Payment terms are net thirty (30) days after date of invoice. On any invoice not paid by maturity date, CUSTOMER shall pay interest from maturity to date of payment at the rate of 1.5% per month.

3. Orders and Forecasts.

- a. General. CUSTOMER purchase orders shall be binding and may be rescheduled only in accordance with section c. Additionally CUSTOMER may furnish LSI ADL with a Forecast. The Forecast will be used in the ordering of long lead time components per section b. For all other purposes the forecast is non-binding.
- b. Long Leadtime Items; Minimum/Multiple Buys. CUSTOMER acknowledges that LSI ADL often must place orders for Components well in advance of the CUSTOMER's delivery date. At CUSTOMER's request, LSI ADL will provide to CUSTOMER a list of Components with long lead times. CUSTOMER acknowledges that Vendor leadtimes are subject to change, and agrees to be financially responsible for all Long Leadtime Components purchased in accordance with the Vendor's then-current leadtimes. CUSTOMER further acknowledges that LSI ADL will be required to order Components in accordance with the various minimum buy quantities, tape and reel quantities, and multiples of packaging quantities required by the Vendor, and agrees that it shall be financially responsible for all such Components.
- c. Reschedules. CUSTOMER may reschedule all or part of a scheduled delivery one time per quarter for a period not to exceed forty-five (45) days. At the end of this forty-five day period CUSTOMER shall accept delivery of rescheduled finished units.

- d. Excess and Obsolete Components. Within a reasonable time after the end of each calendar quarter, LSI ADL shall advise CUSTOMER in writing of any excess/obsolete Components in its inventory and the Delivered Cost of such Components. CUSTOMER shall pay for all Components which it agrees are excess/ obsolete. In the event CUSTOMER doesn't feel that a Component is excess/obsolete, it shall only be required to pay for the Component in the event said Component remains excess/obsolete at the end of the following quarter.
- e. Liability. CUSTOMER acknowledges that it shall be financially liable for all Components ordered in accordance with this Section. CUSTOMER's Component Liability shall be equal to LSI ADL's Delivered Cost of all Components ordered in support of any Order or Forecast, less the actual cost of those Components which are returnable to Vendor (less any cancellation or restocking charges). LSI ADL shall use commercially reasonable efforts to minimize CUSTOMER's Component Liability by attempting to return Components to the Vendor.

4. Delivery/Acceptance. All Product shipments shall be F.O.B. LSI ADL's facility of manufacture and freight collect; title to and risk of loss or damage to the Product shall pass to CUSTOMER upon LSI ADL's tender of the Product to CUSTOMER's carrier. Acceptance of the Product shall occur no later than Five (5) days after shipment, and shall be based solely on whether the Product passes a mutually agreeable Acceptance Test Procedure or Inspection designed to demonstrate compliance with the Specifications. Product cannot be rejected based on criteria that were unknown to LSI ADL or based on test procedures that LSI ADL does not conduct. Product shall be deemed accepted if not rejected within this fifteen-day period.

5. Warranty. LSI ADL's warranty period is for one year from date of manufacture and is limited to correction of defects in LSI ADL workmanship. For the purpose of this Section, "workmanship" shall mean manufacture in accordance with (i) the most recent version of IPC-A-600 or IPC-A-610 or (ii) the CUSTOMER's workmanship standards set forth in the specifications and approved by LSI ADL. LSI ADL shall, at its option and at its expense, repair, replace or issue a credit for product found defective during the warranty period. In addition, LSI ADL will pass on to CUSTOMER all manufacturers' Material warranties to the extent that they are transferable, but will not independently warrant any Material. All warranty returns shall be done in accordance with LSI ADL's return material authorization (RMA) policy, a copy of which is available upon request. Any repaired or replaced product shall be warranted as set forth in this section for a period equal to the greater of (i) the balance of the applicable warranty period relating to such product or (ii) sixty (60) days after it is received by CUSTOMER. LSI ADL's warranty does not include products that have defects or failures resulting from (a) CUSTOMER's design of products including, but not limited to, design functionality failures, specification inadequacies, failures relating to the functioning of products in the manner for the intended purpose or in the specific CUSTOMER's environment; (b) accident, disaster, neglect, abuse, misuse, improper handling, testing, storage or

installation including improper handling in accordance with static sensitive electronic device handling requirements; (c) alterations, modifications or repairs by CUSTOMER or third parties or (d) defective CUSTOMER-provided test equipment or test software. CUSTOMER bears all design responsibility for the Product. It is the sole responsibility of the CUSTOMER to fully evaluate the fitness for use of any recommendations made by LSI ADL personnel as to product design, materials, coatings, processing or testing. THE SOLE REMEDY UNDER THIS WARRANTY SHALL BE THE REPAIR, REPLACEMENT OR CREDIT FOR DEFECTIVE PARTS AS STATED ABOVE. THIS WARRANTY IS IN LIEU OF ANY OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

## 6. Termination.

- a. Either party may terminate an order for default if the other party materially breaches this agreement; provided, however, no right of default shall accrue until thirty (30) days after the defaulting party is notified in writing of the material breach and has failed to cure the breach or give adequate assurances of performance within such 30-day period. Notwithstanding the foregoing, there shall be no cure period for payment-related defaults. In addition, this agreement shall immediately terminate should either party (a) become insolvent; (b) enter into or file a petition, arraignment or proceeding seeking an order for relief under the bankruptcy laws of its respective jurisdiction; (c) enter into a receivership of any of its assets or (d) enter into a dissolution or liquidation of its assets or an assignment for the benefit of its creditors.
- b. In the event an order is terminated for any reason (including a breach by LSI ADL or a Force Majeure Event), CUSTOMER shall pay LSI ADL, termination charges (collectively, the "Termination Charges") equal to (1) the contract price for all finished product existing at the time of termination; (2) LSI ADL's cost (including LSI ADL's Delivered Cost for Material plus its Burdened Cost of labor) for all work in process; (3) LSI ADL's Delivered Cost of Material, including excess Material resulting from any minimum buy quantities, tape and reel quantities and multiples of packaging quantities required by the vendor; and (4) a reasonable profit. "Delivered Cost" shall mean LSI ADL's quoted cost (as set forth in the costed bill of materials or otherwise or, if no quoted cost exists, LSI ADL's standard cost) plus a fifteen percent (15%) materials margin; provided, however, that in the event this Agreement is terminated as a result of LSI ADL's breach, Delivered Cost shall mean LSI ADL's quoted cost (or, if no quoted cost exists, LSI ADL's standard cost). "Burdened Cost" shall mean LSI ADL's actual cost of labor including benefits and overhead.

7. Indemnification. CUSTOMER shall indemnify, defend, and hold LSI ADL and LSI ADL's affiliates, shareholders, directors, officers, employees, contractors, agents and other representatives harmless from all demands, claims, actions, causes of action, proceedings, suits, assessments, losses, damages, liabilities, settlements, judgments,

finances, penalties, interest, costs and expenses incurred (including fees and disbursements of counsel) of every kind (i) based upon personal injury or death or injury to property to the extent any of the foregoing is proximately caused either by a defective product (including strict liability in tort) or by the negligent or willful acts or omissions of CUSTOMER or its officers, employees, subcontractors or agents, (ii) based on any breach of this agreement and/or (iii) arising from or relating to any actual or alleged infringement or misappropriation of any patent, trademark, mask work, copyright, trade secret or any actual or alleged violation of any other intellectual property rights arising from or in connection with the products, except to the extent that such infringement exists as a result of LSI ADL's manufacturing processes.

8. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION SET FORTH IN THIS SECTION SHALL APPLY WHERE THE DAMAGES ARISE OUT OF OR RELATE TO THIS AGREEMENT. For the purpose of this Section, both lost profits and damages resulting from value added to the Product by CUSTOMER shall be considered consequential damages, but amounts required to be paid to a third party as a royalty or license fee shall not be considered consequential damages. IN NO EVENT SHALL LSI ADL'S LIABILITY UNDER THIS AGREEMENT FOR ANY PRODUCT (WHETHER ASSERTED AS A TORT CLAIM OR CONTRACT CLAIM) EXCEED THE AMOUNTS PAID TO LSI ADL FOR SUCH PRODUCT HEREUNDER. IN NO EVENT WILL LSI ADL BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY CUSTOMER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. Changes. CUSTOMER may upon sufficient notice make changes to the product, including but not limited to changes in (1) drawings, plans, designs, procedures, specifications, test specifications or BOM, (2) methods of packaging and shipment, or (3) delivery schedule (in accordance with Section 8). All changes other than changes in delivery dates shall be requested pursuant to an Engineering Change Notice ("ECN") and, if accepted by CUSTOMER, finalized in an Engineering Change Order ("ECO"). If any such change causes either an increase or decrease in LSI ADL's cost or the time required for performance of any part of the work under this Agreement (whether changed or not changed by any ECO) the prices and/or delivery schedules shall be adjusted in a manner which would adequately compensate LSI ADL for such change. LSI ADL reserves the right to charge an administrative fee for all ECN's in an amount not to exceed \$1,000 per ECN.

10. Security Interest. LSI ADL reserves a purchase money security interest in product sold to CUSTOMER and the proceeds thereof, in the amount of the purchase price. In the event of default by CUSTOMER in any of its obligations to LSI ADL, LSI ADL will have the right to repossess the product sold hereunder without liability to CUSTOMER. LSI ADL may file a copy of the invoice with appropriated authorities at any time as a financing statement and/or chattel mortgage to perfect its security interest. At LSI

ADL's request, CUSTOMER will execute financing statements and other instruments that LSI ADL may request to perfect LSI ADL's security interest.

11. Force Majeure Event. Neither party shall be responsible for any failure to perform due to a Force Majeure Event provided that such party gives notice to the other party of the Force Majeure Event as soon as reasonably practicable, specifying the nature and particulars thereof and the expected duration thereof. A "Force Majeure Event" shall mean the occurrence of unforeseen circumstances beyond a party's control and without such party's negligence or intentional misconduct, including, but not limited to, any act by any governmental authority, act of war, natural disaster, strike, boycott, embargo, shortage, and supplier delay in delivering Material to LSI ADL, riot, lockout, labor dispute, or civil commotion.

12. Miscellaneous. The terms and conditions set forth herein constitute the entire agreement of the parties, superseding all previous agreements covering the subject matter. This agreement shall not be changed or modified except by written agreement, specifically amending, modifying and changing this agreement, signed by a corporate officer of LSI ADL and an authorized representative of the CUSTOMER. CUSTOMER hereby acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein. The failure by LSI ADL to enforce at any time any of the provisions of this agreement, to exercise any election or option provided herein, or to require at any time the performance by CUSTOMER of any of the provisions herein will not in any way be construed as a waiver of such provisions. In the event the parties cannot resolve a dispute, the parties acknowledge and agree that the state courts of Franklin County, Ohio and the federal courts with jurisdiction in Franklin County Ohio shall have exclusive jurisdiction and venue to adjudicate any and all disputes arising out of or in connection with this agreement. The parties consent to the exercise by such courts of personal jurisdiction over them and each party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. This agreement shall be construed in accordance with the substantive laws of the State of Ohio (excluding its conflicts of laws principles). Reasonable attorney's fees and costs will be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of this agreement.

2/22/11