



Terms and Conditions of Sales and Services

1. **AGREEMENT.** All sales by Advanced Energy Industries, Inc., or its direct or indirect subsidiary (collectively, "AE") of any products ("Products") to the purchaser ("Customer"), and/or the sale or provision by AE to the Customer of any maintenance or support services for Products ("Services") specified in the associated sales order confirmation or quotation from AE ("Confirmation") shall be exclusively governed by these terms and conditions and the accompanying Confirmation (collectively, the "Terms"). These Terms comprise the entire agreement between the parties. **These Terms take precedence over Customer's additional or different terms and conditions whether contained on a purchase order or other documentation, which AE objects to and hereby rejects.** Customer's right to the Products and/or Services is **expressly made conditional** upon Customer's acceptance of these Terms, any changes to these Terms must specifically be agreed to in a writing executed by AE and Customer before becoming binding on either party. To the extent a conflict or inconsistency exists between these Terms and any document submitted to AE by Customer, these Terms will control. Customer acknowledges that in the event the Products are specified as used or reconditioned, the warranties offered by AE may be less protective than the warranties offered for new Products of the same kind.

2. **WARRANTY FOR PRODUCTS.** If Customer has purchased Products, then this Section 2 shall apply. AE warrants that: (a) new Products sold by AE will be free from defects in material and workmanship for 1 year from the date AE ships the Product, unless a different time period is specified on AE's Confirmation, website, or other AE authorized writing, in which case that time period will prevail, (b) certified used or refurbished Products sold by AE will be free from defects in material and workmanship for 180 days from the date AE ships the Product, and (c) exchange units delivered to Customer to replace a defective Product returned to AE by Customer will be free from defects in material and workmanship for the longer of (i) 90 days from the date AE ships the exchange unit, or (ii) the remainder of the defective and returned Product's original warranty. Additionally, for any Product repaired or serviced under: (i) AE's conversion and upgrade services, the Product will be free from defects in material and workmanship for 90 days from the date of conversion/upgrade, (ii) AE's refurbishment service, the Product will be free from defects in material and workmanship for 180 days from the date of refurbishment, and (iii) AE's standard repair service, any repaired component of the Product will be free from defects in material and workmanship for 90 days from the date of repair. AE's warranty shall not apply to any Products that are not installed, started, or used in operation and tested in conformity with AE's published instructions or specifications, or to any Products which have been subject to misuse, negligence, or accident, or altered or repaired by anyone other than AE or AE's duly authorized agent. AE's warranty does not cover external factors, including without limitation, fire, accident, power surge, power failure, improper storage, damage in shipping or while in transit, or any other hazard not caused by or under the control of AE. In all cases, AE has sole responsibility and discretion for determining the cause and nature of a Product defect, and AE's determination with regard thereto shall be final. Customer must notify AE of any breach of warranty within the applicable warranty period. The exclusive remedy for any breach of warranty shall be, at AE's option, the repair of the Product or replacement of such Product with a Product of the same type, or the refund of the Purchase Price (defined below) for such Product. When notifying AE of, or returning to AE, any Products that fail to meet an applicable warranty, Customer shall comply with AE's then-current Return Material Authorization procedure (available upon request). AE will pay freight on Products returned to Customer which are covered by the warranty in Section 2; Customer will pay freight on Products returned to Customer that are not covered by warranty. AE owns, and Customer hereby assigns to AE ownership of, any part, component, or item removed from a Product by AE under these Terms for any reason. Pre-production (e.g., prototype, engineering verification test, or design verification test) units are sold "where is, as is, with all faults" without warranty of any kind, express or implied, including, without limitation, implied warranties of merchantability or fitness for intended purpose. If Products are purchased through an AE-authorized distributor, then any claims relating to such Products must be pursued through such distributor. If Products are purchased through a distributor that is not authorized by AE, then no warranties shall apply to such Products.

3. **WARRANTY FOR SERVICES.** If Customer has purchased Services, then this Section 3 shall apply. AE warrants that the Services will be performed in a workmanlike manner. Customer's exclusive remedy for a breach of this warranty is for AE to re-perform the Service at no extra charge. Customer must notify AE of any breach of this warranty within 30 days of the date of the provision of the non-compliant services.

4. **DISCLAIMER OF WARRANTY.** The express warranties in Sections 2 and 3 above are made in lieu of any and all other warranties, express or implied. AE does not make, and hereby disclaims, all warranties and conditions including without limitation the implied

warranties of merchantability, fitness for a particular purpose, title or non-infringement of third-party rights. No warranties are made by any of AE's licensors or suppliers. No agent, representative or employee of AE has any authority to make any representations or warranties on behalf of AE.

5. **LIMITATION OF LIABILITY.** AE's total liability arising from the Products and/or Services, whether for breach of contract or warranty, negligence or otherwise, will be limited to fifteen percent (15%) of the amount Customer paid for the Products and/or Services for which losses or damages are claimed during the 12 months prior to the initial event causing liability. The existence of more than one claim will not increase this limit. In no event shall AE be liable for any special, incidental, consequential, indirect, liquidated or punitive damages or penalties arising out of or related to the Products and/or Services, regardless of whether AE has been advised of the possibility of such damages and whether arising out of design or manufacturing defect, negligence, breach of warranty, strict liability, default, indemnity or any other reason or legal theory arising out of the use or handling of its Products or its performance under these Terms. No action relating to the Products and/or Services may be brought by Customer more than one year after delivery of the Products or completion of the Services. AE disclaims all liability of any kind of AE's suppliers and licensors.

6. **USE OF PRODUCTS; INDEMNIFICATION.** Customer shall indemnify AE against all claims, losses, damage, injury, or other liability arising out of or related to the use of the Products, whether sold separately or incorporated into any of the Customer's products or services. Limitations on Use. The Product(s) are not developed for medical use, nuclear applications, or for use in any other inherently dangerous activity (collectively, "Ultra-hazardous Uses"). Customer agrees not to use the Products for any Ultra-hazardous Uses, and any such Ultra-hazardous Use is entirely at the Customer or end-user's own risk. Customer agrees that AE shall not be liable for any claims, losses, costs or liabilities arising from such Ultra-hazardous Uses if Customer or its distributors or customers use the Product(s) for such applications. Without limiting the generality of the foregoing, Customer agrees to indemnify and hold AE harmless from any claims, losses, costs, and liabilities arising out of or in connection with the use of the Product(s) in any such applications. Customer agrees to incorporate the foregoing restriction in all contracts or sale documents under which Customer sells the Product(s) or a device incorporating the Product(s) to Customer's customers.

7. **DELIVERY OF PRODUCTS; ALLOCATION; TITLE.** Delivery and completion dates are estimates; AE will use commercially reasonable efforts to meet desired delivery and completion dates but will not be liable to Customer in any way for any late shipment or completion. Delivery requests not conforming to AE's lead times are subject to expedite fees. AE will not be liable for any delays, loss, or damage in transit. AE shall not be responsible for any failure to perform caused by strike, flood, fire, act of God, pandemic, scarcity of the materials needed to produce the Products or complete the Services, Buyer's acts or omissions, governmental actions or restrictions, or any other cause beyond the reasonable control of AE. If AE determines that its ability to supply the total demand for Products, or to obtain materials used in the manufacture of Products, is hindered, limited or made impracticable, AE may allocate its available supply of Products among its purchasers on such basis as AE determines to be equitable without liability for any failure of performance which may result therefrom. Customer will accept and pay for partial shipments of Products or performance of Services. Unless otherwise provided on the Confirmation, the Products shall be delivered FCA (Incoterms 2020) AE's factory or service facility. Identification of the Products shall occur when they are placed in the hands of the carrier for shipment to Customer. The Products shall be placed in suitably protected containers, the nature of which shall be determined by AE. Delivery obligations for returned Products is addressed in Section 2. Title to Products passes to Customer when Products are placed in the hands of the carrier for shipment to Customer. The Products are deemed accepted upon receipt by Customer.

8. **PURCHASE MONEY SECURITY INTEREST.** If Customer has purchased Products, then this Section 8 shall apply. AE hereby reserves, and Customer hereby grants to AE, a purchase money security interest ("PMSI") in the Products sold hereunder and all the proceeds thereof, including but not limited to insurance proceeds, to secure performance of all of Customer's obligations hereunder. Customer's failure to pay any amount when due shall give AE the right to repossess and remove the Products. Customer agrees, without further consideration, at any time to do or cause to be done, executed, and delivered, all such further acts and instruments as AE may reasonably request in order to perfect AE's PMSI. Customer agrees that AE shall have the authority to file any documents necessary, including but not limited to, any UCC-1 (or similar) financing statement or continuation statement, to perfect

and maintain the perfection of AE's PMSI granted here under.

9. INSURANCE; TAXES. In no case does the purchase price of the Products and/or Services ("Purchase Price"), even if inclusive of freight, cover the cost of any insurance; however, if the route selected involves movement of the Products by common carrier for which the freight rate does not include insurance, AE may at its option, or upon Customer's instruction, procure insurance which amount Customer shall reimburse to AE. Unless otherwise provided on the Confirmation, the Purchase Price is exclusive of, and Customer is responsible for, all sales, value added, use and like taxes and any applicable Customs duties, import licenses, excise fees or tariffs. AE will invoice Customer for all applicable taxes unless Customer supplies an appropriate and valid tax exemption certificate.

10. CANCELLATION/RESCHEDULE/CHANGES. Any request for order cancellation, change request, or reschedule must be received in writing and may be granted or withheld at AE's sole discretion. For any permitted order cancellation, Customer shall be liable for the fees and costs of all work done and materials purchased or provided up to the time of cancellation plus a charge for overhead and loss of profit and any other cancellation charges including without limitation non-recurring engineering expenses, restocking fees, cancellation costs payable by AE to its suppliers, and any other costs incurred by AE relating to such cancellation, as well as the difference in amount paid between volume discount given and the current list or non-discounted price of the Product at the time of cancellation. Upon approval, orders may be rescheduled to ship up to 90 days after the originally scheduled ship date and are subject to a 15% reschedule charge. Only one reschedule per order is allowed. Confirmations may not be cancelled after commencement of Services by AE. Changes to part numbers or Product configurations are subject to a 15% change fee from the original Product price; new part number pricing will also apply.

11. PAYMENT TERMS; INSURANCE ON PRODUCTS. Quoted prices for Products or Services are binding on AE only if put in writing submitted by AE. Purchase Price or prices for any undelivered Products or Services may be increased (or surcharges imposed) by AE in the event of any increase in the cost to AE of supplies, logistics, raw materials, labor or services, tariffs, or any other increase in AE's cost resulting from any cause beyond AE's reasonable control. All Products are invoiced upon shipment and all Services are invoiced upon completion. Terms of payment are net 30 days from the date of invoice, unless otherwise expressly provided for and confirmed in writing by AE. Notwithstanding any specified payment terms, AE may require payment in advance of shipment of Product or commencement of repair services if Customer's credit, in AE's sole judgment, becomes impaired. The Purchase Price shall become immediately due and payable and AE may cancel any unfilled portion of a shipment or uncompleted Service upon Customer's failure to make any payment when due. Customer shall automatically incur, and agrees to pay, the following additional costs and charges on any amounts that are not paid when due: (i) finance charges computed at an interest rate of the lesser of the maximum allowed by applicable law or 1 1/2% per month from the applicable due date until paid, and (ii) AE's costs of collection. Customer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with AE, regardless of whether relating to AE's breach, bankruptcy or otherwise. Customer, at its expense, shall fully insure Products against all loss or damage until the Purchase Price has been paid in full. If a subsidiary or affiliate of Customer fails to make a payment pursuant to these Terms, and AE notifies Customer in writing of such failure, Customer will either cause the subsidiary or affiliate to make such payment to AE or shall itself make such payment to AE.

12. PROPRIETARY INFORMATION. AE may provide confidential or proprietary information to Customer in connection with the Products and/or Services ("CI"). Customer agrees that CI shall include all information which Customer knows or reasonably may know is confidential. CI shall remain the exclusive property of AE and Customer must not disclose CI to any third-party and will preserve and protect the confidentiality of CI by using at least reasonable care and Customer will take all other acts reasonably requested by AE with respect to CI. Upon AE's request, Customer will return to AE all documents containing AE's proprietary information and retain no copies thereof. Customer agrees that its obligation to protect AE's proprietary information shall be ongoing and shall not cease upon completion or termination of these Terms. "AE IP" means any and all intellectual property developed, owned, acquired, conceived, or controlled by AE. AE shall retain all right, title, and interest in and to all of the AE IP. AE grants no license hereunder to Customer under any patent, copyright, trademark, or other intellectual property rights.

13. ADVICE; ENGINEERING CHANGE ORDERS. AE may provide Customer technical advice regarding the Products and Services, but AE does not control or supervise the subsequent manufacture, fabrication, or installation of Customer's products or their use after sale or Service and does not warrant or guarantee such advice. AE reserves the right to make additional engineering changes as necessary to comply with AE's internal policies and procedures. AE reserves the right to charge Customer for costs and expenses incurred by AE associated with any servicing or repair of a Product or component for which there is no problem observed (NPO), regardless of whether the Product is returned to AE for repair or AE deploys resources to make the repair.

14. SPECIAL ORDERS. Customer acknowledges that if this purchase is a special order for custom goods, the provisions of this paragraph supersede any conflicting general terms of these Terms. Customer agrees to defend, protect, and hold harmless AE against all suits at law or in equity and from any and all damages, claims, and demands for personal injury or actual or alleged infringement of any United States or foreign intellectual property right and to defend any suit or actions which may be brought against AE for such injury and/or any alleged infringement because of the manufacture and/or sale of the custom good. Customer will describe any specially ordered customer goods in the purchase order at or before the time

that their manufacture or assembly commences.

15. EXPORT; COMPLIANCE WITH LAW. Customer shall comply with all applicable laws, regulations, and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under these Terms. Customer acknowledges that the laws and regulations of the United States restrict the export and re-export of certain commodities and technical data. Customer will not export or re-export the Products or any related technical documentation in any form in violation of the export or import laws of the United States or any foreign jurisdiction. Customer shall not, without U.S. government authorization, export, re-export, or transfer any goods, software, or technology subject to these Terms, either directly or indirectly, to any country subject to a U.S. trade embargo (currently Cuba, Iran, North Korea, and Syria) or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. In addition, any software or any technology subject to these Terms may not be exported, reexported, or transferred to an end-user engaged in activities related to weapons of mass destruction. Further, Customer and its personnel, agents and representatives are aware of, and agree to abide by, the obligations imposed by the laws of the countries in which Customer does business (including, without limitation, the Foreign Corrupt Practices Act) dealing with payments or gifts to governments or related persons for the purpose of obtaining or retaining business for or with, or directing business to, any person. Accordingly, Customer agrees that no portion of monies paid or payable to Customer in connection with these Terms, (or anything of value) will, directly or indirectly, be paid, received, transferred, loaned, offered, promised or furnished to or for the use of any officer or employee of any government department, agency, instrumentality or corporation thereof, or any political party or any official of such party or candidate for office, or any person acting for or on behalf of any of the foregoing, for the purpose of obtaining or retaining business for or with, or directing business to, any person. Customer will comply with the applicable provisions of 42 USC § 1320a-7b prohibiting illegal remuneration (including kickback, bribe, or rebate). Customer will defend, indemnify, and hold harmless AE from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors, or employees.

16. U.S. GOVERNMENT CONTRACTS. No regulations or requirements of any government other than the U.S. government will be imposed on AE. If the Customer has purchased AE Products in support Customer's U.S. government customer, AE agrees to inclusion by reference of the U.S. Federal Acquisition Regulation / FAR 52.244-6(c)(1) or 52.212-5(e)(1), to the extent that each is applicable and in effect, and no other FAR clauses or agency FAR Supplement clauses, or any other U.S. government contracting requirements. Customer will indicate in any purchase order if the purchase order is in support of the U.S. government and which of the aforementioned clauses are applicable to the purchase.

17. LAW; VENUE. These Terms will be governed by the laws of the State of Colorado giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer shall only bring an action arising from or relating to these Terms in a state or federal court in Denver, Colorado or Fort Collins, Colorado, and Customer irrevocably submits to the personal jurisdiction and venue of such court in such action or in any action brought in such courts by AE. Customer irrevocably consents to the service of process from any of the aforesaid courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer at its address designated pursuant to these Terms, with such service of process to become effective fifteen (15) days after such mailing. Customer agrees to pay AE's reasonable attorney's fees and costs required to enforce AE's rights hereunder. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.

18. ARBITRATION. Customer agrees that AE shall have the right to have any dispute between the parties arising out of or in connection with these Terms be settled by arbitration utilizing the dispute resolution procedures of the American Arbitration Association (or, if Customer is not domiciled in the United States, the International Arbitration Rules of the International Centre for Dispute Resolution) in Denver, Colorado which shall be the seat of the arbitration. If the amount in controversy is less than \$5 million (U.S.), then one arbitrator shall be appointed in accordance with said rules. If the amount in controversy is greater than or equal to \$5 million (U.S.), then three arbitrators shall be appointed in accordance with said rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, nothing in these Terms shall limit either party's right to seek immediate injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such relief in a court of competent jurisdiction.

19. GENERAL. No waiver of rights under these Terms by either party shall constitute a subsequent waiver of this or any other right under these Terms, and all waivers must be in writing to be effective. Neither these Terms nor any rights under these Terms shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of AE and any unauthorized transfer or assignment shall be void. These Terms shall bind and inure to the benefit of the successors and permitted assigns of the parties hereto. In the event that any of the terms of these Terms are held to be illegal by any court of competent jurisdiction, all remaining terms of these Terms shall remain in full force and effect. These Terms together with AE's associated Confirmations (if applicable) constitute the entire understanding and agreement between the parties regarding the subject matter hereof and supersede all prior or contemporaneous understandings, written or oral. In the event the terms of a Confirmation contain additional or different terms than these Terms, the terms of the Confirmation will govern and control. These Terms may only be amended by a written document, signed by the authorized representatives of both parties.