

MAXIM INTEGRATED PRODUCTS, INC.
CAPITAL EQUIPMENT TERMS AND CONDITIONS OF PURCHASE



Any purchase by Maxim Integrated Products, Inc., and/or its subsidiaries (hereinafter "Buyer") is expressly made conditional on Seller's acceptance of these Terms and Conditions of Purchase. These Capital Equipment Terms and Conditions of Purchase form a part of a contract, as hereinafter described more fully between Buyer and the entity identified on the Order to which these Terms and Conditions are attached or referenced (hereinafter "Seller"). Buyer's failure to object to provisions contained in any communication from Seller, or Buyer's acceptance of Equipment or services under an Order, shall not constitute acceptance of Seller's terms and conditions of sale nor be deemed a waiver of any of the provisions contained herein.

1. **DEFINITIONS.** As used in this Agreement, the following terms will have the following respective meanings:

"*Authorized Representative of Buyer*" means its President, Vice President, the buyer assigned to Seller's account, or the written designee of any of the foregoing.

"*Capital Equipment Final Acceptance*" means Buyer's written confirmation in Buyer's format of acceptance or rejection of installed Equipment signed by an Authorized Representative of Buyer and authorizing final payment for the Equipment to Seller or reservation of payment pending Seller's compliance with Equipment Performance Specification to Buyer's satisfaction.

"*Equipment*" means the machinery, equipment and/or computer hardware and software purchased under an Order and all components and parts of such equipment, machinery and/or computer hardware, and all services, additional components and parts necessary or required for operation of the same in accordance with Seller warranties and Equipment Performance Specifications.

"*Equipment Performance Specifications*" means any Buyer drawings, specifications, performance metrics, standards or other requirements contained herein and/or referenced in Buyer's Order or provided to Seller by Buyer.

"*MTBF*" means the Mean Time Between Failure and is the total number of hours the Equipment is in operation at Buyer's facility during the Inspection Period divided by the number of Equipment failures during the Inspection Period.

"*Order*" means a written order placed by Buyer to Seller for the purchase of Equipment described in the Order specifying the quantity, diameter, grade, delivery date, Specifications and shipping instructions.

"*Specifications*" means Seller specifications, drawings, samples, quotations, or other description or documentation furnished to Buyer or specified by Seller and any additional Buyer requirements or instructions set forth in an Order and/or referenced in the Equipment Performance Specifications.

"*Uptime*" means total Equipment availability, excluding preventive maintenance, and is measured based on a 24 hour, 7 day per week work schedule. Downtime does not include scheduled time for option installation or upgrades, but does include preventive maintenance exceeding the number of hours per week as specified in the Order and/or referenced in the Equipment Performance Specifications.

2. **ORDER ACCEPTANCE.** Prior to the date that Buyer submits an Order and Seller's acceptance of the Order, Seller immediately shall provide Buyer all published Specifications for the Equipment. Conditions stated in Seller's acknowledgement or acceptance of an Order or in any quotation or invoice will not be binding unless expressly agreed to in writing by a Buyer Authorized Representative. Seller shall be deemed to have assented to all terms and conditions contained herein upon Seller's acknowledgment of an Order or commencement of performance pursuant thereto. Seller acknowledges receipt of all documents listed on the Order and expressly assumes the obligation to obtain and review all such documents. To the extent of any inconsistency, the order of preference shall be as follows: (1) the Order; (2) Buyer Capital Equipment Terms and Conditions of Purchase; (3) Equipment Performance Specifications and (4) Specifications. Equipment Performance Specifications and Specifications may only be changed by written mutual agreement of Buyer and Seller.

3. **PRICES.** Buyer shall pay Seller for Equipment manufactured by Seller in accordance with Specifications and Equipment Performance Specifications at the prices indicated on the Order. If the price is omitted from the Order, Seller shall invoice Buyer at the last price quoted by Seller to Buyer and mutually agreed upon in writing. Unless otherwise specified on the face of an Order or agreed upon by the parties in writing, prices include all applicable federal, state and local taxes and cost of delivery of Equipment DDP (Incoterms 2000), Buyer destination, freight and cartage prepaid. Seller shall credit Buyer for any tax refund or credit adjustments received by Seller on taxes paid to Seller by Buyer with respect to Equipment provided under an Order. Seller's prices shall not be higher than last quoted or charged to Buyer unless otherwise agreed in writing.

4. **PAYMENT.** Unless Buyer agrees otherwise in writing, Buyer shall not be required to pay any sales, use or other taxes arising from Buyer's purchase of Equipment under an Order. Buyer shall not be required to pay any late charge, interest, finance charge, or similar charge. Buyer's payment of the purchase price does not indicate its acceptance of the Equipment or services or a waiver of any right of Buyer to test or inspect the Equipment. Payment terms, including discount periods, shall be specified in the Order. Payment may be withheld or setoffs made against Seller if Seller is not performing work pursuant to the Order. If Buyer returns an invoice to Seller for any reason not attributable to the fault of Buyer, any applicable discount period will commence on the date of receipt of a corrected invoice by Buyer. Notwithstanding the foregoing, Buyer shall not be obligated to pay invoices for Equipment on which a Return Material Authorization number has been issued or for which a Return Material Authorization request is pending.

5. **DELIVERY.** Time is of the essence for any Order. Failure by Seller to meet delivery dates specified in Buyer's Order may result in substantial damages to Buyer due to commitments to its customers and will constitute a material breach of this Order. Buyer may, at its option take one or more of the following actions: (a) extend the time for delivery; (b) cancel the Order in whole or in part; (c) require Seller to ship all or part of the Order by prepaid air freight at Seller's expense until Seller's deliveries are in accordance with the requirements of the Order. Buyer will not be liable to Seller for any cost, expenses or loss whatsoever occasioned by a cancellation of the Order. Seller agrees to pay Buyer any penalty and/or damages imposed upon or incurred by Buyer resulting from Seller's failure to deliver the Equipment on the specified delivery dates. Title and risk of loss shall pass to Buyer upon Seller's delivery of Equipment to Buyer. Seller shall not ship Equipment earlier than the delivery date specified in Buyer's Order, it being understood that if Seller builds ahead pursuant to an Order submitted by Buyer, delivery may be made pursuant to the requested delivery date stated in such Order. Seller will promptly notify Buyer in writing of any delivery delays or pull-ins in Equipment exit-factory dates, and supply to Buyer at least weekly or at any time upon specific request, a Work in Progress (WIP) report. Any changes to such report must be mutually agreed upon. The average cycle time shall be at least as short as those supplied to other Seller customers for similar Equipment and in similar volumes.

6. **QUANTITIES.** Seller will furnish the specific quantity of Equipment called for in the Order. Except as otherwise specified in the Order or by prior written agreement signed by Buyer, no variation in these quantities will be accepted, and Buyer may return excess shipments at Seller's expense.

7. **PACKAGING AND SHIPPING INSTRUCTIONS.**

A. **Packaging.** All Equipment is to be suitably packed or otherwise prepared for shipment to secure lowest transportation rates and to meet carrier's requirements. Unless otherwise specified in the Order, Buyer is not responsible for any costs for packing, crating or carriage. Any losses resulting from Seller's failure to follow Buyer routing instructions will be charged to Seller's account.

B. **Marking.** Each shipping container and all intermediate containers must be marked to show Buyer's Order number, part number with revision letter and quantity. A packing list showing this information must be included in each shipment, and the container having the packing list will be labeled on the exterior "Packing List Enclosed." Upon establishment of quantity per shipping and/or intermediate container, future orders for that part will be packed in that quantity.

C. **Consolidation.** All materials to be shipped on a given day via the same mode of transportation from a common shipping point to a common address are to be consolidated into one shipment.

8. **INSTALLATION.** If applicable, Seller shall be responsible for assembling, installing and calibrating the Equipment at Buyer's facility and placing the Equipment in operation at Buyer's facility so that the Equipment is fully assembled and fully functional prior to commencement of the Buyer Inspection Period. Buyer will provide a location and grant Seller access thereto

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to facilitate installation of the Equipment and will cooperate with Seller during installation of the Equipment.

9. **EQUIPMENT TRAINING.** Seller agrees to provide, at no additional charge to Buyer: (i) Buyer onsite training for general operations of the Equipment during the Inspection Period as requested by Buyer; (ii) promptly following acceptance of the Equipment, a specialized training class at Buyer's facility pursuant to Seller's standard course outline with an emphasis on Buyer's requirements and (iii) promptly following acceptance of the Equipment, maintenance training pursuant to Seller's standard course outline.

10. **INSPECTION.** Unless expressly agreed otherwise, Buyer will have 90 days ("the Inspection Period") from the complete installation and calibration of the Equipment by Seller to examine, inspect and perform (or have performed) the Equipment acceptance performance metrics described in Paragraph 11 and to accept or reject any Equipment delivered under an Order. During the Inspection Period, Buyer will attempt to notify Seller of any complaint which Buyer may have concerning Equipment delivered, including but not limited to any claimed shortages, defects, quality problems, delivery errors or performance problems, and Seller will undertake all reasonable efforts to correct such deficiencies in a timely manner. If Buyer is unable or prevented from testing Equipment during the Inspection Period due to causes beyond its control, the Inspection period shall be extended by the duration of the delay. If Equipment related issues prevent Buyer from testing Equipment during the Inspection period which are not immediately corrected by Seller after receipt of notification from Buyer, this will result in failure of the Equipment Performance Specifications. Prior to shipment of Equipment, Seller shall carefully inspect and test all Equipment for compliance to applicable Specifications. Seller shall retain proper records of such inspections and tests and provide copies to Buyer, if requested. Unless otherwise specified in the Order, final acceptance or rejection of the Equipment shall be made after delivery to the final destination, however Buyer's failure to accept or reject Equipment or detect defects during inspection does not relieve Seller from its responsibility to provide Equipment in accordance with Specifications, Equipment Performance Specifications and Order requirements. Buyer reserves the right to inspect Seller's facilities at any time during the term of the Order to confirm that Seller is satisfying its obligations of testing, inspection and quality control.

In accordance with ISO quality control Equipment and related certification, a physical inspection of Seller's facility may be required for Buyer and/or Buyer's customer to satisfy certification requirements. Upon written notice from Buyer or Buyer customer, Seller agrees to make its facilities and procedures reasonably available for a site inspection for physical audit, if required for customer to meet ISO certification requirements.

11. **ACCEPTANCE.** In order for Buyer to accept Equipment, an Authorized Representative of Buyer must sign Buyer's Capital Equipment Final Acceptance and provide it to Seller. If Buyer does not accept the Equipment delivered hereunder, Buyer will attempt to specify the grounds to support its decision for not accepting it. In the case of a rejection, Seller will arrange for the return of the rejected Equipment to its facility at Seller's cost. Buyer's failure to detect defects during the Inspection Period or failure to note exceptions to its acceptance on Buyer's Capital Equipment Final Acceptance does not relieve Seller from its responsibility to provide Equipment in accordance with the Order.

A. Acceptance Procedures before Delivery to Buyer

In the event the Order requires Seller to perform and complete an acceptance process before shipment of the Equipment to Buyer, it will consist of the following performance metrics: (i) Equipment shall meet or exceed and operate in accordance with all Specifications and meet all Order requirements; (ii) Equipment shall conform to standard Seller calibration and verification programs, which are ordinarily run prior to shipment in accordance with industry standards; (iii) Equipment shall correlate with prior Equipment purchased, if applicable; and (iv) Equipment software functionality shall be verified by running Equipment diagnostics and applications programs. Upon request, Seller shall provide to Buyer a written report evidencing compliance with the aforementioned performance metrics.

B. Buyer's Equipment Acceptance Procedures after Delivery and Installation
After complete assembly, installation and calibration (if applicable) of a Equipment by Seller at Buyer's site, each Equipment shall satisfy the following performance metrics of Buyer during the Inspection Period: (i) Equipment shall meet or exceed all Specifications and Equipment Performance Specifications; (ii) all manuals, spare parts, if any, and any options ordered by Buyer must be present and complete; (iii) Equipment shall exhibit a minimum MTBF as set forth in the Order and/or the Equipment Performance Specifications; and (iv) At Buyer's facility, the Equipment shall operate and maintain at or above the minimum levels as defined in the Order and/or the Equipment Performance Specifications.

12. **WARRANTY.** The warranty period for the Equipment is as mutually agreed upon by the parties in writing under the Order. The warranty period commences on the day the applicable Equipment is formally accepted by Buyer as signified by execution of Buyer's Final Acceptance Document signed by an Authorized Representative of Buyer. ("Warranty Period"). Seller warrants that Equipment: (a) will meet or exceed, operate and continue to operate in accordance with all Equipment Specifications and Equipment Performance Specifications; (b) all items will be merchantable, of good workmanship, and free from defects; (c) unless otherwise specified herein, all Equipment is new and has not been previously used; (d) the Equipment is fit for use for their ordinary intended purposes as well as any special purpose specified by Buyer; (e) will continue to satisfy any and all items and the sale thereof do not, and the use of the same for their ordinary intended purpose as well as any special purpose specified will not constitute infringement or contributory infringement of any patent, or infringement of any copyright or trademark, or violation of any trade secret; and (f) Seller has good title to the items free from all encumbrances. These warranties will survive any inspection, delivery, acceptance or payment by Buyer for the Equipment and are in addition to, and shall not be construed as restricting or limiting any warranties of Seller, express or implied, that are provided by law or exist by operation of law.

Buyer shall notify Seller if Equipment does not meet the foregoing Warranty during the agreed upon Warranty Period, and Seller shall promptly, and in no event more than ten days from the date of such notice, correct any defective or nonconforming Equipment by repairing or replacing it with Equipment with the same functionality. Buyer may return such defective or nonconforming Equipment to Seller at Seller's expense and recover from Seller the price paid for it in the event Seller does not repair or replace the defective or nonconforming Equipment within the Warranty Period. In the event of recurring problems during the Warranty period, at Buyer's discretion, Buyer shall either (i) request and receive an extension of the Warranty Period; (ii) return such Equipment to Seller for new Equipment with the same functionality, or (iii) promptly receive a full refund of the purchase price form Seller.

13. **INDEMNITY.** Seller agrees and will defend, protect, indemnify and hold harmless Buyer and its officers, directors, employees, agents, customers, successors and assigns from and against all claims, liabilities, losses, costs and expenses (including attorneys' fees and costs of suit and testing and inspection), damages, demands, judgments, causes of action, suits and liability in tort or contract arising out of or in any way connected with the Equipment or services provided to Buyer under any Order including, without limitation: (i) personal injury, death or property damages of any person if directly or indirectly attributable to any act or omission of Seller, its employees, agents and subcontractors; (ii) the work, services, materials or supplies to be performed or supplied by Seller for purchases made by Buyer under the Order; (iii) any claims by third parties alleging that the services or any other Equipment or processes provided under any Order or agreement between Buyer and Seller infringe upon any patent, copyright, trademark, trade secret or other proprietary right whether such are provided along or in combination with other Equipment or processes; (iv) any violation by Seller of any applicable governmental laws, rules, ordinances or regulations; or (v) breach by Seller of any of its obligations under the Order. Seller shall not settle any suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs, including attorney fees that may be incurred by Buyer enforcing this indemnity.

14. **ASSIGNMENT.** Seller will not delegate any duties, nor assign any rights or claims under this Order, or for breach thereof, without the prior written consent of Buyer. Any attempted delegation or assignment will be

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void. All claims for monies due or to become due from Buyer will be subject to deduction by Buyer or for any setoff or counterclaim arising out of this Order or any other Order with Seller, whether the setoff or counterclaim arose before or after any attempted assignment by Seller.

15. **NOTICE OF LABOR DISPUTES.** Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of an Order, Seller will immediately give notice of that dispute to Buyer. Seller agrees to insert the substance of this clause in any lower tier subcontract and to require that in the event its lower tier subcontractors' timely performance is delayed or threatened by delay by any actual or potential labor dispute, the lower tier subcontractor will immediately notify its next higher tier contractor of all relevant information with respect to those disputes.

16. **CONFIDENTIALITY.** Any knowledge or information that Buyer discloses to Seller under an Order, in tangible or intangible form, including, without limitation, specifications, reprints, equipment, prototypes, forecasts, technical or business information, will be deemed confidential, proprietary information of Buyer; and Seller shall not disclose such information, including without limitation, denial or confirmation, relative to the Order without the prior written consent of Buyer. All such information shall remain the property of Buyer and placement of an Order shall not be deemed a granting of any right, license, or authorization, express or implied, in or to Buyer confidential, proprietary information. Seller will not divulge such information to any person other than its employees on a need to know basis and will use such information solely in performing its obligations to Buyer under the Order and not for the benefit of any third party. This obligation shall not extend where such information:

- a. was in the public domain at the time it was disclosed or later becomes public knowledge at a future date, other than as a result of Seller's breach of its obligations set forth herein;
- b. was in Seller's possession or was known to Seller without restriction at the time of its disclosure as evidenced by competent written proof of Seller;
- c. is shown to be developed independently by or for the Seller without use of or reference to Buyer's confidential, proprietary information, as evidenced by written documentation in Seller's possession; or
- d. becomes known to Seller on a nonconfidential basis from a source other than Buyer without breach of an obligation of confidentiality (contractual, legal, fiduciary or other).

Unless otherwise agreed in writing, information in whatever form disclosed in any manner or at any time by Seller to Buyer shall not be deemed confidential or proprietary.

17. **MODIFICATIONS.** There can be no modification, amendment or rescission of an Order without the written agreement of Buyer and Seller. Any changes to processes, manufacturing methods or qualified critical materials are subject to Buyer's prior written approval, and substitutes will not be accepted unless authorized in writing by Buyer's duly authorized management. Any overrun quantities will be subject to Buyer's prior written approval. Buyer reserves the right to and Seller agrees to accept changes to the Order, including, without limitation, changes to quantities, packing, testing, destinations, specifications, designs and delivery schedules. If an Order affects delivery or price, Seller will notify Buyer immediately and an equitable adjustment in prices or other terms hereof, based on reasonable and unavoidable costs incurred by Seller as a result of such change, will be agreed upon in a written amendment to the affected Order. Seller will notify Buyer immediately in writing if it changes its manufacturing locations and Seller shall pay for all related qualification costs associated with Buyer's qualification of a new foundry.

18. **FORECASTS.** Any Buyer forecasts furnished under an Order are presented in good faith and are nonbinding on Buyer. Buyer shall only be liable for actual Order releases made by Buyer. Seller commits to meet Buyer requirements in accordance with such forecast. Seller guarantees capacity for Buyer to meet Buyer's requirements at all times.

19. **CANCELLATION/RESCHEDULE.** Buyer may cancel or reschedule an Order in whole or in part, at any time without liability by giving written notice to Seller. Cancellation or termination by Buyer will not constitute a waiver or release of any rights and remedies of Buyer in contract or provided by law. In the event Seller becomes insolvent or makes an assignment for the

benefit of creditors, or a trustee, receiver, or liquidator is appointed for all or a portion of Seller's property, or any voluntary or involuntary petition in bankruptcy is filed by or against Seller, Buyer may terminate any Order without further obligation or liability of whatsoever to Seller.

20. **GOVERNING LAW.** This Order shall be construed in accordance with and disputes shall be governed by the laws of the State of California, excluding its conflict of law rules. The Superior Court of the County of Santa Clara or the United States District Court for the Northern District of California shall have jurisdiction and venue over all controversies arising out of or related to this Order. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and shall not apply to the terms and conditions of this Agreement.

21. **REMEDIES.** The remedies reserved in this Order are cumulative and additional to any other further remedies at law or in equity; however, in no event will Buyer be liable to Seller for incidental or consequential damages. All of the terms of this Order are material terms and no waiver of or exception to any of the terms, conditions or provisions contained in the Order shall be valid unless specifically agreed to in writing by Buyer.

22. **NON-WAIVER DEFAULT.** Each shipment made under any Order shall be treated as a separate sale and transaction, but in the event of any default by Seller, if Buyer elects to continue to accept shipments, its action shall not constitute a waiver of any default by Seller or in any way affect Buyer's legal remedies for any such default.

23. **COMPLIANCE WITH LAWS.** Seller warrants that the Equipment and services supplied pursuant to the Order shall comply fully with all applicable federal, state, and local laws (including any foreign laws, where applicable), orders, rules and regulations there under and amendments thereto, including without limitation, Executive Orders relating to Equal Employment Opportunity, the Federal Occupational Safety and Health Act, Public Law 91-596, the Federal Hazardous Substances Act, the Transportation Safety Act, the Clean Air Act, the Toxic Substances Control Act, the Fair Labor Standards Act, and the Federal Water Pollution Control Act. Seller shall prepare, maintain and, to the extent that applicable law, regulation or customs authority requires it to do so, submit to the applicable customs authorities, all information and documentation that is necessary to comply with the applicable customs and export and import requirements of each country from which the Equipment will be exported and each country into which the Equipment will be imported. Seller is solely responsible for complying with all technical compliance and country of origin requirements of each country into which the Equipment is to be imported. Upon Buyer's request, Seller will provide a certificate of compliance with respect to such laws, order and regulations. At time of Order placement, Seller will provide to Buyer the Export Control Classification Number for the Equipment to be purchased and, if applicable, obtain any licenses required by U.S. export regulations to ship the Equipment to Seller's facility.

24. **FORCE MAJEURE.** Neither party shall be liable for delay in performance or failure to perform in whole or in part the terms of this Agreement due to strike, labor dispute, war, riot or civil commotion, acts of the public enemy, fire, flood or other acts of God, or causes beyond the reasonable control of such party. The period for performance for the party affected by such a cause shall be extended by the duration of the condition.

25. **SEVERABILITY.** In the event any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and an Order shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

26. **INDEPENDENT CONTRACTOR.** Seller and Buyer expressly understand and agree that Seller is an independent contractor in the performance of each and every part of an Order, is solely responsible for all of its employees, agents and will indemnify Buyer, its officers, directors, employees, agents, customers, successors and assigns, from any and all claims, liabilities, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever that may arise on account of Seller's activities or those of its employees, agents.