



Planar Monolithics Industries, Inc.

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PLANAR MONOLITHICS INDUSTRIES, INC.

TERMS AND CONDITIONS

PMI's Terms and Conditions

The Terms and Conditions of Sale contained herein (the "Agreement") constitute the entire agreement between Planar Monolithics Industries, Inc. ("Seller" or "PMI") and the party which places a purchase order with PMI ("Buyer") and shall control all purchases of Products (as hereinafter defined) by Buyer from PMI. PMI will not be bound by any terms of Buyer's purchase order unless expressly agreed to in writing by PMI. No form of acceptance except PMI's written or electronic acknowledgment provided to Buyer or PMI's commencement of performance shall constitute valid acceptance of Buyer's purchase order; any such acceptance is expressly conditioned on Buyer's assent to the terms hereof and the exclusion of all additional or different terms except as may be set forth in a written agreement expressly superseding these terms. Buyer shall be deemed to have assented to the terms hereof, whether or not previously received, upon accepting delivery of anything shipped by PMI. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms hereof and PMI hereby gives notice of its objection to any additional or different terms proposed by Buyer in its purchase order or any other documents.

Terms and Conditions

- 1. Purchase of Equipment.** Seller hereby sells to Buyer and Buyer hereby buys from Seller, the Equipment described above. The Equipment, together with all replacement parts, repairs, additions, substitutions and accessories is hereafter collectively referred to as the "Equipment". Buyer shall purchase Products by issuing a written purchase order (the "Order") signed by an authorized representative, indicating specific Products, quantity, unit price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certificates, if applicable, and any other special instructions.
- 2. Delivery/Installation of the Equipment.** Buyer's confirmation to Seller, by means of delivery of a Equipment Delivery/Installation Certificate in form and substance satisfactory to Seller, of the delivery and installation of the Equipment to and by Buyer shall constitute Buyer's acknowledgment of its receipt of the Equipment in good working condition, and that all installation and other work necessary prior to use thereof has been completed. Buyer understands that Seller will be relying upon such confirmation by Buyer as a condition of making payment to the supplier for the Equipment.
- 3. Term and Payments.** The term of this Agreement shall commence on the day of the month in which the Equipment is delivered to Buyer or Buyer's agent. The monthly payments hereunder shall commence and be due on the first day of the month following the date on which the Equipment has been delivered to Buyer or its agent, and payments shall be paid on the first day of each successive month thereafter for the full Term. The Buyer also agrees to make said payments by pre-authorized bank debit only and further agrees to execute the necessary documents required to do so, in form and substance satisfactory to Seller. Buyer's obligation to make payments and all other obligations hereunder shall be absolute and unconditional
- 4. Buyers Obligations.** If the Equipment does not operate as represented by the manufacturer or supplier, or is unsatisfactory for any reason whatsoever the Buyer shall make any such claim solely against the manufacturer or supplier and Buyer hereby waives any such claim against Seller and agrees to continue to make all payments to Seller stipulated by this Agreement notwithstanding any such claims. No representation or warranty by the manufacturer or supplier is binding on Seller nor shall breach of such warranty relieve Buyer of its obligations to Seller. Seller hereby assigns to the Buyer, to the extent assignable and without recourse to Seller, all warranties from the Manufacturer to Seller provided that if the Equipment is returned to or repossessed by Seller, all such warranties shall be deemed to have been reassigned to Seller.

5. Title: Personal Property. Title to the Equipment is reserved by Seller until Seller has been paid in full for the Equipment. Buyer hereby authorizes Seller, at Buyer's expense, to cause this Agreement, or any statement or other instrument in respect of this Agreement showing the interest of Seller in the Collateral, including without limitation Personal Property Security Act financing statements, to be filed or recorded and grants Seller the right to sign Buyer's name thereto. Buyer agrees to execute and deliver any statement or instrument requested by Seller for such purpose, and agrees to pay or reimburse Seller for any searches, filings, recordings, stamp fees or taxes related to the filing or recording of any such instrument or statement. Buyer shall at its expense keep the Collateral free from any legal process, lien, charge, or encumbrance and shall give Seller immediate written notice of any claim as to the foregoing and shall indemnify Seller from any loss caused thereby. Buyer shall, upon Seller's request, execute or obtain from third parties and deliver to Seller such certificates, landlord's waivers and such further instruments and assurances as Seller deems necessary or advisable for the confirmation of compliance with the terms of this Agreement or perfection of Seller's rights hereunder. The Equipment is, and shall at all times be and remain, personal property notwithstanding that the Equipment or any part thereof may now be or hereafter become, in any manner, affixed or attached to real property or any improvements thereon.

6. Maintenance, Use and Location. Buyer shall, at its own cost and expense, maintain the Equipment in good operating condition and repair other than normal wear and tear; shall use the Equipment in the regular course of its business and at the location stated herein, within its normal operating capacity and shall comply with all laws, ordinances, regulations, requirements (from the manufacturer or otherwise) and rules with respect to the maintenance and operation of the Equipment; shall not move the Equipment or make any modifications, alterations or additions to the Equipment without prior written consent of Seller; shall not so affix the Equipment to realty as to change its nature to real property or a fixture.

7. Risk of Loss. Buyer shall bear all risks of loss or damage to Equipment from any cause from date of delivery to Buyer. Buyer shall immediately notify Seller of any damage to or destruction of the Equipment. In the event of loss or damage, Buyer, at Seller's sole option, shall (a) repair the damaged Equipment; or (b) replace lost or unrepairable damaged Equipment with substantially identical Equipment in good condition and working order with documentation creating clear title thereto in Buyer; or (c) pay to Seller the present value of all remaining payments provided for over the balance of the term of this Agreement discounted at six (6%) per annum.

8. Insurance. Buyer shall keep the Equipment insured against all risks of loss or damage from every cause whatsoever during the unpaid term of this Agreement or for not less than the full replacement value thereof, and shall carry public liability and property damage insurance covering the equipment and its use in amounts customary for similar Equipments and name Seller and its assignee as loss payee, as their interests may appear with respect to property damage coverage as additional insured with respect to property damage coverage and as additional insured with respect to public liability coverage. Buyer shall pay the premiums therefore and deliver said policies or certificates of coverage therefore to Seller; the insurance shall provide Seller a right to thirty (30) days written notice before the policy can be altered or canceled and the right, without obligation, to pay the premiums. Should Buyer fail to provide such insurance coverage, Seller may obtain such coverage and charge Buyer therefore.

9. Taxes and Charges. This Agreement is intended to be a net agreement, and all payments net to Seller to the extent permitted by applicable law. Buyer shall pay directly (or, at Seller's option, reimburse Seller for) all license fees, assessments and other government charges, and all sales, use, excise, franchise, and any other similar taxes (collectively, "Charges") now or hereafter imposed, levied or assessed by any federal, provincial or local government or agency upon any of the Equipment or upon the purchase, ownership, use, possession, financing or operation thereof, or upon the receipt of payments (excluding income taxes) before the same shall become in default or subject to the payment of any penalty of interest. Seller, at its sole option, may assess

estimated personal property tax with each payment. Buyer shall supply Seller with receipts or other evidence of payment of all Charges as may reasonably be requested by Seller.

10. Agreement Irrevocability and Other Representations of Buyer. BUYER'S OBLIGATIONS UNDER THIS AGREEMENT ARE ABSOLUTE, NON CANCELLABLE AND SHALL CONTINUE WITHOUT ABATEMENT AND REGARDLESS OF ANY DISABILITY OF BUYER TO USE THE EQUIPMENT OR ANY PART THEREOF FOR ANY REASON INCLUDING, BUT NOT LIMITED TO WAR, ACT OF GOD, FORCE MAJEURE, GOVERNMENTAL REGULATIONS, STRIKE, LOSS, DAMAGE, DESTRUCTION, OBSOLESCENCE, FAILURE OF OR DELAY IN DELIVERY, REPAIR OR MAINTENANCE, UNAVAILABILITY OF PARTS OR SUPPLIES, FAILURE OF THE EQUIPMENT TO OPERATE PROPERLY, TERMINATION BY OPERATION OF LAW, OR ANY OTHER CAUSE.

11. Indemnity. Buyer shall indemnify and hold Seller harmless from and against any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including legal fees (on a solicitor and own client basis) arising out of, connected with, or resulting from the Equipment or this Agreement. Such indemnity shall survive the termination or expiration of the Agreement. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR LOST DATA, OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. Default and Remedies. If any one of the following events shall occur (a) Buyer fails to pay any payment hereunder when due; or (b) Buyer fails to pay within five (5) days when due, any sums due to Seller arising independently of this Agreement; or (c) Buyer fails to perform any covenants herein or in any other agreement with Seller after 10 days written notice; or (d) Buyer becomes insolvent, bankrupt or makes an assignment for the benefit of creditors; or (e) the Buyer assigns any of its rights under this Agreement, except in accordance with paragraph 13 hereof; or (f) the Franchise Agreement between Buyer and Seller is terminated for any reason whatsoever, Seller may, to the extent permitted by applicable law, exercise any one or more of the following remedies: (i) Declare the entire unpaid balance of payments for the unexpired term of the Agreement immediately due and payable and recover the present value of all remaining payments for the balance of the term of this Agreement discounted to the date of default at six percent (6%) per annum; (ii) Charge Buyer interest on all monies due Seller from and after the date the same is due at the rate of twelve percent (12%) per annum, calculated monthly, until paid but in no event more than the maximum rate permitted by law; (iii) Require Buyer to return the Equipment at Buyer's expense, to a place designated by Seller and to recover possession of all items of Equipment, without demand or notice, wherever same may be located, without any court order or pre-taking hearing. Buyer hereby waives any and all damages occasioned by such retaking. Seller may, at its option, use, ship, store, repair or recondition all Equipment so recovered and sell, lease or otherwise dispose of any such Equipment at a private or public sale, or resell the Equipment at Buyer's premises at reasonable business hours without being required to remove the Equipment. Buyer shall also be liable for and shall pay to Seller all expenses incurred by Seller in connection with the enforcement of any of Seller's remedies including all expenses of repossessing, storing, shipping, repairing, and selling the Equipment, and Seller's reasonable legal fees and disbursements on a solicitor and own client basis. All remedies of Seller hereunder are cumulative, are in addition to any other remedies provided for by law, and may, to the extent permitted by law, be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of Seller to exercise and no delay in exercising any right or remedy shall operate as a waiver thereof or modify the terms of this Agreement. A waiver of default shall not be a waiver of any other or subsequent default.

13. Cancellations. In the event that either party defaults in any of the terms, conditions, obligations, undertakings, covenants, or liabilities set forth herein, the other party shall give the defaulting party written notice of such default. If the defaulting party does not remedy such default within ninety (90) days following receipt of written notice thereof, the party giving notice may cancel the Order by providing the defaulting party with a written notice of cancellation. In addition, either party may cancel the Order by providing written notice to the other party in the event the other party becomes insolvent, files a petition for bankruptcy under any chapter of the U.S. bankruptcy laws, enters into any arrangement or composition with creditors, or goes or is put into liquidation, or, in the case of the Buyer, is unable to meet its debts as they become due. Except as provided in Paragraph 2.3, cancellation of the Order shall not relieve either party from its obligations hereunder which shall have accrued prior to such cancellation. Cancellation by Buyer of the Order pursuant to this article shall be Buyer's sole and exclusive remedy for any breach by Seller. In the event an Order is agreed to be canceled, Buyer will be liable for no less than the sum of (i) the sales price of all finished goods, (ii) the total cost of all work in process and all raw materials purchased for the Product, including long lead time and/or bulk material, (iii) a reasonable profit with respect to unfinished goods and (iv) any other obligations, liabilities, expenses and/or costs incurred by Seller in connection with the Order (including, but not limited to, any administrative, freight and restocking costs and expenses). In no event will Buyer's liability under this section exceed the total value of the canceled portion of the Order.

If the Products are being purchased to complete a U.S. Government contract which can be and is terminated for the government's convenience, Buyer will give prompt notice to Seller of the termination thereof and will promptly reimburse Seller in accordance with the provisions of the termination article of such government contract. In addition, Buyer shall be liable for, and include in any such reimbursement amount, all of Seller's costs incurred in connection with, arising out of or otherwise associated with the cancellation of the Order for the government's convenience, including, without limitation, administrative costs and expenses incurred in connection with the preparation and processing of all documentation in connection therewith. Buyer further agrees not to raise any claim or defense arising out of this Agreement or otherwise which it may have against Seller as a defense, counterclaim, or offset to any action by an assignee or secured party hereunder. Upon Seller's request, Buyer will acknowledge to any assignee receipt of Seller's notice of assignment. Nothing contained herein is intended to relieve Seller of any of its obligations. BUYER SHALL NOT ASSIGN THIS AGREEMENT OR ANY INTERESTS HEREUNDER NOR ENTER INTO ANY TRANSACTION OF SALE OR LEASE WITH RESPECT TO THE EQUIPMENT WITHOUT SELLER'S PRIOR WRITTEN CONSENT, WHICH MAY BE GRANTED OR WITHHELD IN SELLER'S SOLE DISCRETION.

14. Consent to Jurisdiction, Governing Law and Waiver. Buyer consents to the personal jurisdiction of the courts of the State of New York with respect to any action arising out of this Agreement or the Equipment. Service of process by registered mail or by facsimile shall be deemed the equivalent of personal service in any such action. This Agreement shall be governed by and construed according to the laws of the State of New York. To the extent permitted by law, Buyer hereby waives any and all rights and remedies granted it by the provisions of any law, statute or regulation which would, in any manner, affect Seller's rights and remedies hereunder.

15. General. This Agreement shall inure to the benefit of and is binding upon the heirs, personal representatives, successors and permitted assigns of the parties hereto. Time is of the essence of this Agreement. This Agreement contains the entire arrangement between Seller and Buyer, and no modification of this Agreement shall be effective unless in writing and executed by Seller. All covenants and obligations of Buyer to be performed pursuant to this Agreement, including all payments to be made by Buyer hereunder, shall survive the expiration or earlier termination of this Agreement. If more than one Buyer is named in this Agreement, the liability of each shall be joint and several. In the event any provision of this Agreement shall be unenforceable, then such provision shall be deemed deleted, however all other provisions hereof shall remain in full force and effect. All notices under this Agreement shall be deemed given when delivered personally or when sent by certified mail to the party intended at its address set forth herein, or

such other addresses said party may provide in writing from time to time. Any contrary terms or conditions contained in the Buyer's Purchase Order or other paperwork are inapplicable to this contract. The seller's quotation may contain additional terms and conditions of purchase towards this contract.

16. Force Majeure. In addition to any excuse provided by Sections 2-613 through 2-615 of the Uniform Commercial Code, or by any other applicable law, Seller shall be excused from any liability, loss or damage to Buyer or any other person or party for failure to manufacture or deliver, or any delay in delivery, arising from any events beyond Seller's control regardless of whether or not they were foreseeable by either party when the Products were ordered. Such uncontrollable events include, but are in no way limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, accidents, Government priorities or regulations, quarantine restrictions, acts of Buyer, strikes, labor stoppages, labor disputes, differences with workman decrees, delays in transportation, and shortages of cars, fuel, labor or materials.

17. Data and Intellectual Property Rights. Any technical data or information which Seller discloses to Buyer is and shall remain proprietary to Seller and shall be protected by Buyer in the same manner as Buyer protects its own confidential information but with no less than a reasonable degree of care. Buyer agrees not to disclose any such data to any third party, including its affiliates, nor to use it for any purpose other than as intended by Seller. Nothing shall be deemed to transfer to either party any right or license of any kind in any of the other party's intellectual property.