

INGRAM MICRO INC. PURCHASE ORDER TERMS & CONDITIONS

All purchases made by Ingram Micro Inc. (hereinafter "Buyer") by use of a Purchase Order whether oral or written (hereinafter "Order") are subject to these terms and conditions (hereinafter "Terms"). By accepting any Order and except as otherwise stated herein, the party providing products or services pursuant to the Order (hereinafter "Supplier") agrees to be bound by the Terms, unless Supplier notifies Buyer in writing of Supplier's objections and Supplier obtains a superseding or amended written Order or agreement from Buyer.

1. ACKNOWLEDGMENT AND ACCEPTANCE OF ORDER: Any Order issued by Buyer under these Terms becomes a binding contract with Supplier when accepted by (a) acknowledgement, (b) commencement of performance, (c) shipment of goods, or (d) receipt of goods, whichever is earliest. Any different or additional items or conditions in any Supplier quotation, acknowledgement, notice or invoice are void. The Terms apply to the purchase of materials, items, products, components or services (hereinafter "Material"). All exhibits, attachments, technical specifications, drawings, notes, instructions, or information referenced in any Order are incorporated herein by reference. The Terms control unless they are specifically varied or contradicted by one of the following methods in the listed order of precedence; 1) A current existing Master Purchase Agreement, 2) Another current signed contract between Buyer and Supplier to which the Order applies. All other prior oral or written statements varying an Order are specifically rejected and disclaimed.

2. CHANGES/AMENDMENTS: Buyer has the right at any time, by written notice, in the form of a change order to Supplier, to make any changes it deems necessary, including, but not limited to, changes in specifications, design, delivery, testing methods, packing or destination. If any such required changes cause an increase or decrease in the cost of or the time required for performance, an equitable adjustment will be made in the Order price or delivery schedule, or both. Any claim by Supplier for adjustment under this clause is deemed waived unless asserted in writing within ten (10) days from receipt by Supplier of notice of change. Price increases, extensions of time for delivery and change in quantity will not be binding on Buyer unless evidenced by a change order form issued and signed by Buyer.

3. DELIVERY/FORCE MAJEURE: If any Material is not delivered by the date specified in an Order, Buyer reserves the right, without liability, to cancel the Order as to any Material not yet shipped or tendered, and to purchase substitute Material and to charge Supplier for any loss incurred. Oral cancellation notices, made by Buyer or Supplier, are effective when made, but must be confirmed in writing. Any provisions hereof for delivery by installment will not be construed as making the obligations of Supplier severable. Buyer has the right to refuse deliveries made more than one week in advance of any delivery schedule appearing in an Order unless arrangements for such early delivery have been confirmed with the receiving party.

Supplier will notify Buyer in writing promptly of any delays, however caused, and of any actual potential labor dispute which delays or threatens to delay the timely performance of an Order.

If Supplier is unable to complete performance at the time specified for delivery hereunder, by reason of strikes, labor disputes, riot, war, fire, terrorist attack, or other causes beyond Supplier's reasonable control, Buyer, at its option, may elect to take delivery of Material in its unfinished state and to pay such proportion of the price as the work then completed bears to the total work and to cancel the Order without liability as to the balance of the Material.

4. TITLE AND RISK OF LOSS: Terms of shipping are F.C.A. Buyer's delivery location unless otherwise noted within the terms and conditions of the Order.

5. PAYMENT/PRICE/TAXES: The Material will be furnished at the price set forth on the face side of the Order in U.S. dollars. Prices stated on the Order are firm and will remain firm until deliveries have been completed unless otherwise expressly agreed to in writing by both parties. Supplier agrees that any price reduction made with respect to Material covered by an Order subsequent to placement will be applied to the Order. Buyer will not be held liable for typographical errors and may amend pricing, prior to receipt of an invoice, to conform to any subsequent pricing agreements entered into with Supplier. All prices specified herein include all charges for, but not limited to, inspection, and packaging. The prices stated include all taxes except those, which Supplier is required by law to collect from Buyer. Such taxes, if any, will be stated in Supplier's invoice and will be paid by Buyer unless an exemption is available.

6. WARRANTIES: Supplier warrants that any Material supplied hereunder conforms to the generally recognized manufacturing and safety standards of Supplier's industry in the United States and meets or exceeds Supplier's specifications on performance as detailed in Supplier's brochures, sales literature and other specifications as may be available to Buyer.

In addition to any other express or implied warranties, Supplier warrants that the Material furnished pursuant to an Order is: (a) free from defects in title, workmanship and material; (b) free from defects in design except to the extent that such items comply

with detailed designs provided by Buyer; (c) of merchantable quality and suitable for the purposes, if any, which are stated on the Order.

If any material covered by an Order is defective or found not to be as warranted or does not otherwise conform to the Order's requirements, Buyer may, by written notice to Supplier: (a) rescind the Order as to such non-conforming Material; (b) accept such Material at an equitable reduction in price; (c) reject such non-conforming Material and require the delivery of suitable replacements.

If Supplier fails to deliver suitable replacements promptly, Buyer, with notice of five (5) business days, may replace or correct such Material and charge Supplier the additional cost incurred by Buyer, or terminate the Order for default.

Any items corrected or furnished in replacement are subject to all the provisions of this section entitled WARRANTIES to the same extent as items initially furnished or originally ordered. Cost of replacement, rework, inspection, repackaging and transportation of such corrected Material will be at Supplier's expense.

This warranty provision will survive any inspection, delivery, acceptance, payment, expiration or earlier termination of this Order and such warranties will run to Buyer, its successors, assigns, employees, and users of the Material. Nothing herein, however, will limit Buyer's rights in law or equity for damages resulting from delivery of defective Material or damage caused during the delivery or provision of Material.

7. INSPECTION AND ACCEPTANCE: Supplier will inspect all Material prior to shipment to Buyer. All Material covered by an Order may be inspected and tested by Buyer or its designee. If Buyer elects to inspect or test, successful completion of such inspection and testing will be a prerequisite to Buyer's acceptance of the Material. If deemed necessary by Buyer, Supplier will provide without charge, all reasonable facilities and assistance for such inspection and test.

Any inspection records relating to Material covered by an Order will be available to Buyer during the performance of the Order and for such longer periods as specified by Buyer. In accordance with the requirements in section 6, if Supplier fails to deliver suitable replacements promptly, Buyer, with notice of five business days, may replace or correct such Material and charge Supplier the additional cost incurred by the Buyer, or terminate the Order for default.

No inspection (including source inspection) test, approval (including design approval) or acceptance of Material shall relieve the Supplier from responsibility for defects or other failures to meet the requirements of an Order.

8. BUYER'S PROPERTY IN SELLER'S POSSESSION: All tools, dies, molds, patterns, jigs and any other property furnished to Supplier by Buyer or specifically paid for by Buyer for use in the performance of an Order becomes and remains the property of Buyer; is subject to removal at any time upon Buyer's demand; will be used only in filling orders for Buyer; will be maintained in good order and condition and will be clearly identified as the property of Buyer. Supplier assumes all liability for loss or damage to such property.

9. INTELLECTUAL PROPERTY INDEMNITY: Supplier agrees to indemnify, hold harmless and defend Buyer, its associates, directors, officers, and employees, with respect to all claims, suits, actions and proceedings of actual or alleged infringements of any letter, patent, registered or industrial design, trademark or trade name, trade secret, copyright or other protected right in any country resulting from any sale, use, marketing or manufacture of any Material delivered hereunder and to pay and discharge all judgments, decrees, and awards rendered therein or by reason thereof and bear all expenses and legal fees (including Buyer's) associated herewith. Buyer reserves the right to be represented in any such action by its own counsel at its own expense.

10. GENERAL INDEMNITY: Supplier will indemnify, defend, and hold Buyer and its officers, directors, employees and associates harmless from and against any and all liabilities, damages, fines, penalties, costs, claims, interest and expenses (including costs of defense, settlement, and reasonable attorney fees) that arise from claims, allegations, actions, causes of action, adjudications, or suits by third parties to the extent attributable to (a) negligent or willful misconduct of Supplier or its employees, agents or subcontractors; or (b) violations of any federal, state, provincial, or local law, statute, regulation, rule, ordinance, order, or government directive by Supplier or any person engaged by Supplier to provide Material, including, without limitation, those relating to the environment or public health. This indemnification obligation will apply to claims, liabilities, losses, fines, reasonable attorney fees and other expenses.

11. ASSIGNMENT/SUBCONTRACTING: Supplier agrees that it will not assign the rights of an Order without the prior written consent of Buyer nor will it subcontract work hereunder to a third party without the prior written consent of Buyer, which consent will not be unreasonably withheld. In the event of assignment or subcontracting by Supplier without such consent Supplier agrees that such act of assignment or subcontracting will be void.

12. CANCELLATION: Buyer may cancel an Order in whole or in part, for its convenience and without cause and without penalty, upon written notice by fax or overnight signature required mail to Supplier, effective when sent, provided such notice is sent at least ten business (10) days prior to the delivery date specified on the face of the Order or within three (3) business days of order placement.

Buyer may cancel an Order in whole or in part at any time for cause upon written notice by fax or overnight signature required mail to the Supplier, effective when sent, in the event that Supplier: (a) fails to comply with any term or condition of the Order including but not limited to delivery terms; (b) appoints a receiver, liquidator or trustee in bankruptcy or other similar officer over any or all of its property or assets; (c) files a voluntary petition in bankruptcy; (d) has had filed against it an involuntary petition in bankruptcy which remains in effect for thirty (30) days; (e) voluntarily ceases trading; (f) merges with or is acquired by a third party; or (g) assigns any of its rights or obligations under the Order to a third party without Buyer's advance written consent.

Upon the occasion of any one of the aforesaid and in addition to any remedies which Buyer may have in law or in equity, Buyer may also cancel an Order or any outstanding deliveries hereunder by notifying Supplier in writing of such cancellation and Supplier will thereupon transfer title and deliver to Buyer any work in progress or completed material as may be requested by Buyer. Buyer will have no liability to Supplier beyond payment of any balance owing for Material purchased hereunder and delivered to and accepted by Buyer prior to Supplier's receipt of a notice of termination, and for work in progress requested for delivery to Buyer.

13. RESCHEDULING: Buyer may without liability, at least fourteen (14) days prior to the scheduled delivery date appearing on an Order, defer delivery on any or every item under the Order by giving oral notice to Supplier (confirmed in writing within ten (10) working days) of any necessary rescheduling.

14. CONFIDENTIALITY: All written information obtained by Supplier from Buyer in connection with an Order and which is identified as proprietary, including, but not limited to, any specifications, drawings, blueprints, plans, sketches and software programs, remains the property of Buyer, and will be used by Supplier only to the extent expressly agreed on and necessary for performance of the Order and will not be disclosed to any third parties without the prior written consent of Buyer.

All transactions between Buyer and Supplier will be treated as confidential. Supplier, without express written permission from Buyer, will not make any news release, public announcement, denial or confirmation of any dealings Supplier has with Buyer, including but not limited to the existence of an order or using confidential information in advertisements or sales literature. Supplier will not use any trademark, service mark, trade name, logo or the like, of Buyer without the express written consent of Buyer.

15. SHIPPING, PACKAGING AND LABELING: All Material purchased hereunder must be packed and packaged to ensure its safe delivery in accordance with good commercial practice and where incorporated, Buyer's packaging specification.

Supplier will mark on all containers, handling and loading instructions, shipping information, part number, purchase order number and item number, quantity in box, shipment date, and names and addresses of Supplier and Buyer. An itemized packing list must accompany each shipment. Each packing slip will include; the Order number, quantity, item description, order date, shipping date and delivery address, but will not include pricing information.

All shipments of hazardous materials under an Order must comply with current U.S. Department of Transportation (DOT) regulations, and the labeling must meet the current U. S. Occupational Safety and Health Administration (OSHA) regulations.

Material Safety Data Sheets (MSDS) will be supplied with the first shipment of all hazardous materials, and these sheets will be resubmitted if any changes or updates, as required, are made.

16. INDEPENDENT CONTRACTOR: Supplier will perform the obligations of any Order as an independent contractor and under no circumstances will it be considered an agent or associate of Buyer. The Terms are not to be construed in any way, as to create a partnership or any other kind of joint undertaking or venture between Buyer and Supplier. Supplier expressly waives any and all rights, which may or may not exist, to claim any relief under Buyer's comprehensive insurance policy, worker's compensation or unemployment benefits.

17. CONTRACTOR SAFETY RULES: At all times, while on Buyer's property, Supplier will comply with Buyer's Contractor Safety Rules, which is available from Buyer upon request.

18. STANDARDS OF CONDUCT: Supplier must reassign its employees, agents and subcontractors working on Buyer's premises if any such personnel are deemed to be disruptive, dangerous, incompetent, or otherwise noncompliant with reasonable conduct guidelines and Buyer's policies and procedures. At Buyer's request, Supplier will distribute publications supplied by Buyer regarding Buyer's policies, practices, and procedures.

19. INVOICING/PAYMENTS/SET-OFFS: After each delivery of Material pursuant to an Order Supplier shall send duplicate invoices including item number to Buyer's designated location at Ingram Micro Inc., U.S. Expense Payables Department, P.O. Box 1720, Station B, Mississauga, Ontario L4Y3W6, Telephone Number: 905-755-5000 ext. 5505, Fax Number: 905-755-7952. A duplicate invoice will be provided directly to Buyer upon request.

Payment of invoice does not constitute acceptance of Material ordered and will be subject to appropriate adjustment, if Supplier failed to meet an Order's requirements. Buyer has the right at any time to set-off any amounts due to Supplier, (or any of its employed or affiliated companies) against any amounts owed by Buyer with respect to any Order or any subsequent Order or any other contractual agreement between the parties hereto unless such set-off violates local law or regulations. Supplier will not engage in set-off or deduction unless agreed to in writing by Buyer.

20. INSURANCE AND STATUTORY OBLIGATIONS: The insurance requirements herein are in addition to and separate from any other obligation contained in the Terms. Supplier will obtain and maintain the following insurance coverage at its expense:

1) Commercial General Liability (including product and completed operations, personal and advertising injury and contractual liability coverage) with a minimum per occurrence limit of \$1,000,000 and an annual aggregate limit of \$2,000,000, written on an occurrence form.

2) Workers Compensation Insurance with statutory limits granting a waiver of subrogation in favor of Ingram Micro Inc.

3) Employers' Liability (Stop-Gap Liability) insurance with minimum limits of \$1,000,000.

4) Automobile Liability Insurance with minimum \$5,000,000 coverage limits for each accident, including owned, non-owned and hired vehicles.

5) Umbrella Liability and/or Excess Liability insurance for not less than \$5,000,000 in excess of the limits provided by Commercial General Liability, Employers' Liability and Automobile Liability insurance policies.

Upon request by Buyer, Supplier will furnish a certificate of insurance evidencing the lines of coverage and minimum limits set forth herein and specifically naming Ingram Micro Inc. and its subsidiaries, agents, officers, directors, stockholders, and employees as "Additional Insured" with respect to General Liability, Auto Liability and Umbrella policies. The requirement to furnish a certificate of insurance will survive one (1) year after the termination of an Order. Any failure on part of the Buyer to request, or failure on the part of Supplier to provide, a certificate of insurance does not constitute a waiver of the insurance and statutory obligations herein.

Except for Workers' Compensation insurance which must be maintained in those states, territories or provinces where such coverage is mandated by law, and Automobile Liability, the coverage territory applicable to the insurance policies required above must be worldwide.

Supplier's insurers must be AM Best rated A-, VII or better. Policy limits may not be reduced, terms adversely and materially changed, or policies canceled except after thirty (30) days prior written notice to Buyer. Supplier's insurance will be primary with respect to all obligations assumed by Supplier pursuant to an Order, or any other goods provided or services performed. Any insurance carried by Buyer will not contribute to, or be excess of, insurance maintained by Supplier, nor in any way provide benefit to Supplier, their employees, officers, directors, subsidiaries, associates or agents. Coverage and limits referred to above will not in any way limit the liability of Supplier.

21. WAIVER: Buyer's failure to insist in any instance upon the strict performance of any of the Terms, or to exercise any right or privilege granted to Buyer hereunder will not constitute or be construed as a waiver of any such Term or provision or right and the same shall continue in force.

22. NOTIFICATION OF HAZARDOUS PRODUCT: Supplier hereby agrees to notify Buyer of any inherent hazard related to the Material being purchased herein that would expose the hazard during handling, transportation, storage, use, resale, disposal or scrap. Said notice will be sent to Buyer's Director of Strategic Sourcing and will specify the product name and part number, the nature of the hazard, proper precautions that must be undertaken by Buyer or others and any additional information that Buyer should reasonably expect to know to protect its interest.

23. COMPLIANCE WITH LAWS: Supplier also agrees to comply with all applicable federal, state, provincial, county, and local laws, ordinances, regulations and codes. Whether or not Buyer provides a specification, if Material or containers furnished by Supplier are required to be constructed, packaged, labeled or registered in a prescribed manner, Supplier will comply with all applicable federal, state, provincial, county and local laws, ordinances, regulations and codes.

24. MANDATORY CLAUSES REQUIRED UNDER GOVERNMENT CONTRACTS OR SUBCONTRACTS: If a government contract number is shown on the face of an Order, clauses contained in the current issue of the Federal Acquisition

Regulations (FAR) and supplements thereto, which the government makes mandatory for a contractor under a government contract to include in its subcontracts thereunder, will apply to such Order.

25. REPRODUCTION OF DOCUMENTATION: Buyer has the right at no additional charge to use, reproduce or incorporate all or portions of Supplier's literature such as operating and maintenance manuals, technical publications, prints, drawings, training manuals and other similar supporting documentation and sales literature. Supplier agrees to timely notify Buyer in writing of any updated information relative to the foregoing literature and documentation.

26. NON-EXCLUSIVITY: The parties understand and agree that neither these Terms nor any Order creates rights or obligations of exclusivity inuring to the benefit of Supplier. Nothing in these Terms or in any Order will limit Buyer's right to, at all times, purchase Material from other suppliers.

27. AUDIT RIGHTS: Buyer and its customers have the right at any reasonable time to examine all relevant documents, records, materials, goods, and equipment in the possession or under the control of Supplier that relate to any of Supplier's obligations under any Order. Supplier agrees to cooperate in any such audit request by Buyer.

28. GOVERNING LAW: All Orders and the relationship of the parties will be governed by and interpreted in accordance with the laws of the State of California without regard to rules of conflicts of laws. Venue for any proceedings to enforce this Order shall be in the state or federal courts in Orange County, California, and each party hereby consents to exclusive personal jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.

29. LIMITATION OF LIABILITY: IN NO EVENT WILL EITHER BUYER OR SUPPLIER BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.