



INNOVATIVE MICRO TECHNOLOGY, INC. STANDARD TERMS AND CONDITIONS

For Services and Sale of Products

ALL OFFERS AND SALES MADE BY INNOVATIVE MICRO TECHNOLOGY, INC. ("IMT") TO THE BUYER ("BUYER") FOR PRODUCTS AND SERVICES ARE EXPRESSLY CONDITIONED ON BUYER'S ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED HEREIN. THESE TERMS AND CONDITIONS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN IMT AND BUYER ("AGREEMENT") AND SUPERSEDE ALL PREVIOUS NEGOTIATIONS, DISCUSSIONS AND UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. NO TERM OR CONDITION INDICATED IN ANY BUYER REQUEST FOR QUOTE, PURCHASE ORDER ("ORDER") OR OTHER DOCUMENT SHALL APPLY TO THE SALE OF ANY PRODUCT. IMT REJECTS ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER.

1. SALES OF PRODUCTS AND SERVICES

1.1. Terms and Conditions. In the absence of a separate signed agreement between the parties, the terms and conditions of this Agreement shall control all sales of IMT's semiconductor products and services (unless otherwise indicated, services, deliverables and products are collectively referred to as "Products"). Buyer's placement of an Order for IMT's constitutes acceptance of the terms of this Agreement.

1.2. Order and Acceptance. No Order shall be binding upon IMT until accepted by IMT in writing or upon IMT's performance of such Order. Orders for services may require that the parties enter into a statement of work for such services to be executed by both parties or services may be as set forth in IMT's quote and proposal. IMT shall have no liability to Buyer with respect to any Order that is not accepted or for any services not expressly described in a statement of work or accepted quote. Quotes are based on information provided by Buyer and certain assumptions made by IMT. Any inaccuracy of such information or assumptions may result in an adjustment to price or modifications to services. Services will be provided on a reasonable commercial efforts basis. Certain services may be subcontracted at IMT's discretion. IMT may cancel all or any portion of an Order in the event of Buyer's insolvency or for any other reason based on IMT's reasonable business judgment. Buyer will adhere to any forecasting, minimum order quantities and lead time requirements imposed by IMT. Orders may not be cancelled or rescheduled without IMT's prior written consent. In the event of any cancellation, restart fees may apply.

1.3. Delivery, Shipping, and Acceptance. Products will be shipped in wafer form using IMT's standard packaging. Delivery will be Ex Works IMT's facility (Incoterms 2010). Buyer is responsible for all freight, handling, insurance and other transportation charges. Shipping dates and quantities are estimates only; however, IMT will use reasonable efforts to meet requested shipping dates and quantities. In view of custom nature of manufacturing and potential variation in yields, Buyer agrees to accept shipment within +/- 10% of the quantity set forth in the Order. Products and deliverables shall be deemed accepted upon delivery.

1.4 Title and Risk of Loss. Title to the Products passes to Buyer when presented by IMT or its agent to the carrier at IMT's shipping location, from which point Buyer is responsible for all risk of loss or damage; provided that IMT shall retain, and Buyer hereby grants, a purchase money security interest in each of the Products, and in any replacement, addition or proceeds, in the amount of its purchase price until paid in full. Upon request, Buyer will promptly execute and return for filing any documents, such as a form UCC-1, needed to perfect IMT's security interest and acknowledges that IMT may file a copy of



this Agreement or other appropriate notice as a form UCC-1. IMT reserves and Buyer grants all rights to recover the Products and proceeds from the sale of the Products to the extent of the amounts owed to IMT and will not grant any rights in the Products to other creditors. Buyer will maintain the Products separately and in a manner that they are identifiable to IMT. Buyer expressly grants to IMT the right to enter Buyer's premises to recover the Products in the event of a failure to fully pay amounts due. IMT shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer if IMT fails to meet the estimated delivery dates because of unavoidable production or other delays. Any Products rejected by Buyer may be returned only in accordance with IMT's established procedures.

1.5. Prices. Prices and quotations are submitted without offer unless otherwise specified in an official IMT quotation, and are subject to change without notice. All prices quoted do not include duties, freight, insurance or taxes, which are Buyer's responsibility, and shall be added to the invoice. Buyer will pay to IMT non-recurring engineering charges (NRE) to cover all costs for tooling and other NRE charges as set forth in an executed IMT quotation or statement of work. Additional fees and expenses incurred in connection with Orders placed by Buyer, including any charges for expedited Orders, cancellation or rescheduling fees, inventory fees for lots or wafers placed on hold, manufacturing re-start fees or other fees may apply and will be paid by Buyer. Buyer will also reimburse IMT for actual, reasonable travel and out-of-pocket expenses incurred for any Services performed away from IMT facilities.

1.6. Product Availability. IMT reserves the right to discontinue and withdraw from the marketplace any product or product configuration at any time without any further obligation on the part of IMT.

2. PAYMENT TERMS

2.1. Invoices. Invoices for the purchase price for Products will be issued upon shipment. NRE will be invoiced and paid in advance of IMT incurring any costs or making any changes covered by the NRE. Other fees and expenses may be invoiced on a weekly or monthly basis as incurred. Payments will be due and payable within thirty (30) days after the invoice date, subject to credit approval. Absent credit approval, IMT may require advance payment or an irrevocable standby letter of credit acceptable to IMT. All payments will be non-refundable and shall be made in U.S. dollars by wire transfer in immediately available funds. Past due amounts will be subject to a monthly charge of the lower of one and one-half percent (1½%) per month or the maximum rate allowable by law. Buyer shall reimburse IMT collection costs (including attorney's fees) incurred in collecting any amount due from Buyer.

2.2 Prices. Prices are exclusive of any taxes or duties, including any sales, use, withholding, excise, import, export, value added or similar taxes, duties or governmental charges, however designated (except for taxes on IMT's net income). All such taxes or duties shall be paid by Buyer.

3. LIMITED WARRANTY

3.1. Limited Warranty. IMT warrants that the services provided hereunder will be performed in a professional manner consistent with the quality of IMT's performance of services for similar types of engagements. Services are solely for pre-production prototyping and evaluation. Re-performance of the applicable Services found to be deficient will be Buyer's sole and exclusive remedy under such warranty. Buyer must report the deficiency to IMT in writing within thirty (30) days after IMT's tender of deliverables. IMT will not have any responsibility for any deficiency arising out of any inaccurate or insufficient information or materials provided by Buyer or any modifications made by Buyer. IMT warrants that Products designated as "production units" by IMT will comply with the applicable Wafer Acceptance Criteria established by IMT for a period of thirty (30) days after delivery by IMT ("Warranty Period"). Buyer must perform incoming inspection and notify IMT of any non-compliance during the Warranty Period. IMT's sole obligation to Buyer, and Buyer's sole and exclusive remedy, for breach of



the above warranty shall be, at IMT's option, to either repair or replace the Product confirmed by IMT to be defective and not subject to any warranty exclusions. All returns must be made in accordance with IMT's established policies.

3.2 Exclusions. The warranty extends only to Buyer. The warranty does not apply to any Products which are samples or prototypes or which have been subject to misuse (including electrostatic discharge), neglect, accident, alteration, installation, modification, electro-migration effects, radiation-induced damage or environmental or externally induced degradation or any post-delivery processing by Buyer. IMT shall not be responsible for defects or claims caused by acts not performed by or on behalf of IMT, or by Buyer's design or application or combination with other things or any inaccurate or insufficient information or materials provided by Buyer. Products are not intended for use in, and no warranty is made with respect to, applications where failure can reasonably be expected to result in significant injury (including navigation, weaponry, aviation or nuclear equipment, or medical diagnosis or treatment, surgical implant or to support or sustain life). (The foregoing in this paragraph are collectively referred to as "Exclusions".)

THE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. EXCEPT AS PROVIDED ABOVE, THE PRODUCTS, SERVICES AND ANY OTHER INFORMATION OR DELIVERABLES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND AND IMT EXPRESSLY EXCLUDES AND DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4. INDEMNITY Buyer will indemnify, defend and hold IMT harmless from any losses, costs, damages incurred by IMT or claims against IMT arising from the use of Buyer's materials or designs, use or activities described in the Exclusions, and any claims arising out of Buyers use and distribution of Products.

5. LIMITATION OF LIABILITY IN NO EVENT SHALL IMT BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING FROM CONTRACT, TORT OR NEGLIGENCE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, LOSS OF GOODWILL, OR SUBSTITUTE PROCUREMENT, OR FOR DAMAGES DUE TO DELAYS OR INTERRUPTION OF BUSINESS, WHETHER OR NOT IMT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IMT'S AGGREGATE LIABILITY WITH RESPECT TO ANY AND ALL CLAIMS OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO AND NOT EXCEED THE LESSER OF (i) ONE HUNDRED THOUSAND DOLLARS (\$100,000), OR (ii) THE AMOUNT OF FEES ACTUALLY RECEIVED BY IMT FROM BUYER FOR THE APPLICABLE PRODUCT OR SERVICES DURING THE TWELVE MONTH PERIOD PRECEDING THE TIME THAT THE FIRST SUCH CLAIM IS MADE. THE ABOVE LIMITATIONS OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

6. CONFIDENTIALITY All information marked as confidential or which Buyer has reason to know is treated as confidential by IMT, and the terms of this Agreement, shall be deemed to be Confidential Information. Buyer will not disclose IMT confidential information or use it for any purpose other than as strictly required to perform its obligations. IMT is under no obligation with respect to information supplied by Buyer unless IMT has signed a separate written agreement with respect to such information. In any event, IMT shall be free to use residuals for any purpose.



7. PROPRIETARY RIGHTS Each party retains ownership of its existing proprietary rights. Buyer grants IMT a royalty-free, non-exclusive license to use, copy, modify and practice the technology and information provided by Buyer as necessary for IMT to perform under the Agreement. Any software provided by IMT is licensed not sold. Otherwise, IMT does not grant any rights to Buyer under IMT proprietary rights. **ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED** and no rights or licenses are granted by implication or estoppel. Buyer must not remove or alter any proprietary notices, labels or marks in or on the Products or related materials.

8. GENERAL

8.1 Miscellaneous The parties are independent contractors. Neither party has the authority to bind or incur any obligation on the part of the other. Nothing limits either party's right to independently develop information or products that may compete with the other party, so long as no unauthorized disclosures or uses of Confidential Information have been made. Buyer acknowledges IMT provides services and products similar in nature to the Products for third parties. All notices or communications of any kind made or required to be given pursuant to this Agreement shall be in writing and delivered to the other party at the principal address of record. This Agreement may only be amended by written agreement. IMT shall not be liable for any failure or delay in performing any obligation, if failure or delay is due to circumstances beyond its reasonable control. Buyer may not assign this Agreement without the prior written consent of IMT. Subject to the foregoing sentence, this Agreement will be binding upon and inure to the benefit of the parties hereto, their successors and assigns. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding on the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language. The words "include" and "including" and variations will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation."

8.2 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding conflict of law rules and principles. The United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded and shall not apply. This Agreement is prepared and executed and shall be interpreted in the English language only.

8.3 Dispute Resolution. The parties shall attempt in good faith to resolve any dispute arising in connection with this Agreement informally within thirty days by meetings between representatives authorized to resolve the dispute. All disputes not so resolved will be subject to the exclusive jurisdiction and forum of the federal and state courts located in the Northern District of California. Buyer hereby waives any challenge to the jurisdiction or venue of these courts over these matters.

8.4 Export Laws IMT's obligations are subject in all respects to United States laws and regulations as shall from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States, including the Export Administration Act of 1979, as amended, any successor legislation, and the Export Administration Regulations issued by the Department of Commerce, Bureau of Export Administration. Buyer warrants that it will comply with all laws and regulations. Buyer is solely responsible for obtaining all necessary permits, licenses and certificates and for the payment of any and all applicable taxes and duties.