



TERMS AND CONDITIONS OF SALE

1. GENERAL

THE FOLLOWING TERMS AND CONDITIONS OF SALE APPLY TO ALL QUOTATIONS MADE AND PURCHASE ORDERS ENTERED INTO BY INNOVION CORPORATION ("SELLER"). SELLER'S ACCEPTANCE IS CONDITIONAL ON BUYER'S ASSENT TO THESE TERMS IN LIEU OF THOSE IN BUYER'S PURCHASE ORDER. ANY CHANGES IN THESE TERMS AND CONDITIONS MUST SPECIFICALLY BE AGREED TO IN WRITING BY SELLER AND BUYER BEFORE BECOMING BINDING ON EITHER SELLER OR BUYER. ALL ORDERS OR CONTRACTS MUST BE APPROVED AND ACCEPTED BY SELLER AT ITS HOME OFFICE. THESE TERMS SHALL BE APPLICABLE WHETHER OR NOT THEY ARE ENCLOSED WITH THE PRODUCTS IMPLANTED HEREUNDER ("GOODS").

2. PRICES AND TAXES

(a) Notwithstanding any prices quoted by Seller or listed on Buyer's purchase order, a purchase order is accepted only at the prices shown on Seller's quotation unless otherwise agreed to in writing by Seller and Buyer.

(b) Unless otherwise provided, the amount of any present or future sales, revenue, excise, use or other taxes, fees, or charges of any nature imposed by any public authority applicable on the Goods, will be added to the purchase price and will be paid by Buyer, or in lieu thereof, Buyer shall provide Seller with a duly executed resale certificate in the form required under the applicable law or regulations. If Buyer's purchase order claims exemption for taxes upon sale, and Seller accordingly does not collect such taxes from Buyer, Buyer agrees to indemnify Seller against liability for payment of such taxes.

3. PAYMENT TERMS

Buyer shall pay all invoices issued under these Terms and Conditions within thirty (30) days from the date of invoice. Seller may invoice each shipment separately. All sums not paid when due shall accrue interest daily at the lesser of a monthly rate of 1.5% or the highest rate permissible by law on the unpaid balance until paid in full. Buyer shall pay costs and expenses, including attorneys' fees, incurred by Seller in the collection of such undisputed sums owed by Buyer.

4. DELIVERY AND SHIPMENT

(a) Delivery shall be FOB Seller's point of shipment. Title and risk of loss and damage to the Goods shall pass to Buyer upon delivery to a common carrier. In any event, Seller shall not be in default for failure to deliver unless Seller does not commence to cure such failure within ten (10) days after the agreed upon delivery date.

(b) Seller shall not be liable for any reasonable delay or failure due to shortages of labor, energy, components, raw materials or supplies or interruption of Seller's production or shipment for reasons beyond Seller's reasonable control. In the event of any such delay, the date of delivery shall automatically be extended for a period equal to the time lost by reasons of the delay.

5. ACCEPTANCE

Unless otherwise specified and agreed upon, the Goods will be subject to Seller's standard inspection at Seller's plant unless otherwise agreed to in writing by both parties. Buyer shall accept or reject the Goods within thirty (30) days of receipt. If Buyer fails to notify Seller in writing of its rejection and the reasons therefore within such time period, Buyer will be deemed to have accepted such Goods, and waives any right to revoke acceptance.

6. NONDISCLOSURE OF TRADE SECRETS AND CONFIDENTIAL INFORMATION

(a) Buyer and Seller acknowledge that in the course of negotiations leading up to a contract of sale hereunder or in the performance of the Terms and Conditions, that Buyer or Seller or its affiliates, agents or employees may become privy to trade secrets and confidential information of the other party, including, but not limited to, design information, processing technology and testing procedures. Buyer and Seller agree not to disclose at any time during its relationship and for a period of five (5) years following the termination of its relationship, the other party's trade secrets or confidential information to any person or organization not connected with it without the express written consent of the other party. Buyer and Seller further agree to undertake all necessary and appropriate steps to maintain the secrecy of the other party's trade secrets and confidential information.

(b) All tooling of any kind used in the production of the Goods furnished hereunder is the sole property of Seller. The Goods are offered for sale and are sold by Seller subject in every case to the condition that such sale does not convey any license expressly or by implication, to manufacture, reverse engineer, duplicate or otherwise copy or reproduce any of the Goods.

7. LIMITATIONS ON LIABILITY

IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR GOODWILL, THAT BUYER MAY SUFFER AS A RESULT OF ANY BREACH OF ANY WARRANTY, REPRESENTATION OR COVENANT BY SELLER, REGARDLESS OF THE FORM OF THE ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S LIABILITY TO BUYER EXCEED AN AMOUNT EQUAL TO THE PURCHASE PRICE PAID BY BUYER TO SELLER FOR GOODS TO WHICH A CLAIM RELATES.

8. INDEMNITY

(a) Buyer shall defend, indemnify and hold Seller harmless against any third party claims, expenses or losses resulting from infringement of patents, copyrights, mask works or trademarks or misappropriation of trade secrets in compliance with Buyer's designs, specifications or instructions.

(b) Seller shall defend, indemnify and hold Buyer harmless against any third party claims, expenses or losses resulting from infringement of patents, copyrights, mask works or trademarks or misappropriation of trade secrets resulting from Seller's manufacture of Goods provided under this Agreement excepting that Seller shall not be responsible for any compromise made without its written consent; provided, that Seller is notified promptly in writing and given information, assistance and the sole authority to defend or settle the claim at Seller's expense.

(c) Seller's indemnification of Buyer does not extend to any suit based upon any infringement or alleged infringement of any intellectual property right by the combination of any Goods furnished by Seller with other elements if such infringement would be avoided by the use of the Goods alone, nor does it extend to any Goods designed in accordance with Buyer's instructions.

(d) Should the Goods infringe or become likely to infringe a US Patent, US Copyright or US Trademark or other proprietary right in the US, then Seller may, at its option: (i) procure for Buyer the right to use such Goods free of any liability for infringement; (ii) replace the Goods with non-infringing Goods or (iii) refund the purchase price of the Goods.

(e) THESE SECTIONS 7 AND 8 STATE SELLER'S AND BUYER'S ENTIRE LIABILITY FOR ALL LOSS OR DAMAGE WHATSOEVER AND THE SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY ALLEGED PROPRIETARY RIGHTS INFRINGEMENT OF THE PRODUCTS AND SELLER AND BUYER SPECIFICALLY DISCLAIM ANY OTHER WARRANTY OF NON INFRINGEMENT WHETHER EXPRESS OR IMPLIED.

9. LIMITED WARRANTY

Subject to Section 7 and unless otherwise expressly provided in this contract, Seller warrants that the Goods provided hereunder shall conform to Buyer's product specifications. SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO THE IMPLANTS.

10. EXPORT CONTROL

Buyer agrees to comply strictly and fully with all export controls imposed on the Goods, by any country or organization of nations within whose jurisdiction Buyer operates or does business. Buyer agrees not to export or permit exportation of the Products or any related technical data, without complying with the export control laws in the relevant jurisdiction.

11. MISCELLANEOUS

(a) Any notices to be given hereunder will be given in writing to the address of each party set forth in the purchase order acknowledgment or to such other address as either party may substitute by written notice to the other. All notices shall be effective upon mailing if mailed at a U.S. Post Office, first class mail, postage prepaid.

(b) Failure by Seller or Buyer to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.

(c) These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of California as those laws are applied to contracts entered into and to be performed entirely within California between California residents. Buyer hereby submits to the jurisdiction of, and waiver of any venue objections against, the United States District Court for the Northern District of California, San Jose Branch and the Superior and Municipal Courts of the State of California, Santa Clara County, in any litigation arising out of these Terms and Conditions.

(d) In the event that any provision contained in these Terms and Conditions is determined to be invalid or unenforceable, in whole or in part, the remaining provisions and any partially enforceable provision will, nevertheless, be binding and enforceable.

(e) In the event any proceeding or lawsuit is brought by Seller or Buyer to enforce its rights hereunder, the prevailing party shall be entitled to recover its costs, including expert witness fees and reasonable attorneys' fees.

(f) All disagreements or controversies of any kind, whether claimed in tort, contract or otherwise, either concerning these Terms and Conditions or any other matter whatsoever shall be brought within one (1) year after the accrual of the disagreement or controversy.

(g) Buyer and Seller shall not assign this agreement or any portion hereof without the other party's prior written consent, and any such attempt at assignment shall be void.

12. INCOMING WAFER REQUIREMENTS

- (a) Buyer agrees that wafers provided to Seller for processing will conform to the following:
- (i) SEMI standard mechanically
 - (ii) Edge rounded
 - (iii) Free of edge effects that generate particles (edge bead removal required on photo-resist)
 - (iv) Particle levels <200/wafer at 0.2 microns (understanding that some in-process wafers cannot be counted accurately)
 - (v) Photo-resist to be stabilized by either hard bake or UV-stabilization
 - (vi) No significant warpage/chipping/stress cracks/slip lines
 - (vii) <=150 mm wafers (JDEC standard requires special set-up) must have a major flat if orientation is required
 - (viii) 200 mm wafers must be notched
 - (ix) Each wafer box must be identified by a unique lot number
 - (x) The accompanying paperwork must contain the lot number(s) and the implant parameters
 - a. Species
 - b. KeV (Energy)
 - c. Dose
 - d. Diameter
 - e. Tilt
 - f. Twist
- (b) Buyer agrees to notify Seller of any of the following conditions:
- (i) Substrate type other than silicon
 - (ii) Extreme doping levels that may affect process
 - (iii) Diameter other than SEMI standard metric (+/-0.5mm) for >=100 mm
 - (iv) Diameter other than SEMI standard English (+/- 0.020 inch) for <=3 inch
 - (v) Thicknesses other than SEMI standard
 - (vi) Orientations other than <100> or <111>
 - (vii) Off-axis sawing and non-standard notch or major flat orientation
 - (viii) SOI material
 - (ix) Any metal not encapsulated on the frontside of wafers requiring backside implant.
 - (x) Any material on the wafer other than:
 - a. photo-resist
 - b. silicon, silicon dioxide, silicon nitride, silicon oxynitrides
 - c. aluminum or aluminum oxides/nitrides
 - d. tungsten or tungsten silicides
 - e. titanium or titanium silicides
 - (xi) Contamination above trace levels by any foreign material *not* on the above list.

THE TERMS AND CONDITIONS SET FORTH HEREIN REPRESENT THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER WITH RESPECT TO THE SUBJECT MATTER AND BUYER AGREES THAT ALL PRIOR QUOTATIONS, INVOICES, NEGOTIATIONS, UNDERSTANDINGS, REPRESENTATIONS AND/OR AGREEMENTS OF THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF, WHETHER ORAL OR WRITTEN, ARE MERGED HEREIN AND SUPERSEDED IN THEIR ENTIRETY AND BUYER AND SELLER ACKNOWLEDGE THAT IT HAS NOT ENTERED INTO THIS AGREEMENT IN RELIANCE ON ANY WARRANTY OR REPRESENTATION BY ANY PERSON OR ENTITY EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS SPECIFICALLY SET FORTH HEREIN.