



## TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (hereinafter “**Terms of Sale**”) are applicable to all quotations and purchase orders (“**Purchase Order**” or “**Purchase Orders**”) and are the only terms and conditions applying to the sale of product or products (“**Product**”) by Skyworks Solutions, Inc., having a place of business at 5221 California Avenue, Irvine, California, 92617, and all of its subsidiaries, including but not limited to, Isolink, Inc. and Trans-Tech, Inc. (hereinafter “**Seller**”). No additions or modifications are effective unless expressly agreed to and signed by Seller in writing. All other terms are expressly rejected. Buyer’s acceptance of these Terms of Sale is constituted by written acknowledgment, implication, and/or by acceptance or payment of Product ordered, any of which constitute acceptance.

### 1. WARRANTY, RETURN POLICY & LIMITATIONS.

**(A) Warranty.** Seller warrants that its Product conforms to Seller’s applicable specifications at the time of delivery. Samples, prototypes lots, and/or pre-production runs do not create or imply any warranties. Seller’s warranty obligation is limited to, at Seller’s option, repairing, replacement of, or granting Buyer credit at the invoiced price for any defective Product returned to Seller’s designated location within one (1) year from the date of Product delivery. This warranty shall not apply to any Product which has (i) been repaired (except by Seller), altered or which has been damaged such that Seller is unable to verify the defect with its normal test equipment; (ii) been subjected to abuse (including without limitation electrostatic discharge); or (iii) improper (a) handling, (b) installation, (c) maintenance, (d) removal, (e) modification, or (f) use. Seller’s warranty shall not be enlarged, and no obligation or liability shall arise out of Seller’s rendering of technical advice, facilities, or service in connection with Buyer’s order or the Product furnished.

**(B) Return Policy.** Product may not be returned without Seller’s consent. Buyer shall request and obtain Seller’s written Return Material Authorization (“RMA”) before returning Product of any type, including warranty repair returns. All return documentation must contain Seller’s return authorization identification number. Seller will refuse returned shipments not approved by Seller, or not properly identified. The request for return approval must include (i) serial number, (ii) part number, (iii) lot number, (iv) date code, when possible, (v) full identification of Product to be returned, and (vi) explanation for the return request. Proper handling procedures must be used in the packing and shipping of all returned Product. Product must be returned in the same or equivalent container in which they were shipped with the RMA number clearly visible on the package. Buyer retains title to Product returned for repair.

**(C) Limitations.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE WARRANTIES ARE IN LIEU OF ANY

(i) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (ii) WARRANTIES OF NON-INFRINGEMENT, AND (iii) ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

### 2. LIMITATION OF LIABILITY.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF SELLER, WHETHER UNDER CLAIMS OF WARRANTY, NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID FOR THE PRODUCTS AT ISSUE. UPON EXPIRATION OF THE WARRANTY PERIOD ALL LIABILITY SHALL TERMINATE. SELLER AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, REMOTE, CONSEQUENTIAL, OR PUNITIVE DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOST PROFITS, SAVINGS, OR REVENUES, HOWEVER ARISING FROM OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE USE OF PRODUCT BY BUYER, OR BY THE PERFORMANCE OR FAILURE OF THE SELLER TO PERFORM UNDER THESE TERMS OF SALE, OR BY ANY OTHER ACT OR OMISSION OF SELLER, OR BY ANY OTHER CAUSE. ANY EXCESS REPROCUREMENT COSTS, ARISING OUT OF ANY TERMINATION DUE TO SELLER’S DEFAULT UNDER ANY PROVISION OF THE TERMS OF SALE SHALL BE LIMITED TO TEN PERCENT (10%) OF THE OUTSTANDING BALANCE FOR THE PRODUCTS UNDER THE APPLICABLE PURCHASE ORDER(S).

### 3. SHIPMENTS, DELIVERIES, SECURITY, FORCE MAJEURE & RESCHEDULING.

**(A) Shipments.** All shipments are *F.O.B.* Origin for delivery to U.S. locations, and *ex works* Seller’s point of shipment for all other shipments, except as otherwise expressly agreed in writing by Seller. Buyer assumes title and risk of loss and damage upon Seller’s shipment of Product. Except as otherwise agreed in writing, transportation charges shall be pre-paid by Seller and billed to and paid by Buyer. Shipping dates are approximate and subject to Seller’s lead times. Product delivered more than ninety (90) days before scheduled date(s) may be returned to Seller.

**(B) Deliveries.** Claims against Seller for shortages must be made within ten (10) days after receipt of

shipment. Seller is not liable for losses or added costs due to delivery delays. Partial shipments are permitted.

**(C) Security.** Seller retains a security interest in all Product until full payment for Product has been made; Buyer agrees to do all acts necessary to maintain Seller's security interest. Buyer hereby appoints Seller as its agent and Attorney-in-Fact to execute any financing statements under the Uniform Commercial Code and any appropriate amendments thereto on Buyer's behalf which Seller deems necessary to protect Seller's interest in the Product.

**(D) Force Majeure.** Seller is not liable for (i) force majeure events, whether or not foreseeable, including for example and without limitation, acts of God, acts of Buyer, acts of civil or military authority, fires or other casualty, labor disputes, strikes, floods, war, earthquakes, delays in transportation, current or future pandemics and quarantines, or other significant disruptions; (ii) inability beyond Seller's reasonable control to obtain necessary labor, materials, components, or manufacturing facilities; or (iii) any other commercial impracticability or cause beyond Seller's reasonable control. In any such event mentioned above and to the extent required, Seller may, in its sole discretion and without penalty or liability, reschedule, cancel, allocate a lesser amount, implement an equitable price adjustment, adjust shipping logistics, or substitute a functionally equivalent product (or components within a Seller Product). Both parties will use commercially reasonable efforts to mitigate the impact of such force majeure event and Seller will use good faith efforts to endeavor to give Buyer notice of such impact where practicable.

**(E) Rescheduling.** There is no rescheduling of Purchase Order(s) or Purchase Order line item(s) that are currently scheduled for delivery in less than ninety (90) days. For Product that is scheduled for delivery in more than ninety (90) days, Seller may, upon receipt of Buyer's written request and at Seller's sole discretion, reschedule Purchase Order(s) or Purchase Order line item(s) on a one-time basis, provided that the reschedule date shall be no more than sixty (60) days after the then-current scheduled delivery date and shall not be in a different calendar quarter. Any rescheduling of Purchase Order(s) or Purchase Order line item(s) is at Seller's sole discretion, does not create a waiver or precedent for future rescheduling and is subject to the terms and conditions Seller agrees to in writing.

#### **4. TRANSPORTATION & PACKAGING.**

Seller will ship Product using its established methods of packing and transportation, except as otherwise instructed by Buyer. If Buyer requires other packing, preparation, or transportation, then Buyer will pay the additional costs.

#### **5. QUANTITY VARIATION.**

If Product ordered by Buyer is not standard product customarily carried in stock by Seller: (i) delivery of 90% or more of the amount specified shall constitute fulfillment of the order; and (ii) Seller may deliver up to 110% of the order quantity. In both cases, the charges shall be adjusted to reflect the actual amounts shipped. Notwithstanding the above, for Isolink, Inc. Product only, Seller will provide the order quantities as specified in the applicable Purchase Order.

#### **6. PRICES, PAYMENTS & MINIMUM BUY QUANTITIES.**

**(A) Prices.** Except as otherwise stated in writing, Seller quotations remain valid for a period of thirty (30) days from date of quotation. All prices are stated in U.S. dollars.

**(B) Payments.** Unless otherwise agreed in writing, payment will be made in U.S. dollars, without right of setoff and will be paid via bank wire transfer, T/T, or other payment method reasonably required by Skyworks. No discounts are authorized. Subject to Seller's approval of Buyer's credit, payment is due thirty (30) days from date of invoice. All sales are subject to prior approval of Seller's Credit Department. The amount of credit or terms of payment may be changed by Seller at any time for any reason. *Pro rata* invoices will issue with respect to partial shipments. If shipment is delayed by Buyer, payment is due on the date Seller is prepared to make shipment, and Product held for Buyer shall be at the risk and expense of Buyer. Failure to make payment within ten (10) days of demand by Seller shall, at Seller's option, constitute repudiation of any outstanding Purchase Orders, in which event Seller shall be entitled to assert late payment charges as described in Section 6(D) and cancellation charges as described in Section 9 of these Terms of Sale. In the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer under bankruptcy or insolvency laws, Seller may cancel outstanding Purchase Orders and assert cancellation charges as described in Section 9 of these Terms of Sale.

**(C) Minimum Buy Quantities.** Buyer acknowledges that certain Product offered by Seller and

contained in Seller's price list is subject to minimum buy quantities.

**(D) Late Payment.** Amounts due that Seller has not received within thirty (30) days from the invoice date shall accrue interest in the amount of one and a half percent (1.5%) per month, or the maximum amount permitted by applicable law, whichever is less. In the event that Buyer becomes delinquent in payment to Seller, (i) Buyer shall pay all of Seller's reasonable collection costs and expenses (including reasonable attorneys' fees) and (ii) Seller may, at its sole discretion, and in addition to any other remedies based on contract, law, or equity, withhold shipment of Product ordered until such time the delinquent balance (plus any interest and any other associated late payment fees) is paid in full.

#### **7. REMITTANCE.**

Except as otherwise instructed in writing, payments shall be made to Seller's invoice address. Payment advice must reference the appropriate Seller invoice.

#### **8. CHANGES & PRODUCT DISCONTINUATION AND LAST TIME BUY ORDERS.**

**(A) Changes.** Seller reserves the right at any time and without notice to Buyer to make changes in the Product which do not adversely affect the form, fit, or function of the Product. For changes that adversely affect form, fit, or function, Buyer may by written Purchase Order request changes in drawings, designs, and specifications of Product manufactured for Buyer, and to method of shipment, ship-to locations, and packaging. If such written Purchase Order request is accepted, Seller shall be entitled to an equitable adjustment for any increase in cost, time, or in any other material aspect of a Purchase Order arising from Buyer's changes. All equitable adjustment increases in cost shall be paid thirty (30) days after invoice submittal. In the event that Seller provides a product change notice, Buyer will promptly respond to such product change notice and will work with Seller in good faith to approve such change notice within ninety (90) days of Seller providing such change notice. Buyer will be deemed to have approved the product change notice if Buyer does not respond to Seller's product change notice within ninety (90) days.

#### **(B) Product Discontinuation and Last Time Buy.**

Seller reserves the right to discontinue manufacturing any Product at any time. Whenever possible, solely for products that Buyer has purchased in reasonable quantities in the Skyworks Terms and Conditions of Sale v. 2020rQ4

preceding twenty-four (24) month period, Seller will provide Buyer with reasonable advanced written notice regarding its plan to discontinue manufacturing a Product ("Discontinued Product") so as to afford Buyer with the opportunity to place a last time buy for Discontinued Product ("Last Time Buy"). Purchase Orders for any Last Time Buy must be placed no later than one hundred eighty (180) days from the Discontinued Product notice date, and delivery of the Last Time Buy must be scheduled to occur no later than one (1) year from the Discontinued Product notice date. Last Time Buy orders may not be canceled or rescheduled for any reason, and are subject to minimum order requirements and pricing guidelines. Last Time Buys may not be returned, except as set forth in Section 1 above.

#### **9. CANCELLATION & TERMINATION.**

Purchase Orders for Product may not be cancelled. In the event Seller, at Seller's sole discretion, permits cancellation of any Purchase Order, (i) Buyer must accept delivery of, and pay for at the agreed upon price(s), all Product which is substantially manufactured and allocable to the Purchase Order, and (ii) Buyer must pay all Seller's direct and indirect costs relative to all other Product, components, and work-in-process allocable to the Purchase Order, together with a reasonable profit based on such costs. Such costs will include but not be limited to the costs of cancelling the Purchase Order, segregating materials, preparing cancellation claims, and similar costs.

#### **10. PATENTS.**

Seller will defend any proceeding brought against the Buyer based on a claim that Seller's Product infringes an issued and valid U.S. patent, if notified promptly in writing and given full authority, information and assistance (at Seller's expense) for the defense. Subject to the limitations set forth in Section 2, Seller will pay all damages and costs finally awarded in such a proceeding against such Product. If the Product is deemed to infringe and its use is enjoined, then Seller will at its option, either arrange for Buyer the right to continue using the Product, or provide a replacement Product to Buyer with a non-infringing comparable product, or accept the return of the Product and refund the Buyer's purchase price. THIS PARAGRAPH STATES THE ENTIRE LIABILITY OF SELLER AND ITS SUPPLIERS FOR PATENT INFRINGEMENT. Seller shall not be liable for, and Buyer shall defend, indemnify, and hold Seller harmless against, claims arising from (a) compliance with Buyer's

designs, specifications, or instructions, (b) the combination of Seller's Product with other devices, components, firmware, software, or elements, (c) any modifications to Seller's Product not made or authorized by Seller, (d) failure to use Seller's Products in accordance with Seller's documentation or instructions, and (e) alleged infringement of a technical or industry standard or an allegedly standards-essential patent. The sale of Product does not grant or imply any license of patents or other intellectual property rights, whether as to Product or combinations of Product with other devices or elements.

#### **11. TAXES & DISPUTES.**

Prices do not include sales, use, excise, value-added or other taxes or duties. All taxes and duties in effect or levied which are applicable to Buyer's purchases shall be paid by Buyer.

#### **12. DISPUTES.**

Any dispute, controversy, or claim arising out of or relating to these Terms of Sale, or the interpretation, breach, termination, or validity hereof, shall be resolved through friendly consultation. Such consultation shall begin immediately after one party has delivered to the other party a written request for such consultation. If after thirty (30) days, the parties are unable to resolve the dispute as described in this Section, then with the exception of a claim relating to late or non-payment, the parties hereto agree to attempt in good faith to settle the dispute by mediation to take place in Orange County, California, U.S.A. Either party shall initiate the mediation by so requesting in a writing such initiation which shall be delivered to the other party. Within ten (10) calendar days of request receipt, the parties hereto shall confer for the purpose of selecting a mutually agreeable mediator to be appointed from the Judicial Arbitration and Mediation Services ("JAMS"). If the parties hereto have not been able to agree upon a mediator within twenty (20) calendar days of the request for mediation, or if mediation is unsuccessful, either party may request that JAMS appoint an arbitrator. Said arbitration shall take place in Orange County in the state of California, U.S.A. Judgment on an award rendered by the arbitrator may be entered in any court having competent jurisdiction. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this provision. Further, Skyworks Terms and Conditions of Sale v. 2020rQ4

notwithstanding anything in this Section 12 to the contrary, Seller may apply to any court of competent jurisdiction at any time for any claims relating to Buyer's late or non-payment. All mediation and arbitration proceedings shall be conducted in the English language. With the exception of a claim relating to Buyer's late or non-payment, each party shall be responsible for its own mediation and arbitration costs. Each party shall cooperate with the other in making full disclosure of and providing complete access to all information and documents reasonably requested by the other party in connection with such proceedings, subject only to any confidentiality obligations binding on such party.

#### **13. GOVERNING LAW.**

These Terms of Sale and all sales of Seller's Product are construed and governed by the laws of the U.S. State of California, exclusive of its conflict of laws provision.

#### **14. ASSIGNMENT.**

Buyer's orders and obligations are not assignable without Seller's consent and any such assignment shall be null and void.

#### **15. CONFIDENTIALITY.**

Buyer shall hold in confidence all Seller data and information which is marked as "CONFIDENTIAL" or "PROPRIETARY" if disclosed in documentary form, or which is so identified at the time of disclosure if disclosed in other form. Failure to designate or confirm information as confidential information shall not deprive such data and information of status and protection as confidential information if Seller knows or should reasonably recognize the information as confidential, proprietary, or trade secret information. The following information shall not be protected by this paragraph: (i) information that is publicly available without breach of any obligation; (ii) information that is rightfully received from a third party without restriction; (iii) information that is independently developed by Buyer; and (iv) information that is properly and lawfully in the possession of Buyer without restriction prior to disclosure.

#### **16. WAIVER.**

The waiver by either party of any term, provision, or condition contained herein must be in writing and shall not be construed to be a waiver of any other term, condition,

or provision. No waiver or failure to enforce rights or remedies concerning a default shall constitute a waiver of any other or subsequent default.

#### **17. EXPORT CONTROL, RoHS REGULATIONS & RBA.**

**(A) Export Control.** Buyer agrees to comply with all applicable export control laws, including but not limited to: (i) Buyer agrees not to sell or deliver Seller's Product for ultimate delivery to those areas to which delivery would be forbidden under U.S. laws or regulations pertaining thereto; (ii) Buyer agrees not to sell or deliver Seller's Product to individuals or business entities listed on U.S. export denied persons or entities lists without permission from the U.S. government; and (iii) Buyer agrees not to sell or deliver Seller's Product shipped under a U.S. export license to any other country without first receiving a re-export license from the U.S. government.

**(B) Transactions with Certain Entities Prohibited.** Without limiting the generality of paragraph (A) above, Buyer acknowledges and understands that the Products may be "subject to the U.S. Export Administration Regulations (EAR)," including under the Foreign Produced Direct Product Rule published by the U. S. Department of Commerce Bureau of Industry & Security (BIS) effective as of August 17, 2020 or the de minimis rule (as amended or revised). Accordingly, Buyer hereby covenants and agrees that in the absence of either (1) prior written authorization delivered by Seller to Buyer, or (2) an approved license, utilization of a savings clause, or other lawful exemption issued by BIS, provided by Buyer to Seller in writing and prior to shipment, Buyer may not sell, export, reexport or transfer in-country any Products that are subject to the EAR if Buyer has "knowledge" (as defined in Part 772 of the EAR) that a Prohibited Entity (as defined below) is either (1) involved in the transaction as a "party", which may include as a purchaser, end-user, intermediate consignee or ultimate consignee as defined in 748.5(c) to (f) of the EAR, or (2) if the Products will be incorporated into, or will be used to develop or produce, "parts", "components", or "equipment" (all defined terms in Part 772 of the EAR) produced, purchased or ordered by a Prohibited Entity. As used herein, "Prohibited Entities" mean any entity or person with a Footnote 1 designation on the Entity List, Supplement No. 4 to Part 744 of the EAR.

**(C) RoHS Regulations.** The Product being sold under Seller's Terms of Sale may or may not comply with the so-called RoHS regulations. RoHS compliant products Skyworks Terms and Conditions of Sale v. 2020RQ4

are shipped in packages or containers that are marked "lead-free" or "RoHS compliant" and for applicable RoHS compliant Products, Buyer may use the following portal to download a certificate of conformance: [https://www.skyworksinc.com/Product\\_Certificate.aspx](https://www.skyworksinc.com/Product_Certificate.aspx). Buyer must ensure that RoHS non-compliant products are not placed on the market in any European Union member state.

**(D) RBA.** Seller is a member of the Responsible Business Alliance ("RBA") and as such is bound by the RBA Code of Conduct available at <http://www.responsiblebusiness.org/standards/code-of-conduct/>, and expects its business partners to abide by these terms.

#### **18. TRANS-TECH, INC. SPECIFIC PRODUCT TERMS.**

The following terms apply solely with respect to Trans-Tech, Inc. Product ("TTI Product"). To the extent that any of the terms contained in this Section 18 conflict with or contradict any other terms in these Terms of Sale, the terms contained in this Section 18 shall govern solely with respect to TTI Product.

**(A) TTI Product Mechanical Inspection.** In-process mechanical inspections (Dielectrics and Ferrite) are recorded, but not provided on C of C.

**(B) TTI Product Visual Inspection.** If no AQL is contractually specified, an AQL of 1.0 will be used for all TTI Product except disks, triangles, and composites (assemblies) which will be inspected to a 6.5 AQL (ANSI/ASQC General Inspection Level II). Filters are 100% visually inspected. The inspection criteria used for each TTI Product type can be found at [http://www.skyworksinc.com/Products\\_TechnicalCeramics.aspx](http://www.skyworksinc.com/Products_TechnicalCeramics.aspx).

**(C) TTI Product Final Testing.** If no final testing requirements are contractually specified, a selection of 25% will be used for dielectric TTI Product, except small resonators where a 1.0 AQL will be used (ANSI/ASQC General Inspection Level II) with a Zero-based Acceptance plan for both. Coaxial resonators will be tested to a 1.0 AQL (ANSI/ASQC General Inspection Level II) sampling and acceptance plan. Filters are 100% tested and tuned to the Filters' specification.

**(D) TTI Product Tooling and NRE.** Any tooling purchased for Buyer as part of the Purchase Order shall be listed as a separate line item. Depending upon the cost of the tooling, and for cash flow purposes, Trans-Tech, Inc.

may choose the option to invoice Buyer in installments for the cost of such tooling. Buyer owned tooling may not be removed from Trans-Tech, Inc.'s facility prior to completion of the Purchase Order. However, such tooling may be removed by Buyer after proper notice of cancellation or default. Due to the requirement for Trans-Tech, Inc. to maintain, reface, rework, etc., any Buyer tooling procured under the Purchase Order, and the costs associated with such periodic maintenance, ownership of such tooling shall fully vest in Trans-Tech, Inc. after a period of two (2) years from the date the tooling first entered service. This shall also apply to any Buyer tooling which has remained inactive at Trans-Tech, Inc. for a period of two (2) years after completion of a Purchase Order under which it was used.

**(E) TTI Product Changes.** Buyer shall have the right by written Purchase Order to make changes in drawings, designs, or specifications, where the TTI Product is specifically manufactured for Buyer in accordance therewith, and in the method of shipment or packaging. If any such change causes an increase or decrease in the cost of or in the time required for performance of a Purchase Order, or any other provisions of the Purchase Order so affected, an equitable adjustment shall be made and the Purchase Order modified in writing accordingly.

#### **19. LIFE SUPPORT POLICY.**

Seller's Product is not designed, intended, authorized, or warranted to be suitable for use in life support applications, devices, or systems. Buyer agrees not to use the purchased Product for life support applications, and further agrees to, without limitation, defend, indemnify, and hold harmless Seller and its agents from and against any and all actions, suits, proceedings, costs, expenses, damages, and liabilities including attorney's fees arising out of or in connection with the breach of Buyer's representation in this Section.

#### **20. GOVERNMENT CONTRACT PROVISIONS & CLAUSES.**

In the event any Product purchased hereunder is incorporated into a product sold under a United States Government Contract, the Government clauses required to be passed on to the Seller are not accepted. Except as otherwise provided expressly in writing, Seller's Terms of Sale shall apply in lieu of any government contract and/or subcontract requirements.

#### **21. FIRMWARE AND OBJECT CODE SOFTWARE OWNERSHIP AND LICENSE.**

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With respect to all software, in object code form, and firmware furnished to Buyer hereunder and any derivatives thereof (collectively "Licensed Software"), Seller shall retain ownership of all Licensed Software, and any copies thereof, in whole or in part, and all intellectual property rights pertaining to the Licensed Software. To the extent Seller has rights to do so and as applicable, Seller grants to Buyer, and Buyer acknowledges that it has been granted, a perpetual, nonexclusive, worldwide, personal, and non-transferable right and license to load, run, or store the Licensed Software in machine readable form only in or with the Product furnished hereunder, for the exclusive purpose of processing Buyer's internal data ("Intended Use"). Buyer will use the Licensed Software only for the Intended Use and will not, in particular but without limitation, create derivatives of the Licensed Software, nor translate, adapt, arrange, reverse compile or alter or perform error corrections nor, disclose, sell, assign, rent, lend, sublicense, or otherwise transfer the Licensed Software, or any licenses granted hereunder. To the extent Seller has the right to do so and as applicable, Seller grants to Buyer a non-transferable and non-exclusive license to use the Licensed Software, where in machine readable form only in, or with, the Product furnished hereunder. Nothing in these Terms of Sale shall be interpreted as conveying or granting a license to Buyer of any Licensed Software in source code form. Any license of software in source code shall be covered under the terms of Seller's source code license and granted under separate agreement. If by separate written agreement Seller has granted to Buyer rights to reproduce the Licensed Software, Buyer may copy such Licensed Software and may, in addition to the above, merge the Licensed Software with other subject matter to form a derivative work for incorporation into a Read Only Memory (ROM) or similar information storage device for use in, or with, each Product furnished hereunder and otherwise only in accordance with and under the terms of this license. If the Licensed Software is embodied in an information storage medium furnished as part of a Product purchased hereunder, or incorporated by Buyer in an information storage medium as permitted hereunder, Buyer may, in addition to the above, transfer the information storage medium as part of the transfer of the Product and may convey to Buyer's transferee and to subsequent transferees the license set forth in this Section. Buyer agrees to maintain Seller's copyright notice on the Licensed Software

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and to include the same on all copies of any portion(s) of the Licensed Software made as permitted hereunder.

**22. SAMPLE, PROTOTYPE, LICENSED SOFTWARE & BOARD-LEVEL PRODUCTS.**

ALL SAMPLE, PROTOTYPE, LICENSED SOFTWARE, AND BOARD-LEVEL PRODUCTS DELIVERED HEREUNDER ARE FURNISHED "AS IS." NO SELLER INDEMNITIES ARE PROVIDED FOR SUCH PRODUCTS. SELLER MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR CREATED BY STATUTE WITH RESPECT TO SUCH PRODUCTS AND DOCUMENTATION DESCRIBING SUCH PRODUCTS. FURTHER, SELLER HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF ALL SUCH PRODUCTS AND DOCUMENTATION DESCRIBING SUCH PRODUCTS REMAINS WITH BUYER.

**23. ENTIRE AGREEMENT.**

Seller's Product constitutes commercial goods; these Terms of Sale shall be construed to be between merchants. Except as expressly agreed in writing, these Terms of Sale contain the entire agreement between Seller and Buyer concerning Seller's sale of Product, and no representation, affirmation of fact, course of prior dealings, promise, condition, or usage of the trade shall be binding on either party. No change, modification, rescission, discharge, abandonment, or waiver of these Terms of Sale shall be binding upon Seller unless made in writing and signed on Seller's behalf by an authorized representative. Should any provision of these Terms of Sale be unenforceable in any particular jurisdiction, then such unenforceable provision shall be deemed not to apply. Direct inquiries to Seller may be made at the address on the front of this document.