



## TERMS AND CONDITIONS OF SALE

**GENERAL – THE TERMS AND CONDITIONS OF SALE CONTAINED HEREIN APPLY TO ALL QUOTATIONS MADE AND PURCHASE ORDERS ENTERED INTO BY PSEMI CORPORATION (hereinafter called "PSEMI"). THE SAID TERMS AND CONDITIONS MAY IN SOME INSTANCES CONFLICT WITH SOME OF THE TERMS AND CONDITIONS AFFIXED TO THE REQUEST FOR QUOTE FORM OR ORDER BLANK AND/OR SPECIFIED BY THE BUYER. ACCEPTANCE OF THE BUYER'S OFFER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND BUYER MAY ASSENT BY WRITTEN ACKNOWLEDGEMENT, IMPLICATION, OR BY ACCEPTANCE OF OR PAYMENT FOR GOODS ORDERED HEREUNDER. ANY OF WHICH SHALL CONCLUSIVELY BE DEEMED TO CONSTITUTE ASSENT UNLESS BUYER SHALL GIVE WRITTEN NOTICE OF OBJECTION TO PSEMI PROMPTLY UPON RECEIPT OF THIS ACCEPTANCE. PSEMI'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER SHALL NOT BE DEEMED A WAIVER OF THE PROVISIONS OF THIS ACCEPTANCE. ANY CHANGES IN THE TERMS AND CONDITIONS OF SALE CONTAINED HEREIN MUST SPECIFICALLY BE AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF PSEMI BEFORE BECOMING BINDING ON EITHER PSEMI OR THE BUYER. IF THIS ORDER IS ALSO COVERED BY ANOTHER WRITTEN CONTRACT SIGNED BY BOTH PSEMI AND BUYER, THEN THE TERMS AND CONDITIONS SET FORTH HEREIN APPLY TO THE EXTENT THAT THEY ARE NOT IN CONFLICT WITH SUCH OTHER WRITTEN CONTRACT.**

All orders or contracts must be approved and accepted by PSEMI.

The said terms and conditions of sale shall be applicable whether or not they are attached to or enclosed with the products to be sold or so hereunder.

Prices quoted for the items described above and acknowledged hereby are firm and not subject to audit, price revision, or price predetermination.

**PAYMENT AND TERMS –** If, in the judgment of PSEMI, the financial condition of the Buyer at any time does not justify continuation of production or shipment on the terms of payment originally specified, PSEMI may require full or partial payment in advance. In the event of bankruptcy or insolvency of the Buyer or in the event any proceeding is brought by or against the Buyer under bankruptcy or insolvency laws, PSEMI shall be entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges.

Each shipment shall be considered a separate and independent transaction, and payment therefore shall be made accordingly. If shipments are delayed by the Buyer, payments shall become due on the date when PSEMI is prepared to make shipment. If the work covered by the purchase order is delayed by the Buyer, payments shall be made based on the purchase price and the percentage of completion. Products held for the Buyer shall be at the risk and expense of the Buyer. PSEMI reserves the right to ship to its order and make collection by sight draft with bill of lading attached. All invoices are due and payable 30 days from the date of invoice. No discounts are authorized. Buyer agrees to pay PSEMI delinquency charges on all amounts past due at the annual rate of 18% from the date each payment became past due until paid.

Payments to Seller may be wire transferred into Account No. 3300603626, Routing & Transit No. [UFC121140399](https://www.fedex.com/US/en/home/express/121140399), Swift Code: SVBKUS6S, Silicon Valley Bank, 3003 Tasman Drive, Santa Clara, CA 95054, U.S.A.,

Please remit payment by check to: pSemi Corporation, Dept. LA 21986, Pasadena, CA 91185-1986.

Payment terms for sales outside the United States or to foreign entities shall be cash in advance, Letter of Credit or other method as agreed upon by the parties. If a Letter of Credit is requested by PSEMI, then upon the request of PSEMI, Buyer shall cause a domestic United States bank designated by PSEMI to issue an irrevocable Letter of Credit naming PSEMI, as the beneficiary thereof, the "Letter of Credit". All banking charges and fees associated with the Letter of Credit shall be for the account of and paid by Buyer.

**TRANSPORTATION –** All sales are made F.O.B. point of shipment, freight collect. Buyer will pay for all shipping, export, import, customs duties, and taxes applied by government entities. PSEMI'S title passes to Buyer and PSEMI'S liability as to delivery ceases upon making delivery to material purchased hereunder to carrier at shipping point in good condition, the carrier acting as Buyer's agent. All claims for damages must be filed with the carrier. All shipments will be made by Parcel Post, Railway Express, Air Express or Air Freight as specified by Buyer at the time of order submission. PSEMI will attempt to honor such requests, where possible. PSEMI will exercise its own discretion if Buyer does not provide specific shipping instructions. PSEMI will not declare a value for insurance purposes with the transportation company, unless Buyer provides specific instructions.

**DELIVERY AND FORCE MAJEURE –** Shipping dates are approximate and are based upon prompt receipt from Buyer of all necessary information. In no event will PSEMI be liable for any additional procurement costs, nor for delay or non-delivery, due to causes beyond its reasonable control including but not limited to act of God, acts of civil or military authority, priorities, fires, strikes, lockouts, slowdowns, factory or labor conditions, errors in manufacture and inability due to causes beyond PSEMI'S reasonable control to obtain necessary labor materials, or manufacturing facilities. PSEMI will attempt to notify the Buyer of any such delay, the date of delivery shall be deferred for a period equal to the time lost by reason of delay.

**CANCELLATION/RESCHEDULING (INCLUDES CHARGES) –** Buyer may cancel or reschedule any order for standard products if PSEMI receives such request at least sixty (60) days in advance of Buyer's original requested delivery date. Notification of cancellation or rescheduling of nonstandard or specially processed products must be received at least one hundred twenty (120) days in advance of Buyer's original requested delivery date and subject to cancellation or rescheduling fees as per following schedule:

### STANDARD PRODUCTS:

60 days or less prior to scheduled ship date.	\$500 or 25% of the price of the canceled items, whichever is greater
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### NON-STANDARD PRODUCTS:

60 days or less prior to scheduled ship date.	\$500 or 50% of the price of the canceled items, whichever is greater
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90 days prior to scheduled ship date.	\$250 or 25% of the price of the canceled items, whichever is greater
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120 days prior to scheduled ship date.	None
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**TAXES –** Unless otherwise specifically provided herein, the amount of any present or future sales, revenue, excise or other tax applicable to the products covered by this order or the manufacture of sale thereof, shall be added to the purchase price and shall be paid by the Buyer, or in lieu thereof the Buyer shall provide PSEMI with a tax exemption certificate acceptable to the taxing authorities.

**CONFIDENTIAL INFORMATION –** All drawings, specifications or other information furnished by PSEMI and identified as confidential or proprietary will be held in confidence by Buyer, will be used only for the purpose furnished, and may not be reproduced or further distributed without the written consent of PSEMI. These restrictions shall not apply to information (a) known to Buyer prior to receipt from PSEMI, (b) generally known in the industry prior to receipt or (c) after the same is published or becomes generally available in the industry through no act or failure to act by Buyer. If disclosure is required by governmental authority or is required for the carrying on of the ordinary business of Buyer, disclosure may be made provided PSEMI is notified in writing and every reasonable effort is made to protect PSEMI'S proprietary interests in the information.

**PATENTS –** The Buyer shall hold PSEMI harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with buyer's designs or specifications or instructions. The sale of products by PSEMI does not convey any license by implication, estoppel, or otherwise under patent claims covering combinations of said products with other devices or elements, or the process or method of making such products. Except as otherwise provided in the preceding paragraph, PSEMI shall defend any suit or proceeding brought against the Buyer so far as based on a claim that any product or any part thereof, furnished under this contract constitutes an infringement of any patent of the United States. If notified promptly in writing and given authority, information and assistance (at PSEMI'S expense) for the defense of same with council of PSEMI'S choice, and PSEMI shall pay all damages and costs awarded therein against the Buyer. In case said product, or any part thereof, is in such suit held to constitute infringement and the use of said product or part is enjoined, PSEMI shall, at its own expense, either procure for the Buyer the right to continue using said product or part or replace same with non-infringing product, or modify it so it becomes non-infringing, or remove said product and refund the purchase price and the transportation costs thereof. The foregoing states the entire liability of PSEMI for infringement of patent or other proprietary rights by the said products or any part thereof.

**ASSIGNMENT** – The Buyer shall not assign his order or any interest thereof or any rights thereunder without the prior written consent of PSEMI.

**WARRANTY** – PSEMI warrants articles of its manufacture against defective materials or workmanship for a period of one year from date of shipment. PSEMI further warrants that articles of its manufacture will conform to specifications agreed to in writing by Buyer and PSEMI. This warranty does not extend beyond the first purchaser of said articles. The liability of PSEMI under this warranty is limited at PSEMI'S options, solely to repair or replacement with equivalent articles, or an appropriate credit adjustment not to exceed the original sales price, for articles returned to PSEMI, and provided that (a) PSEMI is promptly notified in writing by Buyer during the one-year warranty period, of any defect or nonconformance in the article. (b) Buyer obtains authorization from PSEMI to return the defective article. (c) The defective article is returned to PSEMI, shipping terms as indicated elsewhere herein and (d) PSEMI'S examination of such article disclosed to its satisfaction that any defect or nonconformance was not caused by negligence, misuse, improper installation, accident or unauthorized repair or alteration by a person other than PSEMI. THIS WARRANTY IS EXPRESSED IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANT ABILITY, FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON PSEMI'S PART, AND IT NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR PSEMI ANY OTHER LIABILITIES. This Warranty shall not apply to any such articles, which shall have been repaired or altered, except by PSEMI, or which shall have been subjected to misuse, negligence, or accident. The aforementioned provisions do not extend the original warranty period of any article, which has either been repaired or replaced by PSEMI. THE FOREGOING CONSTITUTES BUYER'S SOLE AND EXCLUSIVE REMEDY FOR THE FURNISHING OF DEFECTIVE OR NONCONFORMING GOODS AND PSEMI SHALL IN ANY EVENT BE LIABLE FOR THE COST OF ANY LABOR EXPENDED ON SUCH GOODS OR FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES BY REASON OF THE FACT THAT SUCH GOODS SHALL HAVE BEEN DEFECTIVE OR NONCONFORMING.

**PURCHASE PRICES** – Purchase prices are stated in U.S. Dollars and apply only to the continental United States. All prices are subject to change without notice.

**EXPORT CONTROL ASSURANCE** – Buyer hereby assures PSEMI that it will not export or re-export any product supplied by PSEMI, directly or indirectly, to the proscribed countries listed in Section 740 Supplement No. 1 and associated or successor sections of the U.S. Export Administration Regulations of the U.S. Department of Commerce unless authorized by the U.S. Government.

**QUALITY AND ADMINISTRATIVE RETURNS** – Returns due to a quality (warranty) or administrative issue shall be shipped F.O.B. point of shipment, freight collect. Buyer shall adhere to routing instructions designated by PSEMI. Should Buyer fail to comply with PSEMI'S routing instructions, Buyer shall bear costs of transportation and risk of loss (C.I.P. destination). Returns due to distribution stock rotations or non-quality or administrative reasons are to be made C.I.P. destination. Buyer will be liable for all costs of transportation and will bear risk of loss during transit.

PSEMI represents that with respect to the production of articles and/or the performance of the services covered by this order, it will fully comply with all requirements of the Fair Labor Standards Act of 1936, as amended.

**GENERAL** – If any of the terms or provisions of this Agreement shall be declared in violation of the law, the remaining terms and provisions shall remain in full force and effect.

This Agreement shall be governed by the laws of the State of California, U.S.A.

**SURVIVAL** – Each term and condition under this Agreement will remain effective for so long as may be necessary to give effect to its purpose as set forth herein.

**SEVERABILITY** – If any provision of this Agreement shall be found to be unlawful or unenforceable, that provision shall be deleted from this Agreement and the remaining provisions shall, insofar as possible, be given full force and effect.

**BUYER IDEMNIFICATION** – Buyer shall indemnify, defend and hold PSEMI harmless from and against any and all claims, actions, losses, damages, demands, liabilities, costs and expenses, including reasonable attorney's fees and expenses, whether a suit or other proceeding is initiated or not, which may arise from (i) Representations or misrepresentations made by Buyer; (ii) Inadequate installation, deployment, maintenance of products by Buyer or end-users or any neglect by Buyer or end-users, (iii) Buyer's or end-user's use of Products not in compliance with published specifications thereto or not for intended purposes, (iv) Buyer or end-users modifications or alterations of Products, (v) Damage from Buyer or end-user resulting from operation outside of the environmental specifications of the Product, or (vi) any other act or failure to act, not in accordance with the terms and conditions of this Agreement by Buyer or any representations, warranties, or covenants of Buyer under this Agreement.