

TERMS AND CONDITIONS OF SALE

Customer and Advanced Micro Systems ("AMS") agree that the purchase and sales of AMS hardware and software products ("the Products") are made under these terms and conditions, and that AMS SHALL NOT BE BOUND BY CUSTOMER'S ADDITIONAL OR DIFFERENT TERMS. Customer's order and purchase of the Products shall constitute acceptance of these terms and conditions.

1. **TITLE.** Title to the Products shall pass at AMS's plant. AMS retains a security interest and right of possession in the Products until Customer makes full payment.
2. **TAXES.** Product prices are exclusive of, and Customer shall pay, applicable sales, use, service, value added or like taxes, unless Customer has provided AMS with an appropriate exemption certificate for the delivery destination acceptable to the applicable taxing authorities.
3. **PRICES AND PAYMENT.** All quotations shall expire thirty (30) days from date of issuance, unless otherwise set forth on the quotation or agreed in writing. Customer shall make payment in full prior to or upon delivery by cashier's check, credit card, or money order, unless AMS approves Customer for credit terms. If AMS approves Customer's credit application, payment shall be due no later than 30 days from the date of AMS's invoice. All sums not paid when due shall accrue interest daily at the lesser of a monthly rate of 1.5% or the highest rate permissible by law on the unpaid balance until paid in full. In the event of any order for several units, each unit(s) will be invoiced when shipped.
4. **ORDERS.** All orders are subject to acceptance by AMS. AMS's booking of an order shall constitute its acceptance of an order.
5. **INTERNATIONAL ORDERS.** All orders of International origin are exported from the US in accordance with the Export Administration Regulations. Diversion contrary to US Law is prohibited. An additional charge may be included for handling and invoicing. All duties and taxes will be the responsibility of the customer.
6. **DELIVERY.** AMS shall deliver the Products to a carrier at AMS's plant. Customer shall pay all freight charges, including a handling charge for freight pre-paid by AMS, and any other necessary fees. Orders are entered as close as possible to the Customer's requested shipment date, if any. Shipment dates are scheduled after acceptance of orders and receipt of necessary documents. Claims for shipment shortage shall be deemed waived unless presented to AMS in writing within forty-five (45) days of shipment.
7. **LIMITED WARRANTY.** AMS products are warranted against defective materials and/or workmanship for a period of two (2) years from date of shipment. During the warranty period, AMS will, at its option, repair or replace products, which prove to be defective. Customer must obtain a Return Material Authorization number from AMS before returning any Products under warranty to AMS. Customer shall pay expenses for shipment of defective Products to AMS. If the Product is deemed defective and covered under AMS warranty, AMS shall pay freight expenses, excluding any applicable duty and taxes, for the return shipment to Customer. This warranty shall not apply to defects resulting from: improper or inadequate handling by customer; improper or inadequate wiring by customer; unauthorized modification or misuse; or operation outside the electrical and/or environmental specifications for the product. Credit offsets are not allowed on warranty/repair returns.
8. **CUSTOMER REMEDIES.** AMS's sole obligation (and Customer's sole remedy) with respect to the foregoing Limited Warranty shall be to, at its option, return the fees paid or repair/replace any defective Products, provided that AMS receives written notice of such defects during the applicable warranty period. Customer may not bring an action to enforce its remedies under the foregoing Limited Warranty more than one (1) year after the accrual of such cause of action.
9. **RETURN/CANCELLATION/CHANGE POLICY.** Customer may defer or cancel shipments of only the Products listed on AMS' then current price schedule and approved for purchase under these Terms and Conditions and the purchase agreement by (i) giving AMS prior written notice of such deferment or cancellation and (ii) paying the applicable charge (calculated as a percentage of the applicable Product prices) set forth below:

Date Notice is Delivered to AMS	Deferment	Cancellation
Prior to Scheduled Shipment		
61 days or more	5%	15%
31 to 60 days	10%	25%
30 days or less	15%	35%

AMS may, in its sole discretion, cancel any unshipped order if (i) Customer is delinquent in the payment of any amount due and owing AMS and Customer does not cure such delinquency within ten (10) business days after delivery to Customer by AMS of a written notice requesting payment of such amount.
10. **NO OTHER WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED ARE MADE WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY OTHER WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING. AMS DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULTS OF THE USE OF THE PRODUCTS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE AND DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. AMS EXPRESSLY DISCLAIMS ANY WARRANTIES NOT STATED HEREIN.
11. **NO LIABILITY FOR CONSEQUENTIAL DAMAGES.** The entire liability of AMS and its licensors, distributors, and suppliers (including its and their directors, officers, employees, and agents) is set forth above. To the maximum extent permitted by applicable law, in no event shall AMS and its licensors, distributors, and suppliers (including its and their directors, officers, employees, and agents) be liable for any damages, including, but not limited to, any special, direct, indirect, incidental, exemplary, or consequential damages, expenses, lost profits, lost savings, business

- interruption, lost business information, or any other damages arising out of the use or inability to use the Products, even if AMS or its licensors, distributors, and suppliers has been advised of the possibility of such damages. Customer acknowledges that the applicable purchase price or license fee for the Products reflects this allocation of risk. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply. If the foregoing limitation of liability is not enforceable because an AMS product sold or licensed to Customer is determined by a court of competent jurisdiction in a final, non-appealable judgment to be defective and to have directly caused bodily injury, death, or property damage, in no event shall AMS's liability for property damage exceed the greater of \$50,000 or fees paid for the specific product that caused such damage.
12. **WARNING:** (1) AMS PRODUCTS ARE NOT DESIGNED WITH COMPONENTS AND TESTING FOR A LEVEL OF RELIABILITY SUITABLE FOR USE IN OR IN CONNECTION WITH SURGICAL IMPLANTS OR AS CRITICAL COMPONENTS IN ANY LIFE SUPPORT SYSTEMS WHOSE FAILURE TO PERFORM CAN REASONABLY BE EXPECTED TO CAUSE SIGNIFICANT INJURY TO A HUMAN. (2) IN ANY APPLICATION, INCLUDING THE ABOVE, RELIABILITY OF OPERATION OF THE PRODUCTS CAN BE IMPAIRED BY ADVERSE FACTORS, INCLUDING BUT NOT LIMITED TO FLUCTUATIONS IN ELECTRICAL POWER SUPPLY, COMPUTER HARDWARE MALFUNCTIONS, COMPUTER OPERATING SYSTEM SOFTWARE FITNESS, FITNESS OF COMPILERS AND DEVELOPMENT SOFTWARE USED TO DEVELOP AN APPLICATION, INSTALLATION ERRORS, SOFTWARE AND HARDWARE COMPATIBILITY PROBLEMS, MALFUNCTIONS OR FAILURES OF ELECTRONIC MONITORING OR CONTROL DEVICES, TRANSIENT FAILURES OF ELECTRONIC SYSTEMS (HARDWARE AND/OR SOFTWARE), UNANTICIPATED USES OR MISUSES, OR ERRORS ON THE PART OF THE USER OR APPLICATIONS DESIGNER (ADVERSE FACTORS SUCH AS THESE ARE HEREAFTER COLLECTIVELY TERMED "SYSTEM FAILURES"). ANY APPLICATION WHERE A SYSTEM FAILURE WOULD CREATE A RISK OF HARM TO PROPERTY OR PERSONS (INCLUDING THE RISK OF BODILY INJURY AND DEATH) SHOULD NOT BE RELIANT SOLELY UPON ONE FORM OF ELECTRONIC SYSTEM DUE TO THE RISK OF SYSTEM FAILURE. TO AVOID DAMAGE, INJURY, OR DEATH, THE USER OR APPLICATION DESIGNER MUST TAKE REASONABLY PRUDENT STEPS TO PROTECT AGAINST SYSTEM FAILURES, INCLUDING BUT NOT LIMITED TO BACKUP OR SHUT DOWN MECHANISMS. BECAUSE EACH ENDUSER SYSTEM IS CUSTOMIZED AND DIFFERS FROM AMS'S TESTING PLATFORMS AND BECAUSE A USER OR APPLICATION DESIGNER MAY USE AMS PRODUCTS IN COMBINATION WITH OTHER PRODUCTS IN A MANNER NOT EVALUATED OR CONTEMPLATED BY AMS, THE USER OR APPLICATION DESIGNER IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY OF AMS PRODUCTS WHENEVER AMS PRODUCTS ARE INCORPORATED IN A SYSTEM OR APPLICATION, INCLUDING, WITHOUT LIMITATION, THE APPROPRIATE DESIGN, PROCESS AND SAFETY LEVEL OF SUCH SYSTEM OR APPLICATION.
 13. **FORCE MAJEURE.** AMS shall be excused for any delay or failure to perform due to any cause beyond its reasonable control, including but not limited to acts of governments, natural catastrophes, acts of Customer, interruptions of transportation or inability to obtain necessary labor or materials. AMS's estimated shipping schedule shall be extended by a period of time equal to the time lost because of any excusable delay. In the event AMS is unable to perform in whole or in part because of any excusable failure to perform, AMS may cancel orders without liability to Customer.
 14. **LIMITED INDEMNITY AGAINST INFRINGEMENT.** AMS shall, at its own expense, defend any litigation resulting from sales of the Products to the extent that such litigation alleges that the Products or any part thereof infringes any United States patent, copyright, or trademark, provided that such claim does not arise from the use of the Products in combination with equipment or devices not made by AMS or from modification of the Products, and further provided that Customer notifies AMS immediately upon its obtaining notice of such impending claim and cooperates fully with AMS in preparing a defense. If Customer provides to AMS the authority, assistance, and information AMS needs to defend or settle such claim, AMS shall pay any final award of damages in such suit and any expense Customer incurs at AMS's written request, but AMS shall not be liable for a settlement made without its prior written consent. If the Products are held to be infringing and the use thereof is enjoined, AMS shall, at its option, either (i) procure for the Customer the right to use the Products, (ii) replace the Products with others which do not constitute infringement, or (iii) remove the infringing Products and refund the payment(s) made therefor by Customer. The foregoing states the Customer's sole remedy for, and AMS's entire liability and responsibility for, infringement of any patent, trademark, or copyright relating to the Products provided hereunder. THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.
 15. **ACKNOWLEDGMENT/GOVERNING LAW.** Customer acknowledges reading these Terms and Conditions, understands them and agrees to be bound by them. A waiver of any provision of this agreement shall not be construed as a waiver or modification of any other term hereof. With respect to all orders accepted by AMS in the United States, disputes arising in connection with these Terms and Conditions of Sale shall be governed by the laws of the State of New Hampshire without regard to principles of conflicts of laws. With respect to all orders accepted by AMS outside the United States, disputes arising in connection with these Terms and Conditions of Sale shall be governed by the laws of the country and locality in which AMS accepts the order without regard to principles of conflicts of laws.