



KULITE SEMICONDUCTOR PRODUCTS, INC.
TERMS AND CONDITIONS OF PURCHASE

1. Acceptance – Order of Precedence – Modification

This Order is for the purchase of goods, services, or both as described on the face of this document (collectively, "Goods") and is issued by Kulite Semiconductor Products, Inc. ("Buyer"). The Order is deemed accepted upon a) the date the Supplier returns the acknowledgment copy of the Order to Buyer or b) ten (10) calendar days from date Buyer issues the Order to Supplier regardless of mechanism used to convey requirements, whichever is earlier. Any Supplier's terms and conditions which are different from or in addition to those contained in this Order are objected to by Buyer shall be of no effect. Any reference to Supplier's quotation, bid, or proposal does not imply acceptance of any term, condition, or instruction contained in that document.

2. Packaging, Shipment and Delivery

2.1. No charges shall be allowed for packing, crating, freight and/or any other shipping services unless so specified in this Order.

2.2. Unless otherwise stipulated on this Order, Goods shall be shipped F.O.B. shipping point. All transportation charges must be prepaid and invoiced to Buyer. Risk of loss and title to the Goods shall pass to Buyer upon receipt at Buyer's facility.

2.3. Failure to deliver in accordance with the delivery schedule under the Order, if not excused, shall be a material breach of the Order. Supplier shall notify Buyer in writing immediately of any actual or potential delay in the performance of the Order. Such notice shall include a proposed revised schedule, but such notice and Buyer's receipt thereof or Buyer's receipt of a partial shipment shall not constitute a waiver of Buyer's rights and remedies available hereunder and at law.

3. Force Majeure

Neither party will be in default for any delay or failure to perform due to causes beyond its control and without its fault or negligence include, but not limited to, acts of God, fire, flood, acts of war, terrorism, government action, inability to obtain goods, equipment of transportation. If Supplier's delivery is delayed, Buyer may, at Buyer's sole option, cancel deliveries scheduled during the excusable delay period or elect to extend the period of performance to cover the period of delay caused by the excusable delay. If delivery of any Goods is delayed for more than thirty (30) days, Buyer may, without liability, cancel all or any part of this Order.

4. Buyer-Supplied Materials, Tooling, Equipment and Technical Data

4.1. Title to any material, tooling, equipment or technical data that Buyer pays for or provides to Supplier or is responsible for providing to Supplier, including replacements ("Buyer Property"), will remain or vest with Buyer. Supplier will conspicuously label Buyer Property as such, maintain it in good condition, keep written records of the Buyer Property in its possession and the location of the property, not allow any liens to be placed upon it, and not change its location without prior written approval from Buyer. Supplier is responsible for inspecting and determining that the Buyer Property is in useable and acceptable condition.

4.2. Supplier will use Buyer Property exclusively to fulfill Buyer Orders unless otherwise authorized in writing by Buyer. Buyer Property is intended for use at the Supplier's site only or as otherwise authorized in writing by Buyer and, to the extent applicable, may be subject to U.S. and other government export or re-export requirements. Supplier is responsible for any loss, damage, or destruction of Buyer Property and any loss, damage or destruction of any third-party property resulting from Supplier's negligent use of Buyer Property. Supplier will return Buyer Property or dispose of it at Buyer's sole option as it directs in writing. Buyer makes no representations and disclaims all warranties (express or implied) with respect to Buyer Property.

5. Invoicing and Payment

5.1 After each shipment made or service provided, Supplier will submit an invoice, which shall include the following information, as applicable: (a) name and address of Supplier; (b) Buyer's Order number(s); (c) detailed description of the Goods; (d) payment terms; (e) shipment terms used; and (f) all rebates or discounts. If authorized by the Buyer any incidental charges such as shipping costs, nonrecurring engineering or other incidental charges must be separately itemized and identified on the invoice.

5.2 Payment of an invoice does not constitute acceptance of the Goods and is subject to appropriate adjustment if Supplier fails to meet the requirements of the Order. Payment terms are NET 30 days from receipt of invoice unless otherwise agreed.

6. Set Off

Buyer may deduct any amount owing from Supplier to Buyer as a set off against any amount owing to Supplier under this Order.

7. Inspection and Rejection

7.1. All Goods may be inspected and tested by Buyer, its customers, higher-tier contractors, and end users at all reasonable times and places, either before, during or after manufacture. All inspection records, including sub-tier supplier records relating to the Goods, will be maintained by Supplier and made available to Buyer during the performance of this Order, and for such longer periods as may be specified by Buyer. The exercise of this right of inspection, however, shall in no way relieve Supplier of its obligations to furnish all Goods in strict conformance with the requirements of this Order.

7.2. Final inspection and acceptance by Buyer will be at destination unless otherwise specified in this Order. Buyer may inspect 100% or a sample of Goods, at Buyer's option, and may reject all or any portion of the Goods or lot of Goods if Buyer determines them to be defective or nonconforming. No inspection, tests, approval, design approval, or acceptance of the Goods relieves Supplier from responsibility for warranty or any latent defects, fraud, or negligence. If the Goods are defective or otherwise do not conform to the requirements of this Order, Buyer may, by written notice to Supplier: (a) rescind this Order as to the Goods; (b) reject the Goods and require the delivery of replacements or (c) accept conforming Goods and equitably adjust the amount due to Supplier. If Supplier fails to deliver required replacements promptly, Buyer may correct any retained defective or nonconforming Goods at Supplier's expense. These remedies are without prejudice to any other rights and remedies available to Buyer at law or equity.

8. Quality

Supplier shall be responsible for the specific flow down quality clauses, and documentation requirements, if any, set forth in this Order. The flow down quality clauses may be accessed at <https://www.kulite.com/assets/media/2017/05/GeneralQualityProvisions-Rev2015.pdf>. Supplier shall also be responsible for imposing applicable quality assurance requirements on its subcontractors. Buyer shall have the right to conduct quality audits of Supplier's facility and books and records, and to perform or witness inspections or tests of the Goods furnished hereunder at Supplier's facility (or elsewhere) when mutually agreed during manufacture and prior to shipment, at no charge to Buyer.

9. Warranties

9.1. Supplier warrants to Buyer, its successors, assigns, customers, and end users that upon delivery, and for twelve (12) months after delivery to Buyer (or such other mutually agreed period), all Goods furnished will (a) be free from defects in material and workmanship, (b) conform to applicable drawings, designs, quality requirements, specifications and samples and other requirements specified by Buyer, (c) be merchantable, (d) be fit for the intended purposes and

operate as intended, (e) comply with all applicable national and local laws, (f) be free and clear of any and all liens, restrictions, reservations, security interests, or encumbrances, and (g) not infringe any patent, published patent application, or other intellectual property rights of any third party existing as of the date of delivery, and not utilize misappropriated third party trade secret information.

9.2. These warranties will survive any delivery, inspection, acceptance, or payment by Buyer for the warranty period. If Supplier delivers defective or non-conforming Goods, Buyer may at its option and at Supplier's expense: (i) correct the Goods; (ii) require Supplier to promptly correct or replace the Goods; (iii) return the Goods for credit or refund; or (iv) obtain replacement Goods from another source. These remedies are without prejudice to any other rights and remedies available to Buyer at law or equity.

10. Changes

10.1 Buyer may, by written or electronic notification, direct changes in the drawings, designs, specifications, method of shipment or packing, quantity, or time or place of delivery of the Goods; reschedule the services; or require additional or diminished services. Only authorized Buyer procurement representatives may issue changes to the Order. All changes shall be acknowledged by the Supplier upon a) the date the Supplier returns the acknowledgment copy of an Order to Buyer or b) ten (10) calendar days from date Buyer issues the Order change to Supplier regardless of mechanism used to convey requirements change, whichever is earlier.

10.2 If any change causes an increase or decrease in the cost of, or the time required for, performing this Order, a mutually satisfactory equitable adjustment will be made in the Order price, delivery dates or both, and this Order will be modified in writing or electronically accordingly. Any claim for adjustment under this provision may, at Buyer's option, be deemed to be waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within thirty (30) days from the date of the receipt by Supplier of the Buyer-directed change to the Order. If the cost of property made obsolete or excess as a result of a change is paid by Buyer, Buyer may prescribe the manner of disposition of the property. Notwithstanding any disagreement between the parties regarding the impact of a change, Supplier will proceed diligently with its performance under this Order pending resolution of the disagreement.

11. Cancellation for Default.

Buyer may terminate this Order if a) Supplier commits a material breach and fails to remedy the breach within thirty (30) calendar days following receipt of written notice specifying the grounds for the breach. A material breach includes, but is not limited to, late delivery or delivery of nonconforming Goods; or b) if Supplier becomes insolvent or if any petition is filed or proceedings commenced by or against Supplier relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Upon termination, Buyer may require Supplier to transfer title and deliver to Buyer any completed Goods and Buyer will pay the Order price for those Goods subject to set off against any damages to Buyer. In the event that Buyer wrongfully terminates this Order under this Article 11, in whole or in part, such termination becomes a termination for convenience under Article 12.

12. Termination for Convenience.

12.1 Buyer may terminate all or any part of this Order for convenience at any time after notice specifying the extent of termination and the effective date. After receipt of notice of termination, unless otherwise directed by Buyer, Supplier shall immediately: (1) stop work as directed in the notice; (2) place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order; and (3) terminate all subcontracts to the extent they relate to work terminated. After termination, Supplier shall submit a final termination settlement to Buyer in the form prescribed by Buyer.

12.2 In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of

the total Order price. Supplier's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

12.3 To the extent that any portion of this Order is not terminated under this Article, Supplier will continue performing that portion of the Order.

13. General Indemnification

Supplier will, at its expense, defend and indemnify Buyer and its subsidiaries, affiliates, and their respective officers, directors, and employees, and Buyer's customers (collectively "Indemnitees") from and against any and all loss, cost, expense, damage, claim, demand, or liability, including reasonable attorney and professional fees and costs, and the cost of settlement, compromise, judgment, or verdict incurred by or demanded of an Indemnitee arising out of, resulting from or occurring in connection with (a) Supplier's actual or alleged violation of any law, regulation, rule or order; (b) infringement or alleged infringement of any patent, trademark, copyrights, or design rights by Supplier's Goods provided hereunder; (c) injury to persons or property to the extent caused by the nonconforming Good; (d) negligence or willful misconduct; and e) breach of the terms of this Order. In no event will Supplier enter into any settlement without Buyer's prior written consent, which will not be unreasonably withheld.

14. Confidential Information

All information (including but not limited to drawings, plans, designs, specifications, manufacturing, research and development data, inventions, know-how, processes, procedures, costs, suppliers, and materials that contain information) relating to this Order or to the Goods which has been disclosed to Supplier by or on behalf of Buyer (whether such information is owned by Buyer or by any other entity with whom Buyer is doing business) (collectively referred to as "Confidential Information"), has been and will be received and held by Supplier in confidence. Supplier will not disclose Confidential Information to others or use it for any purpose other than for the direct benefit of Buyer or Buyer's customer. All Confidential Information shall remain the property of Buyer. Supplier will acquire no right in or to such Confidential Information, and Supplier will promptly return Confidential Information to Buyer and discontinue all use upon expiration or termination of this Order or at Buyer's written request. Supplier will limit access to Confidential Information to only those employees of Supplier having a need to know such Confidential Information, and who have been clearly informed and accept their obligations of confidentiality under this Article.

15. Protection of Information

15.1. "Intellectual Property" means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature, including, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.

15.2. Buyer shall own all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with this Order ("Foreground Intellectual Property"). Supplier hereby irrevocably assigns to Buyer all right, title and interest to all Foreground Intellectual Property. Supplier agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's rights in Foreground Intellectual Property, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Supplier to Buyer. All Foreground Intellectual Property assigned to Buyer pursuant to the Order shall be considered Buyer's Confidential Information.

15.3. Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of this Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire". For any works of authorship that do not come under such categories, Supplier, warranting that it has the right to do so, hereby assigns all right, title, and interest to any copyright in such works to Buyer, and will execute, or cause to be

executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.

16. **Obsolescence**

When Supplier has knowledge that any hardware item or material to be provided in performance of this Order is obsolete, is marked for impending obsolescence, or has an established end of production date, Supplier shall immediately give initial notice thereof, including all relevant information, to Buyer. Supplier's initial notifications of obsolescence shall be made through the end of the contracted warranty period for the items provided under this Order.

17. **Export control**

Supplier understands that technical data provided by Buyer hereunder maybe subject to foreign and U.S. export laws and regulations, including, without limitation, the Arms Export Control Act and the International Traffic in Arms Regulations (ITAR), 22 C.F.R. parts 120 - 130 and the Export Administration Act and the Export Administration Regulations (EAR), 15 C.F.R. parts 730 - 774. To this extent, Supplier may require a written confirmation that the Buyer is a U.S. Person (as defined in ITAR 120.15), and inquire whether the recipient is currently registered with the U.S. Department of State Office of Defense Trade Controls. Supplier acknowledges and accepts its responsibility for ensuring its compliance with all applicable export control laws and regulations and, in particular but not exclusively, those of the United States.

18. **Compliance with Laws**

Supplier represents and warrants that it shall perform all activities required under this Order in compliance with all applicable international, national, state and local laws.

19. **Code of Business Ethics and Conduct**

Supplier shall comply with Kulite's Supplier Code of Conduct ("Code") in performing this Order. A copy of the Code may be obtained under Supplier Resources at <https://www.kulite.com/company/supplier-code-of-conduct/>. Supplier shall maintain an integrity and compliance program effective in preventing and correcting ethical violations and in maintaining compliance with laws.

20. **Conflict Minerals**

Supplier shall to the best of its ability assist in all Kulite or Kulite's customer inquiries related to establishing the origin of Conflict Minerals as this term is defined the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

21. **Applicable Law and Forum**

21.1 Buyer hereby irrevocably submits to the jurisdiction and venue of any state or federal court located in the State of New Jersey over any action arising out of any dispute between Buyer and Supplier relating to this Order and agrees that any judgment of any such court shall be binding upon Buyer in any country in which assets of Buyer may be located.

21.2 Buyer further irrevocably consents to the service of any process in any such action or proceeding upon it by the mailing of a copy of such process to Buyer by registered or certified mail, postage prepaid, return receipt requested and such service of process shall be deemed to have been duly given upon deposit in the United States mail in the foregoing manner.

21.3 Irrespective of the place of execution or performance, this Order shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to its principles or laws regarding conflicts of law, and specifically excluding the United Nations Convention on Contracts for the International Sale of Goods of 1980 (and any amendments or successors thereto).

22. **Miscellaneous**

22.1 Assignment and Subcontracting: Supplier will not assign or subcontract this Order or any rights or obligations or subcontract all or any material aspect of the work without the prior written approval of Buyer. Any assignment without Buyer's written approval will be voidable at the option of Buyer.

22.2 Rights and Remedies: No failure or delay by a party to exercise any right or remedy provided under this Order or by law shall constitute a waiver of that or any other right or remedy, not shall it preclude or restrict the further exercise of such right or remedy. The rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or equity.

22.3 Severability: If any provision of this Order is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, that provision will be severed from this Order; the remaining provisions will remain in full force and effect; and a similar legal, valid and enforceable provision will be substituted in lieu of the severed provision.

22.4 Entire Agreement: The Order incorporating the terms and conditions defined herein together with the specifications, drawings and other documents referred to on the face of the Order represents the entire and final agreement between Buyer and Supplier and supersedes all prior negotiations, representations, understandings or agreements (either written or oral) between the parties relating to the Goods.

22.5 Amendment: Except as set out in these terms and conditions, any variation to the Order including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by both parties.

22.6 Survival: The Articles which expressly or by implication survive termination of this Order shall continue in full force and effect after any termination or expiration of this Order.

APPENDIX 1

If this Order is issued under a United States Government prime contract or subcontract, the flow down clauses contained below and any other provisions or requirements mandated as applicable to U.S. Government subcontracts are hereby incorporated herein. Such government contract provisions shall be controlling over any conflicting terms and conditions set forth herein. Where applicable, the terms "government", "Contracting Officer", and similar terms shall mean Buyer, and the term "Contractor" and similar terms shall mean Supplier.

If a Defense Priority Allocation System (DPAS) rating appears on this Order, the Supplier shall comply with all the requirements of 15 CFR Part 700 in obtaining controlled materials and other products, services and materials needed to fill this Order. For more information visit the DPAS website <http://www.dema.mil/DPAS/>.

I. THE FOLLOWING CLAUSES OF THE FEDERAL ACQUISITION REGULATIONS (FAR) APPLY TO THIS ORDER:

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010) (Applies if this Contract exceeds \$150,000).

FAR 52.203-18 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS-REPRESENTATION (JAN 2017)

FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)

FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)

FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (JAN 2017)

FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (JAN 2017)

FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (NOV 2016)

FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)

FAR 52.222-26 EQUAL OPPORTUNITY (SEP 2016)

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015) (Applies if this Order is for \$150,000 or more.)

FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014) (Applies if this Order exceeds \$15,000.)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016) (Applies if this Order is for \$150,000 or more.)

FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (Applies if this Order exceeds \$10,000.)

FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (MAR 2015)

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (Applies if this Order exceeds **\$3,500** except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item.)

FAR 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015)

FAR 52.222-59 COMPLIANCE WITH LABOR LAWS (DEC 2016) (Applies if this Order exceeds \$500,000 and is for other than COTS items)

FAR 52.222-60 PAYCHECK TRANSPARENCY (Oct 2016) (Applies if this Order exceeds \$500,000, and is for other than COTS items).

FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011) (Applies if this Order exceeds \$3,000.)

FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (Applies if Supplier is a small business concern. This clause does not apply if Buyer does not receive accelerated payments under the prime contract. Not all agencies provide accelerated payments.)

FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (JAN 2017)

FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)

II. THE FOLLOWING CLAUSES OF THE DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) APPLY TO THIS ORDER:

DFARS 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

DFARS 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (OCT 2016)

DFARS 252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (OCT 2014) (Applies if the Work to be furnished contains specialty metals.)

DFARS 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2016)

DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA -- NONCOMMERCIAL ITEMS (FEB 2014) (Applies to the extent specified in DFARS 252.227-7015.)

DFARS 252.227-7015 TECHNICAL DATA -- COMMERCIAL ITEMS (FEB 2014)

DFARS 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 2016)

DFARS 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2013)

DFARS 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013) (Applies if this Order is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system. Contractor shall provide notifications to Buyer and the contracting officer identified to Supplier.)

DFARS 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000) (Applicable if this Order meets the criteria set forth in paragraph (b) (2) (ii) of the clause.