

## SD-CTR-010 SemiDice Americas Terms and Conditions for Sale

### 1 Agreement and Acceptance

These terms and conditions of sale (these “Terms”) govern the sale by SemiDice (“**SemiDice**”) of the products (“Products”) and services (“Services”; and together with the Products, collectively, the “Products/Services”) ordered by the buyer (“Buyer”) named on the purchase order or other order document or communication from Buyer (a “Purchase Order”) covering the purchase of the Products/Services covered thereby. Notwithstanding anything herein to the contrary, if a written contract signed by both SemiDice and Buyer is in existence covering the sale of the Products/Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

No Purchase Order, in whole or in part, shall be binding on SemiDice unless and until an authorized representative of SemiDice issues to Buyer a written order confirmation or invoice with respect to such Purchase Order or ships Products in fulfillment thereof (a “Sales Confirmation”; and Buyer’s order for Products/Services to the extent confirmed or fulfilled by SemiDice pursuant to such Sales Confirmation, an “Accepted Order”). The terms of each Purchase Order and Sales Confirmation, and any related quote or similar document provided by or on behalf of SemiDice for the Products/Services covered thereby, shall incorporate and be governed in all respects by these Terms unless otherwise expressly agreed in writing by SemiDice. All quotations, offers, and tenders pertaining to the Products/Services, and SemiDice’s performance of Services and shipments and deliveries of Products, are made subject to these Terms. These Terms are intended by SemiDice to be part and parcel of any offer, counteroffer, or acceptance addressed to Buyer and any fulfillment of a Purchase Order for Buyer.

The accompanying Sales Confirmation and these Terms (collectively, the “Agreement”) shall constitute the entire agreement between SemiDice and Buyer relating to the Products/Services and all other matters thereunder and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its Purchase Order or such terms. Any term or condition of Buyer’s Purchase Order which is in any way different from or in addition to any term or condition of the Agreement is specifically rejected by and shall not be binding upon SemiDice unless expressly accepted by SemiDice in writing. Fulfillment of Buyer’s Purchase Order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms or any other term or condition of the Agreement.

No waiver by SemiDice of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by an authorized representative of SemiDice. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

### 2 Delivery

Accepted Orders will be delivered within a commercially reasonable period of time following Sales Confirmation, subject to availability of finished Products/Services and all other terms of the Agreement. Unless otherwise agreed in writing by the parties, SemiDice will deliver Products or perform the Services from the SemiDice factory (or other business location) quoting the particular Product or Service or such other SemiDice (or its supplier’s or other partner’s) location(s) as determined by SemiDice in SemiDice’s discretion (the “**Shipping Point**”) and, with respect to Products, using SemiDice’s (or, if applicable, its supplier’s or other partner’s) standard methods for packaging and shipping such Products. All Product shipments will be made by United Parcel Service, DHL, Federal Express, or other carrier selected by SemiDice at SemiDice’s discretion, unless SemiDice has agreed in writing to accommodate a specific request from Buyer with respect to an alternate carrier or method. SemiDice may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s Purchase Order.

With respect to hybrid DC/DC products, SemiDice may deliver a quantity of product of up to 15% more or less than the quantity ordered by the Buyer or, in respect of all other Products, SemiDice may deliver a quantity of Products of 5% more or less than the quantity ordered by the Buyer, in which case the Buyer shall not be entitled to object to or reject the Products (or any part of them) by reason of the surplus or shortfall, and shall pay for such Products at the pro rata Contract rate.

Upon SemiDice notification in writing to Buyer of Product ready for Source Inspections. Buyer shall respond within 5 days of notification to SemiDice to schedule Source Inspection within a 15-day period from original notification. SemiDice reserves the right to schedule a certified third-party independent source inspector to conduct the required inspections should Buyer fail to

schedule source inspections within the specified timeframe. SemiDice will invoice Buyer for the source inspection service, provide the independent report as part of the end item data package and complete the deliverables in accordance with purchase order.

Unless otherwise specified in the Sales Confirmation or otherwise in writing by an authorized representative of SemiDice with respect to the Accepted Order, delivery shall be made EXW Shipping Point. Title to the Products and risk of loss passes to Buyer upon delivery of the Products to the initial carrier at the Shipping Point with the carrier acting as Buyer's agent. SemiDice shall not be liable for Products delayed, lost, or damaged in transit, all claims for which must be filed with the carrier. Buyer shall be liable for detention, demurrage, storage, or auxiliary charges assessed by carriers or warehousemen resulting from Buyer's requirements for special service or Buyer's failure to accept delivery in a timely manner. As collateral security for the payment of the purchase price of the Products/Services, Buyer hereby grants to SemiDice a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code of the state in which the Products are located.

Without limiting the foregoing terms of this Section 2 (Delivery): Time is not of the essence of the Agreement, and all delivery dates stated or otherwise provided in connection with an Accepted Order are approximate and based on SemiDice' reasonable estimate of dates that the Products will be delivered, or the Services performed, if SemiDice timely receives from Buyer all necessary information including, but not limited to, specifications, drawings, testing parameters, package configuration, and customer supplied materials. SemiDice shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached the Agreement, for any delay or failure in fulfilling or performing any term of the Agreement (including, but not limited to, the performance of any Services or the delivery or shipment of any Products), or for any resulting damages, when the delay or failure is directly or indirectly caused by or resulting from any acts or circumstances beyond the reasonable control of SemiDice including, without limitation, accident (in manufacture or otherwise), errors, omissions, acts of God, fire, flood, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown, or power outage. If any contingency occurs, SemiDice may allocate production and deliveries among SemiDice' customers. Subject to all other applicable terms and conditions of the Agreement, any liability of SemiDice for non-delivery of Products/Services for which SemiDice is responsible in accordance with these Terms shall be limited to replacing the Products or re-performing the Services within a reasonable time or adjusting the invoice associated with such Products/Services to reflect the actual quantity of Products delivered or the Services performed.

### **3 Cancellation**

Subject only to Buyer's remedies and SemiDice' obligations pursuant to Section 9 (Limited Warranty) and Section 10 (Returns of Products; Re-performance of Services), Buyer shall accept all Products/Services as ordered. Cancellation of any Accepted Order by Buyer is not permitted, all orders are deemed Noncancelable and Nonreturnable without the written consent of an authorized SemiDice representative. The parties agree that SemiDice, in its sole discretion, is entitled to the full price of the Accepted Order for the Products/Services cancelled (Liquidated Damages). In the event of an approved cancellation by Buyer for any reason other than in accordance with Section 10 (Returns of Products; Re-performance of Services), in addition to Buyer's payment of all fees and other charges as set forth in the accompanying Sales Confirmation, Buyer may be required to pay a cancellation fee which will be determined by SemiDice based on actual expenditures incurred directly by or on behalf of SemiDice or its suppliers in relation to such cancelled Accepted Order as of the date of Buyer's cancellation. SemiDice reserves the right to cancel any Accepted Order if Buyer is in default of any payment obligations for prior Accepted Orders or if prevailing conditions beyond SemiDice' reasonable control, from any cause whatsoever, make it impossible or impracticable to assure delivery. For the avoidance of doubt, Buyer will not be responsible for any cancellation fees or charges if such cancellation is by SemiDice and not resulting from any act or omission of Buyer.

### **4 Changes in Design of Products or Methods for Performing Services**

SemiDice reserves the right to make changes from time-to-time to any of its standard Product offerings. SemiDice may make changes to the design of Products due to Buyer-initiated specification changes without incurring any obligation to make equivalent changes in Products previously manufactured or delivered by SemiDice or to any similar Products manufactured by SemiDice. Buyer is responsible for all costs associated with Buyer-initiated specification changes, including but not limited to, material and documentation costs. Notwithstanding anything to the contrary contained in the Agreement, SemiDice may,

from time-to-time, change its methods or processes relating to Services without the consent of Buyer, provided that such changes do not materially affect the nature or scope of the Services in relation to the features or functionality of the associated Products that are part of any Accepted Order not yet delivered to Buyer.

## **5 Changes in Schedules and Other Buyer Delays**

No changes may be made in scheduled deliveries without the written consent of SemiDice. In the event Buyer requests a change in any scheduled delivery and SemiDice approves such change, SemiDice may require Buyer to issue a new Purchase Order or a written modification to the existing Purchase Order reflecting the requested change(s). For the avoidance of doubt, in any event, any such new or modified Purchase Order shall be subject to SemiDice' review and acceptance in accordance with these Terms, including that no such new or modified Purchase Order shall be considered an Accepted Order unless confirmed by SemiDice pursuant to a new Sales Confirmation. If Buyer delays in furnishing or fails to furnish SemiDice with technical or other information, approvals, or customer-supplied materials requested or required by SemiDice within 7 days of SemiDice's request, SemiDice may invoice for all work performed to date and Buyer shall reimburse SemiDice for such additional costs and expenses.

## **6 Price**

Buyer shall purchase the Products/Services from SemiDice at the prices quoted by SemiDice. If Buyer has issued a Purchase Order independently of an SemiDice quote, then Buyer shall purchase the Products/Services at the prices set forth in SemiDice' published price list in force as of the date of Buyer's Purchase Order, subject to SemiDice's confirmation of such prices and acceptance of the Purchase Order via a Sales Confirmation. All prices quoted are subject to change, without notice, at any time prior to the Sales Confirmation. In the event that (i) the cost of raw materials and/or components increases due to unanticipated circumstances or otherwise, and/or (ii) a vendor raises its prices or imposes a surcharge on SemiDice, SemiDice reserves the right to increase prices and/or surcharge Buyer, and Buyer agrees to accept such price increase or surcharge until the term of such price increase or surcharge ends or until the termination of the Agreement. Such prices and surcharges may be adjusted by SemiDice to reflect a change in underlying costs.

Any licenses or clearances required at the port of entry and destination for the Products shall be obtained and paid for by Buyer. All Products/Services pricing is based on EXW Shipping Point and are exclusive of all shipping costs, costs of insurance, and any applicable federal, state, and local duties, taxes, or other charges imposed on the manufacture, sale, delivery, shipment, or use of any of the Products/Services (including, without limitation, sales, use, excise, shipment, property, and value added taxes), all of which shall be paid by Buyer; provided, however, that Buyer shall not be responsible for any taxes imposed on, or with respect to, SemiDice' income, revenues, gross receipts, personnel, or real or personal property or other assets. Any duty, tax, or other charge that SemiDice may be required to collect or pay in connection with the Agreement shall either be paid by Buyer or Buyer shall provide to SemiDice appropriate resale certificate numbers and other documentation satisfactory to the applicable taxing authority to substantiate any claim of exemption from any such tax or charge.

The term "after-imposed tax" as used in this Paragraph 6 means any new or increased federal, state, local, municipal, or international customs or import duty, tariff, rate increase, or tax that was exempted or excluded as of the date of the Purchase Order, or did not exist as of the date of the Purchase Order, but whose exemption or exclusion was revoked or reduced after the date of the Purchase Order, or came into existence after the date of the Purchase Order, and affects the transactions, raw materials, real property, personal property, goods or services covered by this Purchase, and that SemiDice pays, bears, or incurs as the result of action taken by any domestic or foreign executive (i.e., Executive Orders), legislative, judicial, or administrative entity. SemiDice shall promptly notify Buyer if an after-imposed tax is reasonably expected to result in an increase in the Purchase Order price.

The price paid by Buyer to SemiDice under this Purchase Order shall be increased by the amount of any after-imposed tax, provided SemiDice warrants in writing to Buyer that no amount for such after-imposed tax was included in the Purchase Order price, as a contingency reserve or otherwise.

SemiDice may attempt to mitigate, in whole or in part, the costs associated by an after-imposed tax by acquiring goods or services from a different source ("Replacement Source") than the source that SemiDice had originally planned to utilize as of the effective date of this Purchase Order ("Original Source"), because the Replacement Source charges lower prices in the aggregate than the Original Source after applying one or more after-imposed taxes. In such cases, Buyer agrees to pay to SemiDice (a) the price of the good or service at issue from the Original Source as of the effective date of this Purchase Order ("Original Price"), plus (b) the difference between the actual price of the good or service acquired from the Replacement Source and the Original Price.



## 7 Payment Terms

Unless otherwise provided in the applicable Sales Confirmation, payment is due thirty (30) days from the earlier of the date of invoice or delivery. SemiDice may change the amount of credit or terms of payment, and may withdraw credit, at any time. If SemiDice decides at any time that Buyer's credit has become impaired, SemiDice shall be entitled, at its option, to decline to make further deliveries on any Accepted Order to Buyer until SemiDice' receipt of satisfactory security or of cash payments in advance, or to terminate the Accepted Order as to any remaining deliveries, without prejudice to its rights accrued up to the date of any cessation of deliveries or termination of the Accepted Order. Payment shall be made in United States Dollars. Credit card purchases will include a 3% handling fee. If the delivery of Products/Services is delayed by Buyer, date of readiness for delivery shall be deemed the date of invoice and delivery for payment purposes. Buyer shall pay interest on all late payments at the lesser of the rate of one-and-one-half percent (1.5%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. If collection procedures are required, Buyer shall pay all costs of collection, including but not limited to, collection fees, reasonable attorneys' fees, court costs, and interest. Each delivery of the Products shall be considered a separate and independent transaction and payment thereof shall be made accordingly. If the Products are delivered in installments, payments shall be made based on the percentage of the Products delivered. Any Products held for Buyer shall be at the risk and expense of Buyer. SemiDice reserves the right to make delivery of the Products and make collection by sight draft with bills of lading attached. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with SemiDice, whether relating to SemiDice' breach, bankruptcy, or otherwise.

## 8 Safety and Buyer Indemnity

Buyer agrees to, and to cause others to, follow proper safety rules and use proper safety equipment in connection with its use of the Products; and Buyer agrees to defend, indemnify, and hold SemiDice harmless if Buyer fails to do so.

Buyer shall defend, indemnify, and hold SemiDice harmless from and against any claim of (including settlement costs, reasonable attorneys' fees and costs) arising from Buyer's breach of this Agreement, including Buyer's confidentiality obligations described herein.

## 9 Limited Warranty

Buyer acknowledges and agrees that the remedies set forth in Section 10 (Returns of Products; Re-performance of Services) are Buyer's exclusive remedies for the delivery of defective or non-conforming Products/Services (including die-related Products/Services) and that the following warranty terms set forth in this Section 9 (Limited Warranty) specifically do not apply to: (a) die-related Products/Services; (b) defective or non-conforming Products/Services where the alleged defect or non-conformance is related to a die part or component of the Product/Service as reasonably verified by SemiDice ((a) and (b), collectively, a **"Die-related Defect"**); (c) Outsourced Semiconductor Assembly and Test ("OSAT")-related Products/Services; or (d) defective or non-conforming Products/Services where the alleged defect or non-conformance is related to an OSAT part or component of the Product/Service as reasonably verified by SemiDice ((c) and (d), collectively, an **"OSAT-related Defect"**). Buyer's exclusive remedies and SemiDice' sole obligations with respect to such Die-related Defects and OSAT-related Defects are provided for solely in Section 10 (Returns of Products; Re-performance of Services). With respect to all Products other than die-related Products and OSAT-related Products (**"Other Products"**), and except with respect to any Die-related Defects and OSAT-related Defects, SemiDice warrants that such Other Products will be free from defects in materials (excluding customer-supplied materials) and workmanship, and will conform to SemiDice' applicable written specifications, under normal use and service or, if applicable, the specified use as agreed upon by SemiDice and Buyer in writing and confirmed by the accompanying Sales Confirmation, for: (a) two (2) years for Other Products compliant to MIL-PRF-38534 and 38535; (b) one (1) year for standard and custom ceramic Other Products; and (c) one (1) year for standard plastic Other Products (in the case of (a), (b), and (c), as applicable, the **"Product Warranty"**, and the applicable Product Warranty period as measured from the date of shipment from SemiDice, the **"Warranty Period"**). The foregoing Product Warranty shall not apply to any (i) Products which have been repaired or altered by any person other than SemiDice, or which have been subjected to operating and/or environmental conditions in excess of maximum rated values, or which have otherwise been subjected to misuse, damage, neglect, accidents, or improper installation or testing, or (ii) defect which arises because Buyer failed to follow SemiDice' oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Product, including, without limitation, improper packaging of the Products returned to SemiDice. With respect to all Services other than die-related Services and OSAT-related Services (**"Other Services"**), and except with respect to any Die-related Defects and OSAT-related Defects, SemiDice warrants to Buyer that it shall perform the Other Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services (the **"Services Warranty"**; and together with the Product Warranty, the **"Limited Warranty"**). SemiDice neither assumes, nor authorizes any person to assume for it, any responsibility or liability not expressed herein, unless such terms are in writing and signed by an SemiDice representative. The foregoing Limited Warranty may be asserted only by Buyer, and not

by any of Buyer's customers or any other third party.

EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH ABOVE IN THIS SECTION 9 (LIMITED WARRANTY), SEMIDICE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS/SERVICES, INCLUDING BUT NOT LIMITED TO, ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Products. Third Party Products are not covered by any warranty hereunder. For the avoidance of doubt, without limiting the generality of the warranty disclaimer set forth above, SEMIDICE MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING BUT NOT LIMITED TO, ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

## **10 Returns of Products; Re-performance of Services**

With respect to die-related Products/Services, OSAT-related Products/Services, any alleged Die-related Defect, OSAT-related Defect, or shortage or rejection of die-related Product/Service or OSAT-related Product/Service must be claimed by Buyer and notified to SemiDice in writing within thirty (30) days of Buyer's receipt of the allegedly defective Product/Service. If any Other Product fails to conform to SemiDice' stated specifications due to a defect in material (excluding customer supplied materials) or workmanship, and is covered by the Product Warranty, SemiDice shall accept returns during the applicable Warranty Period as provided for in Section 9 (Limited Warranty). No Products may be returned without prior written authorization by SemiDice, and all returns of any Product must be accompanied by a valid SemiDice Return Material Authorization ("RMA") number. SemiDice does not accept returned materials without a valid RMA number. In order to obtain an RMA number, Buyer must provide a detailed description of the nature of the alleged defect, the original Purchase Order number, and the part number, serial number, and date code of the Product(s) to be returned. Buyer shall furnish such other written evidence or other documentation as reasonably required by SemiDice. The RMA number shall be valid for thirty (30) days after issuance by SemiDice. Die-related Products and OSAT-related Products which are notified and returned to SemiDice with a RMA within the applicable return period in accordance with this Section 10 (Returns of Products; Re-performance of Services), and Other Products which are subject to the Product Warranty and returned to SemiDice with a RMA during the applicable Warranty Period, and in each case of the foregoing which are, after examination by SemiDice, deemed to SemiDice' satisfaction to be defective, will be repaired, replaced, or credited at the original sales price, at SemiDice' discretion. Buyer shall return the Products to SemiDice with transportation charges prepaid. With respect to any Services subject to a claim under the Services Warranty set forth in Section 9 (Limited Warranty) and confirmed by SemiDice as non-conforming, SemiDice shall, in its sole discretion, (i) re-perform the applicable Services, or (ii) credit or refund the original price of such Services at the pro rata contract rate.

The repair or replacement of any defective or non-conforming Products or re-performance of any non-conforming Services by SemiDice pursuant to this Section 10 (Returns of Products; Re-performance of Services) does not extend the original Warranty Period, if any. In the event SemiDice determines that any returned Products (or associated Services) are not covered by the Limited Warranty as provided for in Section 9 (Limited Warranty) or returned in accordance with the terms of this Section 10 (Returns of Products; Re-performance of Services), such Products will be returned to Buyer at Buyer's expense and may be subject to additional charges due to the lack of warranty coverage. SemiDice shall not be liable for re-inspection or rejection charges. Repair, replacement, or credit for returned Products or Product parts will be made only after SemiDice has determined that the Product and/or Product parts are covered by the terms of the Limited Warranty. Failure analysis of any returned Products shall be at SemiDice' sole discretion.

THE REMEDIES SET FORTH IN THIS SECTION 10 (RETURNS) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SEMIDICE' ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 9 (LIMITED WARRANTY).

## **11 Limitation of Liability**

NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SEMIDICE OR ANY AFFILIATE, SUPPLIER, AGENT, OR EMPLOYEE OF SEMIDICE BE LIABLE TO BUYER OR ANY THIRD PARTY

FOR ANY INDIRECT, INCIDENTAL, CONTINGENT, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR REVENUE, LOSS OR USE OF THE PRODUCTS/SERVICES OR ANY PROCEEDS, OVERHEAD, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, OR ANY CLAIMS OF BUYER'S CUSTOMERS FOR ANY SUCH DAMAGES) ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SEMIDICE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL SEMIDICE' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES OUT OF THE USE OF THE PRODUCTS, SEMIDICE' PERFORMANCE OF SERVICES OR OTHER OBLIGATIONS HEREUNDER, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, AND WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT PAID BY BUYER TO SEMIDICE FOR THE PRODUCTS/SERVICES SOLD HEREUNDER OR ONE HUNDRED FIFTY THOUSAND DOLLARS (US\$150,000), WHICHEVER IS LESS.

## **12 Blueprints and Specifications**

All orders are accepted with the understanding that the parts or material furnished will be in accordance with blueprints and specifications on hand in SemiDice' files or furnished to SemiDice with Buyer's order, and which have been specifically agreed to and accepted by SemiDice, in writing, as applicable to such order.

## **13 Inspection and Consigned Materials**

SemiDice shall have no obligation to perform any special tests or electrical tests, including basic failure verification, relating to the Products/Services except as otherwise agreed in writing by an SemiDice representative. If agreed upon by SemiDice and provided for in the Sales Confirmation, Buyer may inspect the Products at SemiDice' place of manufacture at times mutually and reasonably acceptable to both SemiDice and Buyer; and a standard charge shall be paid by Buyer to SemiDice.

Buyer shall bear all risk of loss, at all times, on all consigned materials (including die and wafers), tooling and equipment shipped into SemiDice' facilities. Buyer will be responsible for maintaining the appropriate insurance coverage for all such consigned materials, tooling and equipment while in-transit and in-house. A lot is defined as a group of parts/devices, received at SemiDice at the same time, which are to be kept separate from other parts/devices to protect identification integrity. Each lot received will be kept separate and charged separate unless otherwise specifically agreed upon between SemiDice and Buyer. In the event that Buyer instructs SemiDice to combine the processing of multiple lots, SemiDice will not be held liable for any undesirable mixing of lots.

## **14 Patent Infringement Indemnity**

To the extent that the Products are manufactured or the Services are performed pursuant to design or other information or specifications provided or requested by Buyer, Buyer represents and warrants that it has all necessary right, title, and interest in such design, and that the design and all information and technology contained in such design do not infringe any patent, copyright, trademark, or other proprietary right of a third party and were not developed on the basis of misappropriated trade secrets of a third party. If any infringement, misappropriation, or other violation of any proprietary right is alleged prior to completion of delivery of any Products/Services, SemiDice may decline to make further deliveries without being in breach of the Agreement. Buyer shall defend, indemnify, and hold SemiDice harmless from and against any and all damages, costs, and expenses (including without limitation reasonable attorneys' fees) arising from any threatened or actual suit or claim based upon Buyer's breach of the representations and warranties set forth herein or Buyer's modification of the Products after delivery thereof by SemiDice. Buyer shall further defend, indemnify, and hold SemiDice harmless from and against any claim of alleged defect in the design of the Products or aspect of the Services to the extent such Product design or aspect of the Services is provided or requested by Buyer. The sale of the Products/Services by SemiDice does not convey any license, by implication, estoppel, or otherwise, under patent claims covering combinations of the Products with other devices or elements. Except as otherwise provided in the preceding sentence, SemiDice shall defend any suit or proceeding brought against Buyer to the extent based on a third party claim that any Product or any part thereof, sold to Buyer by SemiDice (except to the extent such Products are based upon design or other information or specifications provided or requested by Buyer, or involving a Third Party Product) constitutes an infringement of any patent of the United States of America, if Buyer notifies SemiDice promptly in writing and gives SemiDice authority, information, and assistance (at SemiDice' expense) for the defense of the suit or proceeding. In case such Product or any part thereof (other than Products or parts based upon design or other information or specifications provided or requested by Buyer, or involving a Third Party Product) is in such suit or proceeding held to constitute



infringement and the use of the Product or part thereof is enjoined, SemiDice shall, at its option and expense, either procure for Buyer the right to continue using the Product or part thereof, or replace it with a non-infringing product, or remove said Product and refund the purchase price and the shipment costs thereof. THE FOREGOING STATES THE ENTIRE LIABILITY OF SEMIDICE FOR INTELLECTUAL PROPERTY INFRINGEMENT, MISAPPROPRIATION, OR OTHER VIOLATION BY THE PRODUCTS/SERVICES OR ANY PART OR COMPONENT THEREOF. SemiDice grants no patent rights or data rights by its sale of the Products/Services to Buyer and specifically prohibits the reproduction or distribution of any data, information, or manufacturing know-how furnished in connection with the sale of the Products/Services, except as necessary for Buyer's normal service of the Products. The Products are manufactured in accordance with SemiDice' manufacturing specifications and may be covered by U.S. and foreign patents and other proprietary rights.

## **15 Equipment, Fixtures, and Tools**

Any equipment (including, without limitation, jigs, dies, fixtures, and tools) which SemiDice may develop, construct, acquire, or otherwise use for the manufacture of the Products for Buyer shall remain SemiDice' property and in SemiDice' possession and control. New or additional dies or changes necessary in existing equipment to conform with changes in design ordered by Buyer, whether or not SemiDice has specifically charged therefore, shall be paid for by Buyer. Dies or equipment charges cover the use of such dies or equipment only and do not convey any interest therein to Buyer. Any materials or equipment owned or furnished by Buyer, while in SemiDice' possession, will be handled and stored by SemiDice with reasonable care, but SemiDice shall have no responsibility for any loss or damage thereto.

## **16 SemiDice's Remedy Upon Buyer's Default**

Upon Buyer's default of any of its obligations under the Agreement or otherwise relating to the Accepted Order, including these Terms, or otherwise, including but not limited to, the duty to make payment when due, SemiDice shall have all remedies available to it under applicable law.

## **17 End Use/End User Information; United States as End User**

Under certain circumstances, SemiDice will require information on the ultimate destination of Products/Services sold. This information includes, but is not limited to, information regarding end use (application) and end user (customer). This information is considered proprietary and will not be disclosed to anyone outside of SemiDice other than to applicable government entities regulating export and as otherwise necessary or permitted in accordance with applicable law. If the Products/Services sold under the Agreement are pursuant to a contract or subcontract issued by an agency or department of the United States government, SemiDice agrees that these Terms (other than those with respect to price and payment) shall be deemed modified to the extent reasonably necessary for Buyer to comply with mandatory statutory procurement requirements imposed on Buyer by virtue of the fact that the Products/Services procured under the Agreement are intended to be acquired, used, or consumed by an agency or a department of the United States; provided, however, that these Terms shall not be deemed so modified unless and until Buyer notifies SemiDice of such intent and identifies with specificity the modifications Buyer deems necessary for compliance

## **18 Compliance with Law**

Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under the Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products/Services under the Agreement or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Buyer shall not transfer directly or indirectly any of the Products or any technical data, technical assistance, research, development, or software relating to the Products/Services purchased or obtained from SemiDice (collectively referred to as the "**Products/Technology**") to any transferee or end user of the Products/Technology or any product incorporating the Products/Technology in any country to which, under applicable laws, regulations, and ordinances of the United States or any other jurisdiction, SemiDice is forbidden to transfer the Products/Technology, or, if not forbidden to transfer the Products/Technology, is required to obtain a license or other prior approval before such sale, transfer, and/or exportation from the United States or any other country or territory. Buyer hereby covenants, represents, and warrants that: (a) Buyer has full power and authority to purchase the Products/Technology from SemiDice; (b) prior to exportation or re-exportation of the Products/Technology, Buyer shall make every reasonable effort to determine the ultimate destination, end user, and the use to which the Products/Technology will be applied; and (c) such purchase, use, exportation, or re-exportation shall not violate any applicable laws, regulations, or ordinances.

## **19 Governing Law and Arbitration of Disputes**

All matters arising out of or relating to the Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, United States of America, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Delaware.

### **19.1 Arbitration of Disputes**

Any controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement, including any claim based on contract, tort or statute, shall be settled, at the request of either party, by arbitration conducted in Orlando, Florida, or such other location upon which the Parties may mutually agree, before and in accordance with the then-existing Rules of Commercial Arbitration of the American Arbitration Association ("AAA"), except that for controversies, disputes or claims between SemiDice and a foreign corporation, the then-existing International Arbitration Rules of the AAA shall govern, and judgment upon any award rendered by the arbitrator may be entered by any state or federal court having jurisdiction thereof.

The Parties hereby consent to the jurisdiction of an arbitration panel and of the courts located in, and venue in, Orlando, Florida, with respect to any dispute arising under this Agreement. Any controversy concerning whether a dispute is an arbitrable dispute hereunder shall be determined by one or more arbitrators selected in accordance with this provision. The Parties intended that this agreement to arbitrate be valid, specifically enforceable and irrevocable.

### **19.2 Initiation of Arbitration**

A party may initiate arbitration hereunder by filing a written demand for arbitration with the other party to the dispute and with the American Arbitration Association ("AAA"). Arbitration hereunder shall be conducted in a timely, expedited manner.

### **19.3 Selection of Arbitrator**

Any arbitration shall be held before a single arbitrator, who shall be selected in accordance with the procedures of the American Arbitration Association ("AAA"), and shall be a member of the Large Complex Case Panel with significant intellectual property (patent and copyright) law and semiconductor manufacturing experience. If the Parties are unable to agree on a single arbitrator, then each of the Parties shall select an arbitrator and such arbitrators shall select a third arbitrator. The arbitration shall then be held before the panel of three arbitrators.

### **19.4 Awards**

The arbitrator(s) may, in its discretion, award to the prevailing party in any arbitration proceeding commenced hereunder, and the court shall include in its judgment for the prevailing party in any claim arising hereunder, the prevailing party's costs and expenses (including expert witness expenses and reasonable attorneys' fees) of investigating, preparing and presenting such arbitration claim or cause of action.

## **20 Confidential Information**

All non-public, confidential, or proprietary information of SemiDice, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by SemiDice to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" or "proprietary" in connection with the Agreement is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by SemiDice in writing. Upon SemiDice' request, Buyer shall promptly return all documents and other materials received from SemiDice. SemiDice shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

## **21 Termination**

In addition to any remedies that may be provided under these Terms, SemiDice may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Agreement including, but not limited to, the provisions of Section 11 (Limitation of Liability), Section 14 (Patent Infringement Indemnity), Section 18 (Compliance with Law), Section 19 (Governing Law and



Arbitration of Disputes), Section 20 (Confidential Information), the survival terms of this Section 21 (Termination), and Section 22 (Miscellaneous).

## **22 Miscellaneous**

These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party. Buyer shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of SemiDice. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under the Agreement. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms. If any term or provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

## **23 Force Majeure**

SemiDice shall not be held responsible or liable for any loss or damage resulting from a delay in the delivery of the products or any failure to perform its obligations to Buyer if the causes of such delay or failure are attributable to (a) acts of God or of the public enemy, (b) acts of a federal, state, local, municipal or foreign government, in either its sovereign or contractual capacity, or Buyer, (c) strikes, (d) fires, (e), floods, (f) embargoes, (g) supply shortages, or (h) other causes beyond the reasonable control of SemiDice. In the event any delay occurs because of these causes, the date of delivery shall be extended by at least the period of time attributable to the delay.