

AMSC TERMS AND CONDITIONS



UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL PURCHASES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS. AS USED HEREIN, THE TERM "BUYER", REFERS TO AMERICAN SUPERCONDUCTOR CORPORATION. THE TERM "SELLER" REFERS TO THE VENDOR LISTED ON THE THIS PURCHASE ORDER.

1. **Applicability:** This Purchase Order is only an offer to enter into a contract. Buyer may revoke, amend or modify this offer at any time prior to Seller's acceptance. Any of the following acts, constitutes Seller's acceptance of this Purchase Order and all terms and conditions herein: (a) Seller's execution and return of the acknowledgement copy of this Purchase Order or Seller's own acknowledgement form; (b) Seller's commencement of performance pursuant to this Purchase Order; (c) Seller's delivery of any of the products ordered or (d) Seller's acceptance of any payment by Buyer hereunder in accordance with the terms set forth below, which terms cannot be altered or amended without Buyer's express written agreement. Acceptance shall be binding upon Seller and Seller's successors, assigns and delegates.
2. **Prices:** All prices shall be stated in this Purchase Order and are firm and not subject to escalation. Seller represents and warrants that the prices set forth in this Purchase Order are at least as low as those currently being quoted by Seller to other commercial users for the same products, in like quantities, under similar circumstances. If no price is stated for any product, the price for that product shall be the lowest price currently quoted or charged by seller for that product, but in no event higher than the price most recently quoted or charged to Buyer by Seller for that product.
3. **Taxes:** Unless otherwise provided in this Purchase Order, the price includes and Seller shall pay, all excise, sales, use, transfer or other taxes, federal, state and local, in connection with the sale or delivery of the products to use.
4. **Terms of Payment:** Unless Buyer has otherwise agreed in writing, payment terms shall be net sixty (60) days from the later of the date Buyer receives Seller's invoice or the date on which Buyer accepts the products.
5. **Quantities:** Unless agreed otherwise in writing, Seller must deliver the exact quantities specified in the Purchase Order. Buyer reserves the right to reject incomplete deliveries and to return at Seller's risk and expense excess quantities delivered.
6. **Packaging and Shipment:** All products shall be packaged, marked and otherwise prepared for shipment by Seller in suitable containers in accordance with sound commercial practices. Seller shall mark on containers all necessary handling, loading and shipping instructions. An itemized packing list shall be included with each shipment. Bills of lading shall be mailed to Buyer in triplicate. Seller shall pay all costs of packaging, transportation and insurance in delivering the products to under this Purchase Order.
7. **Delivery:** Buyer's production and marketing schedule are established in part in reliance upon the delivery information specified in this Purchase Order. Time and place of delivery are therefore of the essence in the performance of this Purchase Order. Any provision for delivery in installments shall not be construed as determining the obligations of Seller as severable. Seller's failure to provide conforming delivery shall entitle Buyer to revoke any acceptance, to cancel this order without liability to Seller, to receive a full refund of any amounts paid, to purchase substitute products elsewhere, to return at Seller's risk and expense all or any part of a non-confirming delivery and to hold Seller accountable for any loss or additional costs incurred by Buyer. Buyer's receipt or acceptance of all or part of a non-confirming delivery shall not constitute a waiver of any claim, right or remedy Buyer has under this Purchase Order or under applicable law.
8. **Title and Risk of Loss:** Title to and risk of loss for products purchased which conform to this Purchase Order shall pass to Buyer upon acceptance at Buyer's premises. Title to and risk of loss for non-conforming products and for all property provided by Buyer to Seller shall remain with Seller.
9. **Inspection and Rejection:** Buyer may inspect and test all products at reasonable times before, during and after manufacture and/or delivery. If any inspection or test is made on Seller's premises, Seller shall provide reasonable facilities and assistance for the safety and convenience of Buyer's inspectors in such manner as shall not unreasonably hinder or delay Seller's performance. All products shall be received subject to Buyer's specifications, testing, approval and acceptance at Buyer's premises, notwithstanding any inspection or testing at Seller's premises or any proper payment for such products. If Buyer rejects any portion of the products or services, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Purchase Order in its entirety; or (c) reject the products and/or services and require replacement of the rejected products or

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services. If Buyer requires replacement of the products and/or services, Seller shall, at its expense, promptly replace the nonconforming products and/or services and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective products and the delivery of replacement products and/or services. If Seller fails to timely deliver replacement products and/or services, Buyer may replace them with products and/or services from a third party and charge Seller the cost thereof and terminate this Purchase Order for cause pursuant to Section 16. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Purchase Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

10. **Warranties:** In addition to any other express or implied warranties, Seller warrants to Buyer that for a period of twenty-four (24) months from the date the products and/or services are accepted or thirty (30) months from the delivery date, all products and/or services will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance, payment or resale of or for the products and/or services by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations commences from the date of Buyer's discovery of the non-compliance of the products and/or services with the foregoing warranties. Seller shall, at its own cost and expense, promptly replace or repair the defective or non-conforming products and/or services and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or non-conforming products and/or services to Seller and the delivery of repaired or replacement products and/or services to Buyer. If Seller fails promptly to replace or repair any such products and/or services, Seller shall promptly refund to Buyer the full purchase price paid by Buyer for all such products and/or services.

11. **Intellectual Property: Non-judgment.**

(a) Seller acknowledges and agrees that all specifications, drawings, diagrams, schematics, sketches, models, samples, designs, technical information or data, written, oral or otherwise furnished by Buyer or on Buyer's behalf ("Intellectual Property"), is and shall remain Buyer's sole and exclusive property and shall be returned promptly to Buyer or Buyer's designee (together with all copies) upon the earlier of Buyer's request or the termination or completion of this Purchase Order. Seller acknowledges and agrees that all such Intellectual Property shall be treated as proprietary to Buyer, and shall not be used or disclosed by Seller except as required in the course of performing this Purchase Order for Buyer. Unless Buyer has otherwise agreed in writing, information and material furnished or disclosed by Seller to Buyer, shall not be considered to be confidential or proprietary, and shall be acquired by Buyer free of restrictions of any kind.

(b) Seller acknowledges and agrees that any copyrightable product made, designed or developed for Buyer in connection with the performance of this Purchase Order shall be a "work made for hire" within the meaning of Section 201 of the Copyright Law of 1976. Seller hereby assigns to Buyer any and all inventions, discoveries, computer programs, software, data, technologies, designs, innovations and improvements, and the related patents, copyrights, trademarks, trade names and other industrial and intellectual property rights and applications therefore, made or conceived by Seller or its agents or employees in connection with the performance of this Purchase Order. Seller hereby appoints any of Buyer's officers as its duly authorized attorney, and Seller agrees to cooperate to the extent Buyer may reasonably request, for the purposes of executing, filing, prosecuting and protecting the foregoing.

(c) Seller represents and warrants that the products delivered hereunder do not infringe any United States or foreign patent, trademark, trade secret or copyright, or any proprietary, intellectual property, industrial property, contract or other right held by any third party.

12. **Tools and Equipment:** All tools, dies, molds, patterns, jigs, masks and other equipment and materials furnished by Buyer to Seller or paid for by Buyer, directly or indirectly, and any replacements, shall remain Buyer's property. Seller shall safely store such property separately from Seller's property, shall plainly identify such property as Buyer's property and shall not use such property except in filling this or other Purchase Orders for Buyer. All such property shall be held at Seller's risk, shall be insured by Seller at its expense for an amount equal to its replacement cost, and with Buyer named as loss payee and shall be returned promptly to Buyer or Buyer's designee upon the earlier of Buyer's request or the termination or completion of this Purchase Order.



- 13. **Changes:** Buyer may at any time and from time to time, by written notice to Seller, make changes in specifications, designs, method of packing or shipment, quantity ordered, destinations and delivery schedules. If any such change causes a material increase or decrease in Seller's cost or time for performance, an equitable adjustment shall be made by Buyer to the price or delivery schedule, or both. Any claim by Seller for adjustment under this Changes Section shall be deemed waived, unless made in writing within ten (10) days after receipt of written notice of the change. No change, modification or revision of this Purchase Order shall be binding upon Buyer unless in writing and signed by Buyer's duly authorized representative. Nothing contained in this Changes Section shall excuse Seller from diligently proceeding with the order as changed.
- 14. **Compliance with Laws:** Seller shall comply with all applicable governmental laws, ordinances, codes, rules, regulations and orders in the performance of this Purchase Order, including without limitation, the Occupational Safety and Health Act, the Fair Labor Standards Act of 1938, Title VII of the Civil Right Act, the Age Discrimination in Employment Act, and Executive Order 11246, along with the implementing rules and regulations of the office of Federal Contracts Compliance. At Buyer's request, Seller shall provide appropriate certificates of compliance. Seller shall obtain all permits or licenses required in connection with the manufacture, sale, shipment and installation of the products ordered hereby. Seller shall comply with all export and import laws of all countries involved in the sale of products under this Order. Seller assumes all responsibility for shipments of products requiring any government import clearance. Buyer may terminate this Purchase Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the products.
- 15. **Government Contract Provisions:** Purchase Orders which specify a government contract number or otherwise indicate that the materials purchased are intended for use under government contracts or subcontracts and shall be subject to and deemed to incorporate all clauses and provisions which are contained in such contracts or subcontracts which are applicable to Seller.
- 16. **Cancellation; Survival.** Cancellation. Buyer may, by written notice to Seller, cancel the whole or any portion of this Purchase Order in the event of (i) proceedings, voluntary or involuntary, in bankruptcy or insolvency, by or against Seller; (ii) the appointment, with or without

- Seller's consent, of any trustee or receiver for any substantial portion of Seller's assets; (iii) any assignment for the benefit of Seller's creditors; (iv) Seller's breach of any provision contained herein; or (v) for Buyer's convenience. If Buyer terminates the Purchase Order for any reason, Seller's sole and exclusive remedy is payment for the products and/or services received and accepted by Buyer prior to cancellation. In the event of any cancellation other than for Buyer's convenience, Seller shall be liable to Buyer for any excess cost if Buyer procures substitute products elsewhere. In the event of any cancellation, Buyer may require Seller to deliver to Buyer, in the manner and to the extent directed by Buyer, any completed or partially completed products for which payment has been remitted by Buyer. Seller shall continue performance of this Purchase Order to the extent not cancelled. Except with respect to the cancelled portion of this Purchase Order, Buyer's rights set forth in this Cancellation Section shall be in addition to Buyer's other rights in the event of Seller's default. Survival. Provisions of this Purchase Order which by their nature should apply beyond the term will remain in force after any termination or expiration of this Purchase Order including, but not limited to, at least the following provisions: Set-off, Warranties, Indemnification, Limitation of Liability, Intellectual Property, Insurance, Compliance with Laws, Governing Law and Jurisdiction, and Survival.
- 17. **Assignment:** Seller shall not delegate or subcontract any duties or assign any rights, obligations or claims under this Purchase Order without the prior written consent of the Buyer, and any such attempted delegation, subcontract or purported assignment shall be null and void.
- 18. **Governing Law and Jurisdiction:** This Purchase Order and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed, and enforced as a sealed instrument in accordance with the laws of the Commonwealth of Massachusetts without giving effect to any conflict of law provision. Any legal suit, action or proceeding arising out of or relating to this Purchase Order shall be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Massachusetts in each case located in either Middlesex County or Suffolk County, and each party irrevocably submits to the exclusive jurisdiction of such courts.
- 19. **Indemnification:** Seller shall defend, indemnify and hold Buyer and Buyer's parent company, its subsidiaries,



affiliates, successors or assigns and Buyer's respective directors, officers, shareholders and employees and customers (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the products purchased from Seller or Seller's negligence, willful misconduct or breach of the terms of this Purchase Order. Seller shall not enter into any settlement without Buyer's or an Indemnitee's prior written consent. In addition, Seller shall, at its expense, defend, indemnify and hold Buyer and any Indemnitee harmless against any and all Losses arising out of or in connection with any claim that Buyer's or an Indemnitee's use or possession of the products infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. If a final injunction is obtained against Buyer's right to continue using an affected product or, if in Buyer's opinion the products are likely to become the subject of a claim, then Seller shall (a) obtain the right for Buyer to continue to use the products; or (b) replace or modify the products so that they no longer infringe but functions in an equivalent manner. If Seller determines that neither of these alternatives is reasonably available, then Seller shall terminate this Purchase Order and refund any monies paid by Buyer for the products. In no event shall Seller enter into any settlement without Buyer's or an Indemnitee's prior written consent. Seller shall not be liable to the extent an indemnifiable claim is directly caused by compliance with Buyer's designs or instructions.

20. **Limitation of Liability:** Notwithstanding any provision of this Purchase Order to the contrary, in no event shall Buyer or its affiliates or their officers, directors, employees, agents, shareholders or contractors ("Related Parties"), be liable to Seller for any consequential, incidental, special, punitive or exemplary damages (including but not limited to lost revenues, profits or data or other economic loss) arising from any cause, even if Buyer is advised of the possibility of such damages. The maximum liability of Buyer and its Related Parties, taken as a whole, for any and all claims in connection with this Purchase Order and the products, shall in no circumstance exceed the fees paid to Seller by Buyer for the product giving rise to the liability.

- 21. **Insurance:** Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1 million per occurrence and \$2 million aggregate; automobile liability covering both personal injury and property losses in a sum no less than \$1 million each accident; statutory workers compensation insurance and employers liability coverage in a sum no less than \$1 million; errors and omission insurance in a sum no less than \$10 million and excess or umbrella liability in a sum no less than \$5 million with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Purchase Order, which shall name Buyer as an additional insured, Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in Seller's insurance policies. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer or the Indemnitees and Buyer's insurers.
- 22. **Set-off:** Any amount owed to Seller by Buyer or any of Buyer's affiliates shall be subject to deduction for any set-off, counterclaim or indemnification rights arising out of this or any other Purchase Order to Seller from Buyer or any of Buyer's affiliates.
- 23. **Severability; Remedies; Waiver:** Severability. In the event that any one or more provisions contained in this Purchase Order shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Remedies. The rights and remedies contained herein are cumulative and in addition to any other remedies at law or in equity or otherwise. Waiver. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Purchase Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 24. **Anti-corruption:** With respect to laws relating to corruption, commercial bribery, and money laundering, Seller represents and warrants that no part of any profits obtained by it in connection with its sale of the products and/or services under this Purchase Order will be (i) directly or indirectly paid, offered, transferred, or given to any official, representative, or employee of any



government, government agency, or instrumentality for the purpose of obtaining or retaining business for or with, or directing business to, any person or company (such as, Buyer), or (ii) otherwise used for any purpose which would violate the U.S. Foreign Corrupt Practices Act or any other laws, regulations, and standards of the U.S. or other applicable countries. Seller agrees to indemnify and hold Buyer harmless from, or in connection with, any violation of the provisions of this Article 24 by Seller or its employees, consultants, agents, customers or subcontractors.

25. **Additional or Inconsistent Terms:** Any term or condition set forth in any Purchase Order, proposal or other document provided by Seller to Buyer which is in any way different from, inconsistent with or in addition to the terms and conditions set forth herein will not become a part of this Purchase Order or be binding upon Buyer. Buyer's failure to object to terms contained in any communications from Seller will not be a waiver of the terms set forth herein. Seller shall not condition any delivery upon the abrogation or modification of any of the terms and conditions included on this Purchase Order.
26. **Entire Agreement:** This Purchase Order is the complete and exclusive statement of the contract between Buyer and Seller with respect to Buyer's purchase of the products. No waiver, consent, modification, amendment or change of the terms of this Purchase Order shall be binding unless in writing and signed by Buyer and Seller. In case of a conflict between the terms and conditions on the face of this Purchase Order and the terms and conditions contained on this reverse side of this Purchase Order, the terms and conditions on the face of this Purchase Order shall control.