

AgigA Tech, Inc. Terms and Conditions of Sale

1. **ACCEPTANCE.** The terms and conditions herein become the exclusive and binding agreement between AgigA Tech, Inc. ("Seller") and the Buyer ("Buyer") covering the purchase of the products ordered herein when these terms and conditions are accepted by acknowledgment and/or commencement of performance by Seller. Additional or different terms proposed by Buyer including those in buyer's purchase order, other correspondence or any other order will not apply unless accepted in writing by Seller's authorized representative. No change, modification or revision of these terms and conditions will be effective unless an authorized representative of Buyer signs Seller's written changes. Seller's failure to specifically object to any communication from Buyer that contains additional terms and conditions shall not be deemed a waiver of these terms and conditions.
2. **PRICES.** Prices are shown on the face of this document or on the applicable invoice. If Buyer does not purchase the entire quantity upon which these prices were based, Buyer agrees to pay the specified higher price for the quantity actually purchased. Prices do not include customs duties or any sales, use, excise, ad valorem, vat or other taxes, as required under international, local, or county laws, unless alternative terms were pre-negotiated and agreed in writing. When Seller has the legal obligation to collect such taxes, the appropriate amount shall be invoiced to and paid by Buyer unless Buyer provides Seller with a valid tax exemption certificate from the appropriate taxing authority.
3. **TERMS OF PAYMENT.** Payment terms are net thirty (30) days from date of invoice. All payments shall be made in U.S. dollars unless otherwise agreed in writing by an authorized representative of Seller. Seller may change these credit terms if buyer's financial condition changes. In the event that Buyer fails to pay on the due date, in addition to the unpaid balance, Seller is entitled to interest at one and one half percent (1-1/2%) per month on the unpaid balance. Each shipment made under Buyer's purchase order will be considered a separate and independent transaction. Seller reserves a purchase money security interest in any product delivered herein for the maximum time permitted by law or until all of Seller's claims have been paid.
4. **TITLE AND DELIVERY.**
 - (a) Buyer acknowledges and agrees that the delivery dates are estimates only and may be changed by Seller. Seller will use commercially reasonable efforts to deliver in accordance with the delivery dates; however, Seller will not be liable for failure to deliver as estimated. Unless otherwise agreed to in writing by an authorized representative of Seller, all shipments are F.O.B point of shipment for U.S. destinations and Ex-Works for non-U.S. destinations. Title to products and risk of loss and damage will pass to Buyer at and upon delivery, except as otherwise stated in these terms and conditions. Buyer must pay all transportation costs. Unless otherwise agreed, Seller will select the carrier. Seller may modify the specifications or manufacturing process provided the modifications do not adversely affect the form, fit or function of products.
 - (b) In the event that Seller's ability to supply products becomes constrained, for any reason whatsoever, Seller may reduce quantities, delay shipments, or allocate products among its customers in its sole discretion and, as a result, Seller may sell and deliver to Buyer fewer products than specified in Buyer's purchase order or agreement or Seller's confirmation or agreement, as the case may be. Buyer may not cancel, push-out, or reschedule any purchase order placed with Seller except in accordance with the terms stated in these terms and conditions or other agreement signed between Seller and Buyer.

- (c) Any claims in respect to the products delivered to a purchase order, including visible defects, quantity shortages or incorrect product shipments, must be made within ten (10) days of delivery. Failure to notify Seller in writing of any visible defects in the products or of quantity shortages or incorrect shipments within such period will be deemed unqualified waiver of any rights to return products on the basis of visible defects, shortages or incorrect shipments. Due to the variability of transit times from worldwide production facilities, Seller reserves the right to ship product one to seven days in advance of Buyer's requests.

5. INTELLECTUAL PROPERTY.

- (a) Seller, at its expense, will have sole control of the defense of suit or proceeding made or brought against Buyer by a third party alleging that Seller's product infringes such third party's United States patent, trade secret or copyright (each, a "Claim"). Seller shall pay damages and costs therein in a final award against Buyer made by a court of competent jurisdiction, but will not be responsible for any compromise or settlement made without Seller's written consent. Seller's obligation under this section shall be subject to Buyer providing Seller with prompt written notice of any Claim, full and complete cooperation and assistance with Seller in the defense and settlement of the Claim, and granting Seller sole control over the defense or settlement of the Claim.
- (b) In the event a court of competent jurisdiction makes a determination that any of Seller's product infringes, or if Seller determines that its product likely infringes, Seller, at its option and expense, will: (i) modify the infringing portion of the product so as to make it non-infringing; (ii) replace the infringing product with a non-infringing product having substantially similar functionality; (iii) obtain the right to continue using the infringing product; or (iv) refund to Buyer the purchase price of the product prorated over a five-year period from the delivery date.
- (c) Seller's obligations under this Section will not apply to the extent of any Claim or infringement resulting from: (i) Buyer's continued use of the infringing product after receipt of notice from Seller of a claim or after receipt of the remedy required of Seller under this Section; (ii) modifications to the product by any party other than Seller; (iii) modifications to a product made pursuant to Buyer's express instructions; (iv) combination of the product with other products, processes or materials not provided by Seller; or (v) Buyer's use of the product other than in accordance with these terms and conditions.
- (d) THIS SECTION STATES SELLER'S TOTAL RESPONSIBILITY AND LIABILITY AND BUYER'S SOLE REMEDY, FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, TRADEMARK, OR COPYRIGHT BY ANY PRODUCTS OR SERVICES DELIVERED HEREUNDER, OR ANY PART THEREOF. THIS SECTION IS IN LIEU OF AND REPLACES ANY OTHER EXPRESSED, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT. IN NO EVENT WILL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR OTHER DAMAGES RESULTING FROM ANY SUCH INFRINGEMENT.
- (e) Buyer will, at its own expense, indemnify and hold Seller harmless from and against any liabilities, costs, damages, or losses resulting from any alleged infringement of any patent, trademark, copyrights, or other intellectual property right arising as a result of Seller's compliance with any of Buyer's designs, specifications, or instructions and will defend at its own expense, including attorneys' fees, any claim or suit brought against Seller alleging any such infringement, including infringement arising out of the use of such products as part of or in combination with another device or from Seller's compliance with instructions from Buyer provided that Seller: (i) gives Buyer notice of any such allegation or suit and permits Buyer,

through counsel of its choice, to defend such allegation or suit; and (ii) gives Buyer all reasonably needed information, assistance and authority, at Buyer's expense, necessary for Buyer to defend any such allegation or suit, and further provided that Seller has the right to participate in any such suit, at its own expense, using counsel of its choice and that Buyer may not enter into any settlement that would impose any obligation on Seller without first obtaining Seller's written consent.

6. LIMITED WARRANTY.

- (a) **Systems or Board Level Products.** Seller warrants that the systems or board level products to be delivered under these terms and conditions if properly used and serviced, will perform to Seller's published specifications and will be free from defects in material and workmanship for one (1) year following the date of shipment.
- (b) **Software Products.** All software products are provided "AS IS" unless otherwise specified under a separate written agreement between the parties pursuant to Section 14 of these terms and conditions.

7. EXCLUSIONS OF WARRANTIES. THE WARRANTIES CONTAINED IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. Additionally, the warranties contained in these terms and conditions shall extend to Buyer only and not to Buyer's customers. If any product furnished by Seller fails to conform to the above warranty, Seller's sole and exclusive liability is, at Seller's option, to repair, replace or credit Buyer's account with an amount equal to the price paid for any such product returned by Buyer during the warranty period, provided that: (i) Buyer notifies Seller in writing that such product failed to conform and furnishes a detailed explanation of any alleged deficiency; (ii) notification is received by Seller within thirty (30) days from when Buyer observes alleged deficiency; (iii) such product is returned to Seller's plant at Buyer's risk and expense; and (iv) Seller is satisfied that claimed deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, repair or improper testing. If such product fails to conform, Seller will reimburse Buyer for the transportation charges. Seller will have a reasonable time to repair or replace products or to credit Buyer's account. This warranty does not cover, and Seller expressly excludes from this warranty, non-production versions, such as beta and demonstration versions, engineering samples, test and development systems containing the products and any version for which Seller has not published a data sheet. If any product covered by these terms and conditions is designated for "developmental" or "experimental" use or for reference designs, no warranty whatsoever shall be applicable thereto and Buyer will indemnify Seller for any and all claims or liability asserted against Seller in connection with such "developmental," "experimental" use or reference designs products.

8. DISCLAIMER. Products are not designed, intended, or authorized for use in components of systems designed or intended for the operation of weapons, weapons systems, nuclear installations, life-support computers, equipment or other medical systems (including resuscitation equipment and surgical implants), pollution control or hazardous substances management ("Unintended Uses"). Seller is not liable, in whole or in part, and Buyer will release Seller from any claim or damage arising from all Unintended Uses of product, unless Buyer notifies Seller in writing and an authorized representative of Seller expressly consents in writing to such Unintended Uses of products. Buyer will indemnify and hold Seller harmless against all claims, costs, damages, expenses, and reasonable

attorneys' fees arising out of any claim, including claims for personal injury or death arising from any Unintended Uses of Seller's product.

9. RESCHEDULE AND CANCELLATION.

- (a) **Default.** If Buyer defaults, Seller may decline to make further shipments and/or may terminate Buyer's order without affecting Seller's rights and remedies including, but not limited to, any right to cancellation charges and quantity price adjustments. If Seller continues to make shipments after Buyer's default, Seller's actions shall not constitute a waiver nor affect Seller's legal remedies.
 - (b) **Rescheduling of Standard Products.** Upon written notice to Seller, Buyer may reschedule any order for Standard Products scheduled for shipment beyond thirty (30) days from Seller's originally scheduled shipment date.
 - (c) **Cancellation of Standard Products.** Upon written notice to Seller, Buyer may cancel any order for Standard Products scheduled for shipment beyond thirty (30) days after Seller receives Buyer's cancellation notice.
 - (d) **Rescheduling of Custom or Non-Standard Products.** Buyer may reschedule any order for Custom or Non-Standard Products up to two (2) times from the original delivery date without charge if Buyer provides Seller with written notice at least sixty (60) days prior to the then-current delivery date, and provided the cumulative total of any rescheduled dates does not exceed one hundred eighty (180) days from the original delivery date.
 - (e) **Cancellation of Custom or Non-Standard Products.** Purchase orders for Custom or Non-Standard Products are Non-Cancellable, Non-Returnable.
 - (f) For purposes of this Section 9, "Custom or Non-Standard Product(s)" means a Product furnished by Seller pursuant to these terms and conditions that contains customer-specific hardware, software, marking, and other specifications or other combination thereof unique to Buyer. "Standard Product(s)" means a Product that is not defined as Custom or Non-Standard Product under these terms and conditions.
- 10. BREACH.** Any one of the following acts by Buyer will constitute a material breach of Buyer's obligations under these terms and conditions: (i) Buyer fails to make payment for any products or services in full when due; (ii) Buyer fails to accept conforming products or services supplied under these terms and conditions; or (iii) filing of a voluntary or involuntary petition in bankruptcy against Buyer, the institution of any proceeding in insolvency or bankruptcy (including reorganization) against Buyer, or an assignment for the benefit of creditors of Buyer. In the event of Buyer's material breach, Seller may (in addition to any other rights or remedies provided herein or at law or in equity), by written notice to Buyer, terminate its obligations or any part thereof, without any liability to Seller. Buyer must pay all costs, including reasonable attorneys' fees, incurred by Seller in any action brought by Seller to collect payments owing or otherwise enforce its rights.
- 11. DISCONTINUATION OF PRODUCT.** Seller reserves the right to discontinue manufacturing, sale or supply of products at any time. If, however, at any time during the term of an agreement under which Seller sells and Buyer purchases products on a regular basis, such regularly sold and purchased products are to be permanently discontinued ("Discontinued Product"), Seller will use its commercially reasonable efforts to give Buyer prior written notice of such discontinuance and will use commercially reasonable efforts to accept last-time-buy orders for such Discontinued Products all in accordance

with Seller's product discontinuation process. Last-time-buys may not be cancelled, rescheduled, returned or replaced.

12. **DATA SHEETS/CONTROL SPECIFICATIONS.** Seller's data sheets and firmware specifications are controlled specifications applicable to product at the time of delivery. Seller reserves the right to revise published control specifications and to make changes to any product or packaging material at any time. Seller assumes no responsibility for the use of any product applications or circuits described in published data sheets and conveys no license under any patent. Applications for products contained in any other publication are for illustration purposes only, and Seller makes no representation or warranty that such applications will be suitable for the use specified, except as described in the data sheet(s).
13. **SOFTWARE LICENSE.** SOFTWARE PRODUCTS FURNISHED UNDER THESE TERMS AND CONDITIONS REMAIN THE EXCLUSIVE PROPERTY OF SELLER. BY ACCEPTING SELLER'S SOFTWARE LICENSE AGREEMENT, BUYER WILL OBTAIN NO GREATER COPYING AND USE RIGHTS THAN ARE AVAILABLE UNDER COPYRIGHT LAWS. BUYER WILL NOT USE, PRINT, COPY, MODIFY, TRANSLATE, ALTER OR DISPLAY SOFTWARE PRODUCTS IN WHOLE OR IN PART EXCEPT AS EXPRESSLY PROVIDED FOR IN THE SOFTWARE LICENSE AGREEMENT. BUYER WILL NOT SELL, ASSIGN OR TRANSFER RIGHTS IN SUCH SOFTWARE PRODUCTS EXCEPT AS PERMITTED UNDER THE SOFTWARE LICENSE AGREEMENT. FURTHER, BUYER WILL NOT REVERSE-COMPILE, DE-COMPILE OR REVERSE-ENGINEER ANY SOFTWARE PRODUCTS, AND ANY ATTEMPT TO DO SO WILL BE A BREACH OF THE SOFTWARE LICENSE AGREEMENT. SELLER WILL NOT DELIVER SOFTWARE WITHOUT SUCH SOFTWARE LICENSE AGREEMENT.
14. **ASSIGNMENT.** Neither party will assign or transfer its rights or obligations under these terms and conditions without the prior written consent of the other party. Notwithstanding the foregoing, neither party will require the other party's consent to assign these terms and conditions in its entirety (but not less than in its entirety) to any of its Affiliates or to any party who acquires substantially all of the assets of the assigning party to which these terms and conditions relate. Affiliate means an entity controlled by, controlling, or under common control, of the applicable party. Any purported assignment in violation of this clause will be void.
15. **LIMITATION OF LIABILITY.** IN NO EVENT WILL SELLER BE LIABLE TO THE BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER, WITHOUT REGARD TO CAUSE OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, DAMAGES INCURRED BY THE OTHER PARTY OR SUCH THIRD PARTY FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS) ARISING OUT OF AN ORDER FOR PRODUCT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS OTHERWISE STATED IN THESE TERMS AND CONDITIONS, SELLER'S LIABILITY FOR BREACH OF ANY PROVISION WHETHER REFERRED TO UNDER TITLE AND DELIVERY, INTELLECTUAL PROPERTY, OR LIMITED WARRANTY ABOVE OR OTHERWISE SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS GIVING RISE TO THE LIABILITY, LESS THE PURCHASE PRICE OF THE PRODUCTS DELIVERED TO BUYER. BUYER MAY NOT BRING AN ACTION IN CONNECTION WITH THE DELIVERY OF PRODUCTS UNLESS SUCH ACTION IS COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUED.
16. **FORCE MAJEURE.** Neither party will be deemed in default of these terms and conditions to the extent that any delay or failure in the performance of its obligations results from any cause beyond its

reasonable control and without its fault or negligence, including, without limitation, acts of god, acts of civil or military authority, embargoes, strikes, work stoppages, war, riots, fires, explosions, delays by suppliers, shortages of parts or materials, power failures, or communication line interruptions. Upon any delay described in this Section, the time for performance by the party affected by a force majeure event will be extended for a period equal to the time lost by reason of the delay.

17. **CONTROLLING LAW.** These terms and conditions shall be governed by and construed under the laws of the state of California, without regard to conflict of law principles or the United Nations convention on contracts for the international sale of goods. The parties consent to personal and exclusive jurisdiction of and venue in, the State and Federal Courts within Santa Clara County, California. These terms and conditions and all other documents originated and signed by Seller which are consistent with these terms and conditions related to the delivery of products, constitute the exclusive and complete agreement between the parties concerning the delivery of product.
18. **EXPORT COMPLIANCE.** If products of Seller furnished under these terms and conditions are subject to U.S. export administration regulations, Buyer agrees not to export, directly or indirectly, any of the products furnished hereunder to any country for which the United States government requires an export license, re-export authorization or other approval without first obtaining such license, authorization or approval.