



**United Silicon Carbide, inc.**  
**Standard Terms and Conditions of Sale**

1. **APPLICABILITY.** These terms and conditions (these “**Terms and Conditions**”) shall apply to all sales by United Silicon Carbide, inc. (“**Seller**”) of products to one or more buyers (each, a “**Buyer**”) pursuant to orders placed by Buyer and accepted by Seller from time to time. ACCEPTANCE OF ANY ORDER IS EXPRESSLY LIMITED TO ACCEPTANCE OF ALL OF THESE TERMS AND CONDITIONS. NO ADDITIONAL TERMS CONTAINED IN ANY DOCUMENT TENDERED BY BUYER AND NO ORAL TERMS SHALL BECOME A PART OF THE AGREEMENT BETWEEN THE PARTIES. ALL ORDERS PLACED WITH SELLER SHALL CONSTITUTE BUYER’S ACKNOWLEDGEMENT AND AGREEMENT THAT THESE TERMS AND CONDITIONS ARE INTENDED TO BE THE PARTIES’ FINAL EXPRESSION AND EXCLUSIVE STATEMENT OF THE TERMS OF THEIR AGREEMENT. NO COURSE OF DEALING, NO USAGE OF TRADE AND NO ACCEPTANCE OF OR ACQUIESCENCE TO ANY COURSE OF PERFORMANCE SHALL MODIFY, ALTER OR BE RELEVANT TO EXPLAIN OR MODIFY THESE TERMS AND CONDITIONS. Only such terms contained in an amendment or agreement signed by Seller that expressly supersede these Terms and Conditions shall be binding upon Seller. Seller may amend these Terms and Conditions from time to time with notice to Buyer; provided that any such amendment shall only be binding upon Buyer from the date thereof and shall not apply retroactively without Buyer’s written consent.
  
2. **PRICES AND TAXES.** Prices listed on Seller’s website or any order accepted by Seller shall apply to all sales of products hereunder. Prices are specified by Seller in U.S. dollars. Shipping and handling are as stated on Seller’s website or such order. All invoices sent to a “bill to” address outside the United States will include a fee for handling. Prices are exclusive of any present or future sales, revenue or excise tax, VAT, GST, additional shipping charges, duties (including customs and brokerage fees) or other tax and levy applicable to the sale of any products beyond those to which Seller has agreed under the agreed Incoterms. Any tax-exemption certificate or other document related to Buyer’s tax liability hereunder shall be the sole responsibility of Buyer.
  
3. **DELIVERY, RESCHEDULING AND CANCELLATION.** Products shall be delivered Free Carrier (FCA) Incoterms® 2010 in the country of dispatch or other facility designated by Seller, unless otherwise agreed in writing between Seller and Buyer. All products shipped to the Buyer shall be packaged in Seller’s standard containers and shall be shipped to Buyer’s named location as entered via order. Seller shall not be liable for any costs, losses, damages, claims or expenses (consequential or otherwise) incurred by Buyer as a result of the delivery schedule. Also, for website sales, overnight delivery is contingent on Seller’s inventory being available at the time of order placement. Seller will use commercially reasonable efforts to ship products in a timely manner based on product availability and mutually agreed schedule. However, delivery dates are approximate and Seller shall not be liable for delivery delays for any reason. No order that has been accepted



by Seller, or any part thereof, may be rescheduled or cancelled without Seller's prior written consent.

4. **TRANSFER OF TITLE.** Title and risk of loss or damage thereto shall pass to Buyer upon Seller placing the product in the possession of a common carrier or Buyer's designated carrier in accordance with Section 3 above. Buyer shall be responsible for all duties, taxes, and any other expenses incurred after shipment.
5. **TERMS AND METHOD OF PAYMENT.** In the case of website sales, the Buyer's credit card will be charged at the time of purchase. In all other cases, payment is due thirty (30) days from the date of invoice, *provided, however*, that these terms are subject to credit approval, and Seller may at any time prior to delivery modify the terms of payment with any Buyer if deemed appropriate by Seller in its sole and absolute discretion. Interest on late payments will be charged at 1.5% per month on the aggregate amount past due, and Seller may suspend production and/or shipments to any Buyer that is then late on any amounts due to Seller.
6. **EXCLUSIVE WARRANTIES.** Except with respect to custom products, Seller warrants that the products are free from faulty workmanship or defective materials and conform to Seller's applicable specifications or data sheets for a period of one year from the date of shipment. Custom products, including development products, prototypes, and any pre-production samples (whether or not paid for by Buyer) are provided "AS IS" without any warranty of any kind.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY AND CAN BE AMENDED ONLY BY WRITTEN INSTRUMENT SIGNED BY AN OFFICER OF SELLER. SELLER DISCLAIMS ALL OTHER WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND ANY OTHER REPRESENTATION OR WARRANTY OBLIGATION ON THE PART OF SELLER.

If Seller breaches the foregoing warranties, Buyer's sole and exclusive remedy shall be, at Seller's option, to have the product in question replaced or repaired by Seller, or to receive a credit for the amount paid for such product, provided (a) such product is returned by Buyer during the applicable warranty period set forth above; (b) Seller is promptly notified in writing upon discovery by Buyer that such products failed to conform to these Terms and Conditions with a detailed explanation of any alleged deficiencies; and (c) the alleged deficiencies actually exist (based upon Buyer's inspection of the returned product) and were not caused by accident, misuse, abuse, mishandling, neglect, alteration, negligence, improper installation, improper testing, or unauthorized repair or alteration by anyone other than Seller. Transportation charges in connection with returned products shall be at Seller's expense only if Seller is responsible under the terms of this warranty. If Seller elects to



replace such products, Seller shall have a reasonable time to make such replacement. Such replacement or credit shall constitute fulfillment of all liability of Seller to Buyer under any legal theory, including, but not limited to, contract, tort, indemnity, statutory provision or otherwise. Product may not be returned for any reason other than for warranty purposes as described herein. THE FOREGOING CONSTITUTES BUYER'S SOLE AND EXCLUSIVE REMEDY FOR SELLER FURNISHING DEFECTIVE OR NONCONFORMING PRODUCTS.

7. **LEGAL COMPLIANCE.** Seller and Buyer shall comply at all times with all applicable federal, state, and local laws and regulations. The products covered by these Terms and Conditions may be subject to export or reexport restrictions under U.S. and other applicable laws and regulations, including but not limited to the U.S. Export Administrations Regulations (EAR), the regulations of the Department of the Treasury, Office of Foreign Assets Control (OFAC), and all applicable export laws and regulations of any other country from which the products may be reexported. Buyer warrants that it will comply with all applicable export, reexport and foreign policy controls imposed by the U.S. and the country in which it is located, and Buyer will take the necessary actions and precautions to ensure that it does not contravene such laws or regulations. Delivery of products under these Terms and Conditions shall be subject to the ability of Seller to make such delivery under applicable laws and regulations. Any order that has been accepted by Seller, but which cannot be fulfilled in compliance with such laws or regulations, or if Buyer advised Seller that such compliance will create an unacceptable delay in delivery, shall be considered to have been rejected when submitted to Seller, and Seller shall have no obligations in connection therewith. The parties acknowledge that they may each be subject to penalties for transacting business involving product, or Seller's technical information, with any customers that it knows or has reason to know are subject to denial of U.S. Export privileges, or engages, directly or indirectly in prohibited nuclear, chemical, biological or missile technologies. Buyer shall indemnify and defend Seller and Seller's officers, directors, shareholders, employees and agents, and its successors and assigns (collectively and severally, "**Indemnified Seller**") against, and hold Indemnified Seller harmless from, any loss, claim, damage, suits, costs, expenses (including without limitation attorneys, accountants and other professional fees), that arise out of or result from any breach of this Section 7 by Buyer.
  
8. **LIMITATION OF LIABILITY.** EXCEPT AS TO CLAIMS OF FRAUD, SELLER'S MAXIMUM AGGREGATE LIABILITY TO BUYER, ANY CUSTOMER OF BUYER, AND ANY OTHER THIRD-PARTY IN CONNECTION WITH SELLER'S PRODUCT SOLD TO BUYER UNDER THESE TERMS AND CONDITIONS AND ALL ORDERS PLACED HEREUNDER, WHETHER ON ACCOUNT OF NEGLIGENCE, STRICT LIABILITY IN TORT, BREACH OF CONTRACT, BREACH OF WARRANTY OR OTHERWISE, AT LAW OR IN EQUITY, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL AMOUNT ACTUALLY PAID BY BUYER TO SELLER FOR THE APPLICABLE PRODUCTS WITH RESPECT TO WHICH LOSSES OR DAMAGES OCCUR. IN ADDITION, SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, COSTS, EXPENSES, OR



LOSSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND OPPORTUNITY COSTS) ARISING UNDER OR IN CONNECTION WITH THE PRODUCTS. ANY ACTION BY BUYER OR ANY OF ITS CUSTOMERS OR OTHER THIRD PARTIES RELATED TO THE PRODUCTS MUST BE BROUGHT WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES. THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, WHETHER IN STATUTE, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE.

9. **U.S. GOVERNMENT CONTRACTS.** If the products to be furnished under these Terms and Conditions are to be used in the performance of a U.S. Government contract or subcontract, then Buyer represents and warrants that: (a) Buyer has fully advised Seller of any related requirements under applicable U.S. Government procurement regulations or other federal law; and (b) in no event shall the U.S. Government be entitled to ownership of any intellectual property of Seller contained in the products delivered hereunder.
10. **INTELLECTUAL PROPERTY.** Buyer acknowledges and agrees that: (a) any and all of Seller's intellectual property rights, including patents, trademarks, works of authorship, manufacturing processes, expressions, designs, design registrations, data, and databases and other specifications and documentation, trade secrets, and all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered, are the sole and exclusive property of Seller; (b) Buyer shall not acquire any ownership interest in any of Seller's intellectual property rights under this Agreement; (c) any goodwill derived from the use by Buyer of Seller's intellectual property rights inures to the benefit of Seller; (d) if Buyer acquires any intellectual property rights in or relating to any of Seller's products hereunder by operation of law or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller without further action by either of the parties; and (e) Buyer shall use Seller's intellectual property rights solely for purposes of using the products purchased by it under these Terms and Conditions and only in accordance with these Terms and Conditions and the instructions of Seller.
11. **WAIVER.** Failure by a party to take affirmative action with respect to any breach of these Terms and Conditions by the other party shall not be construed as a waiver of, or estoppel with respect to, that breach or any future breach. To be effective, waivers must be in writing and signed by the party waiving such breach and then, shall only be effective as to the specified breach and not to any future breach.
12. **USAGE POLICY.** SELLER'S PRODUCTS ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS WITHOUT THE EXPRESS PRIOR WRITTEN APPROVAL OF SELLER. As used herein:

(1) life support devices or systems are devices or systems which (a) are intended for surgical implant in the body, or (b) support or sustain life and whose failure to perform when



properly used in accordance with instructions for use provided in the labeling can be reasonably expected to result in a significant injury to the user; and (2) a critical component is any component in a life support device or system whose failure to perform can be reasonably expected to cause failure of the life support device or system or to affect its safety or effectiveness. IN ADDITION, SELLER'S PRODUCTS ARE NOT AUTHORIZED FOR USE (WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER) AS CRITICAL COMPONENTS IN OTHER PRODUCTS OR SYSTEMS, INCLUDING WITHOUT LIMITATION MEDICAL DEVICES, WEAPONS SYSTEMS, AND AUTOMOTIVE OR AERONAUTICAL SAFETY DEVICES, WHERE THE FAILURE OF SUCH PRODUCT OR SYSTEM COULD REASONABLY CAUSE SERIOUS PERSONAL INJURY OR DEATH.

13. **INDEMNITY.** Without limiting its indemnification obligations contained in Section 7, Buyer shall indemnify and defend Indemnified Seller against, and hold Indemnified Seller harmless from and against all losses, claims, damages, suits, liabilities, costs and expenses (including, without limitation, attorneys', accountants and other professional fees) arising from or in any way relating to (i) the products sold to Buyer hereunder or (ii) a breach by Buyer of these Terms and Conditions. Seller may participate in the defense of any such claim for the further protection of its own interests.
  
14. **INSURANCE.** At any time Buyer places an order hereunder and for a period of at least 18 months thereafter, Buyer shall, at its own expense, maintain and carry in full force and effect commercial general liability (including product liability) with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance evidencing the insurance coverage required in this Section 14. Seller may, at any time in its sole discretion, request as a condition to selling products to Buyer that Buyer increase its coverage and/or scope of insurance coverage, and Seller may withhold sales of products to Buyer if it fails to comply with Seller's request. Buyer shall provide Seller with 90 days' advance written notice in the event of a cancellation or material change in such insurance policy.
  
15. **FORCE MAJEURE.** No party hereto shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached these Terms and Conditions or any order placed hereunder, for any failure or delay in fulfilling or performing any term of any agreed order or these Terms and Conditions (except for any obligations to make payments to the other party when due), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date hereof; (f) action by any governmental authority; (g) national or regional emergency; and (h) strikes, labor stoppages or slowdowns or other industrial disturbances. The party suffering such a "Force Majeure Event" shall give notice within 10 days of becoming aware of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue, and it shall use commercially reasonable efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.



16. **SEVERABILITY.** If any provision of these Terms and Conditions, or the application thereof to any circumstance, person or place, shall be held by a court or other tribunal of competent jurisdiction to be invalid, unenforceable or void, the remainder of these Terms and Conditions and such provisions as applied to other circumstances, persons or places shall remain in full force and effect.
  
17. **GOVERNING LAW.** The validity, performance, interpretation and construction of these Terms and Conditions shall be governed by the laws of the state of New Jersey (excluding its choice of law rules and excluding the 1980 United Nations Convention on Contracts for International Sale of Goods). Any suit or action arising out of or in connection with these Terms and Conditions, or any breach hereof, shall be brought and maintained exclusively in the federal or state courts in New Jersey. The parties hereby irrevocably submit to the jurisdiction of such courts for the purpose of such suit or action and hereby expressly and irrevocably waive, to the fullest extent permitted by law, any objection it may now or hereafter have to the venue of any such suit or action in any such court.
  
18. **NOTICE.** All notices and other communications required or permitted under these Terms and Conditions and any order placed hereunder shall be in writing and shall be sent by overnight air courier service (in which case notice shall be deemed given when received by addressee or on the second (2<sup>nd</sup>) day after the date of delivery to the courier, whichever is earlier), by registered or certified mail, return receipt requested, postage prepaid and properly addressed (in which case notice shall be deemed given when received by the addressee or on the fifth (5<sup>th</sup>) day after the date of mailing, whichever is earlier), or via electronic mail (e-mail) or facsimile, provided the recipient responds to such e-mail or facsimile (in which case notice shall be deemed given the day following the date of delivery). All notices to Seller shall be at the following address:

United Silicon Carbide, inc.  
7 Deer Park Drive , Suite E  
Monmouth Junction, New Jersey 08852

All notices to Buyer shall be to the Buyer's address set forth on the latest accepted order with such Buyer.