



**Silicon Storage Technology, Inc.**  
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## TERMS & CONDITIONS OF SALE

### 1. GENERAL

These terms and conditions apply to all bids, quotations and orders for the sale of products by Silicon Storage Technology, Inc. (hereinafter referred to as "SST"), EXCEPT AS OTHERWISE SET FORTH IN A WRITTEN DOCUMENT OR AGREEMENT SIGNED BY A DULY AUTHORIZED OFFICER OF SST. These terms and conditions represent the sole understanding between SST and customer (hereinafter referred to as "Buyer"), with respect to the purchase and sale of products. Any provision of Buyer's purchase order that is in any way inconsistent with or in addition to these terms and conditions of sale, shall not be binding on SST. Any order acknowledgment containing these terms and conditions constitutes a counter offer to Buyer and retention by Buyer of the products delivered hereunder beyond the inspection period described below shall constitute acceptance according to these standard terms and conditions. SST's failure to object to provisions contained in any communication from Buyer shall not be a waiver of these terms and conditions.

### 2. PRICE AND PAYMENT

a) All prices published or quoted by SST may be changed at any time without notice. Unless otherwise specified, written quotations expire thirty (30) calendar days from the date issued and are subject to change or termination by notice during this period.

b) SST will invoice Buyer on the date the product is tendered to the carrier at SST's shipping point (hereinafter referred to as the Delivery Date). Such invoices will be due and payable net thirty (30) days from date of invoice, subject to credit approval.

c) SST retains the right to demand, at SST's option that sales be entered into on the condition that Buyer establish in favor of SST an irrevocable letter of credit confirmed by a United States bank acceptable to SST, payable to SST in United States Dollars on presentation of a sight draft, a copy of a commercial invoice, a packing list, and a bill of lading indicating delivery to a carrier of a product for delivery to Buyer or to Buyer's order.

d) For sales to Buyer having its principal place of business outside the United States of America, SST reserves the right to bill in United States Dollars or the currency of the country in which the product is shipped. In such event the billing rate of exchange will be that in effect on the date the product is tendered to the carrier at SST's shipping point.

e) At any time and from the period prior to the Delivery Date, SST reserves the right to change any terms of credit extended to Buyer in the event SST believes, in good faith, that there has been an adverse change in credit worthiness of Buyer and SST requires partial or full payment in advance. In such event, if Buyer refuses to accept such change in credit terms the orders shall be canceled without liability arising therefrom to either party. In the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws or their equivalent, SST may cancel any outstanding order, without liability to SST, and SST shall receive reimbursement from Buyer for costs incurred and lost profit for product so cancelled.

f) Overdue payments shall be subject to finance charges computed at a periodic rate of 1.5% per month (not to exceed 18% per annum).

### 3. TERMS OF SHIPMENT

All sales are made Ex Works, SST's facility. Title risk of loss or damage shall pass to Buyer upon tender of the product in good condition to the carrier at SST's shipping point. Buyer assumes the cost of all freight charges necessary to transport product from SST's facility to Buyer's ship address. Unless written instructions from Buyer specifying the method of shipment to be used have been received and accepted by SST, SST will exercise its own discretion with respect to manner of shipment, insurance, and carrier to be used. SST may make partial shipments by line item to Buyer and invoice Buyer for such partial shipments.

### 4. DELIVERY

SST will manufacture in accordance with the planned shipment date as confirmed in SST's Order Acknowledgment. However, the planned shipment date is an estimate only, and SST will be subjected to no liability by failure to perform on or by such date. SST reserves the right to make partial shipments with the consent of the Buyer, which shall not be unreasonably withheld, and invoices will be issued accordingly by quantity shipped and purchase order line item. SST reserves the right to make production shipments in whole box quantities. Where such shipments deviate from the ordered quantity by no more than +1%, SST will invoice for the additional quantity. Where such shipments deviate from the ordered quantity by no less than -1%, SST will cancel the remaining quantity.

### 5. FORCE MAJEURE

SST shall not be liable for nonperformance or delays, which occur due to causes beyond SST's control. These causes shall include, but shall not be limited to, force majeure, wars, strikes, fires, storms, flood, earthquake, shortages of labor or material, labor disputes, vendor failures, transportation embargoes, acts of any government or agency thereof, judicial action, and any or all other causes beyond SST's reasonable control. In the event of any such excused delay or failure of performance, the date of delivery shall, at the request of the SST, be deferred for a period equal to the time lost by reason of the delay. SST shall notify Buyer in writing of any such event or circumstance within reasonable time after it learns of such. IN NO EVENT WILL SST BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

### 6. TAXES

All taxes, other than taxes on income, including but not limited to sales, use, excise, value added or similar taxes applicable to the manufacture or sale of products shall be paid by the Buyer and, when applicable, shall be added to the purchase price. In lieu of the imposition of any particular tax, the Buyer may, where applicable, provide a tax exemption certificate to SST in a form acceptable to the taxing authorities.

### 7. LIMITATION OF LIABILITY

SST's liability under or for material breach of this Agreement shall be limited to refund of the purchase price paid by Buyer. In no event shall SST be liable for costs associated with the procurement of substitute goods by the Buyer. In no event shall SST be liable for any special, consequential or incidental damages, including loss of profits, however caused, whether for breach of warranty, negligence, or otherwise.

### 8. ACCEPTANCE

a) The Buyer shall have no right to reject the product on the grounds of variation from the quantity invoiced where such variation does not exceed +/-1% of the quantity invoiced. Buyer shall pay for such product actually received at the contract rate.

b) Except as set forth in section 7, Buyer shall give notice to SST (and the carrier where appropriate) of discrepancies between type and quantity of product delivered, or damage to the product, within 30 days of delivery of the product to a common carrier or to the Buyer, whichever is earlier. Lacking such notice, the Buyer shall be deemed to have accepted the product as invoiced.

c) Product may be returned to SST only after prior notification and SST's consent following receipt of a valid Return Material Authorization (RMA) number according to SST's RMA policy, freight prepaid F.O.B. SST's designated return facility. Product returned without a valid RMA number will be sent back to the Buyer at Buyer's expense.

d) No credit allowances for nonconforming products will be made or replacements shipped until SST is satisfied, after suitable test and inspection, that the product was in fact nonconforming.

### 9. SPECIFICATIONS

All products are subject to SST's standard specifications. SST reserves the right to make substitutions in the specifications of any product at any time without notification to or approval from Buyer.

### 10. LIMITED WARRANTY

SST warrants to Buyer only, and not to Buyer's affiliates or customers or any third parties, that all products shall perform in accordance with SST specifications for a period of one (1) year from the Delivery Date of subject product(s). SST's liability is limited to replacing or repairing the product that has been paid for. SST will not be liable under the warranty unless:

a) SST is promptly notified in writing within thirty (30) days upon discovery of nonconformances by Buyer;

b) The nonconforming product is returned to SST under a valid SST RMA;

c) The nonconforming product is received within one (1) year from the date of passing of title;

d) SST's examination of the product discloses to its satisfaction that the alleged

nonconformances are material and have not been caused by misuse, neglect, improper installation, repair, alteration, or accident;

e) The nonconforming product is not altered or damaged such that SST can not verify the defect with normal test equipment or has had its marking altered or removed by a party other than SST;

In no event will SST be responsible for any costs associated with the removal (or re-installation) of Products into or from items into which such Products have been integrated or used. SST may use refurbished parts to repair to replace warranted Products, provided that SST reasonably determines that such parts have the same estimated useful life as new parts. SST will return repaired or replaced Products to Buyer at SST's expense.

SST's warranties will not be affected by rendering of technical advice in connection with the order of products furnished hereunder. EXCEPT AS EXPRESSLY PROVIDED ABOVE, SST MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SST BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO THE PRODUCTS PURCHASED HEREUNDER.

### 11. LIFE SUPPORT POLICY

SST's products are not authorized for use as critical components in life support devices or systems. Life support devices or systems are devices or systems that (a) are intended for surgical implant into the body, or (b) support or sustain life and whose failure to perform, when properly used in accordance with instructions for use provided in the labeling, can be reasonably expected to result in a significant injury to the user.

A critical component is any component of a life support device or system whose failure to perform can be expected to cause the failure of the life support device or system, or to affect its safety or effectiveness. Buyer agrees to indemnify and hold SST harmless for any cost, loss, liability, or expense (including without limitation attorney's fees and other costs of litigation or threatened litigation) arising out of violation of the above prohibition by Buyer or any person or entity receiving SST's product through Buyer.

### 12. CHANGE ORDERS and TERMINATION

Orders for standard product may be changed by Buyer, with no penalty to the Buyer, provided that Buyer provides SST notification at least 30 days prior to the scheduled ship date. Order changes received within 30 days of the scheduled ship date may be subject to an order change charge; a schedule detailing these charges will be forwarded to Buyer when Buyer's change order is acknowledged. In no event can any aspect of the order be changed after product shipment has occurred.

Orders for standard product may be canceled by Buyer, with no penalty to the Buyer, provided that Buyer provides SST notification at least 30 days prior to the scheduled ship date. Order cancellations received within 30 days of the scheduled ship date may be subject to a cancellation charge; a schedule detailing these charges will be forwarded to Buyer when Buyer's cancellation is acknowledged.

Orders for custom product may be canceled by Buyer, provided that Buyer pays SST for completed work allocated to the time of termination of the work at the unit selling price and all costs, direct and indirect for work-in-progress as well as costs resulting from cancellation and a reasonable profit therein. Specific cancellation charges will be dependent on the type of custom product ordered; a schedule detailing these charges will be forwarded to Buyer when Buyer's cancellation is acknowledged.

### 13. ASSIGNMENT

Neither Buyer nor SST may assign any purchase order acknowledged by SST, or any interest or right herein without the prior written consent of the other. Any assignment without such consent shall be void ab initio.

### 14. GOVERNMENT CONTRACTS

If the goods to be furnished under this Agreement are to be used in the performance of a U.S. Government contract or subcontract and a U.S. Government contract number shall appear on Buyer's purchase order, those clauses of the applicable U.S. Government Procurement Regulations that are mandatory required by Federal Statute or Regulation to be included in the U.S. Government subcontracts, shall be incorporated herein by reference.

### 15. PATENTS

SST assumes no obligation of liability of any kind with respect to infringements or alleged infringements of United States or foreign patents, copyrights, trademarks, or other proprietary rights arising out of the Buyer's purchase, use, possession, sale, or delivery of any product sold hereunder. The Buyer shall indemnify and hold SST harmless from any and all claims, liabilities, damages, or expenses resulting from any infringement (direct or contributory) of United States or foreign patents, copyrights, trademarks, or other proprietary rights arising from compliance by SST with any designs or specifications provided by the Buyer's sale or use of any product in any patented machine or process. No sale of any product shall be construed as granting to the Buyer any license or other right to (a) apparatus or circuits in which the products or parts may be used, (b) a process or machine in connection with which they may be used, or (c) the process for their manufacture.

### 16. APPLICABLE LAWS

The validity, performance, and construction of this Agreement shall be governed by all applicable laws of the State of California, and the U.S.A. Both Buyer and SST expressly exclude any and all applicability of the United Nations Convention on Contracts for the International Sale of Goods.

### 17. ENTIRE AGREEMENT

The terms and conditions contained herein constitute the entire Agreement between parties. SST shall not be bound by any terms of Buyer's order that are inconsistent with the terms set forth herein.

Acceptance by Buyer of these terms may be made either by written acceptance or by receipts by Buyer of any products under this Agreement and failure to return the same within five days following delivery of such products. This Agreement shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not incorporated to this Agreement by its express terms. No representation, promise, or condition not expressly provided in writing and signed by authorized representatives of the Buyer and an officer of SST shall be binding on either party. The invalidity, in whole or in part, of any provision shall not affect the validity of any other provision. SST reserves its right to modify these terms and conditions at any time. **THIS AGREEMENT SHALL NOT BE MODIFIED EXCEPT BY SUBSEQUENT AGREEMENT SIGNED BY A DULY AUTHORIZED OFFICER OF SST.** SST reserves its right to modify these terms at any time.

### 18. AUDIOFLASH

All SST "AUDIOFLASH" products are sold "AS IS" and are not returnable or refundable. SST hereby disclaims any and all express and implied warranties, including SST's limited warranty(ies), implied warranties for fitness for purpose or merchantability for these products.