



TERMS AND CONDITIONS OF SALE

The following sets forth the terms and conditions of sale of products and/or services of Naprotek, LLC. ("NAPROTEK") as of the date set forth above. Customer acknowledges that these terms and conditions are subject to change from time to time, and such changes shall be effective and binding against Customer upon written notice thereof from NAPROTEK.

1. **ACCEPTANCE.** No Customer work order for NAPROTEK products or services shall be binding upon NAPROTEK until accepted in writing by an authorized NAPROTEK representative. Customer shall be deemed to have agreed to all terms and conditions of sale provided herein and to any special terms and conditions contained in the price quotation/sales order attached hereto ("Order") or other writing signed by an authorized NAPROTEK representative (collectively, the "Agreement").

2. **CANCELLATION AND HOLDS.** (a) Customer shall advise NAPROTEK of cancellation (whether in whole or in part) of the Order in writing. Upon receipt of Customer's written notification of cancellation, NAPROTEK will arrange to stop all work on the products and/or services cancelled as promptly as reasonably possible. The parties agree that NAPROTEK, in its sole discretion, is entitled to the full price of the agreement for the products and/or services cancelled ("Liquidated Damages"). The parties further agree that these Liquidated Damages represent a reasonable estimate of the loss and damages that will be suffered by NAPROTEK under the circumstances existing at the time the Agreement is entered into. (b) An order that is partially processed and put on hold by the Customer for more than 14 calendar days shall be invoiced at the full price and may be returned to the customer.

3. **QUOTATIONS AND PRICING.** The prices stated in the Order attached to these terms and conditions of sale shall be firm for 30 days from the date of the Order. The Order is not assignable by Customer without the prior written consent of NAPROTEK.

4. **CHANGE IN SCOPE.** No changes to the scope of any services or products provided under this agreement are permitted unless agreed to in advance by NAPROTEK in writing. Customer may suspend or stop the services or manufacture of products under this Agreement by giving a written directive, but once work has been suspended, NAPROTEK is not required to resume the provision of the services or products until the parties agree to a change in scope, schedule, and/or compensation. In the event Customer suspends or stops work under this Agreement, or the parties cannot agree on changes to the scope of services or products (as mentioned above) within five business days, Customer shall be required to compensate NAPROTEK in accordance with paragraph 2.

5. **PAYMENT.** Payments shall be in U.S. dollars. Payment terms include Cash at Time of Order, C.O.D., Visa, MasterCard, American Express, or wire transfer unless and until NAPROTEK has approved the customer for credit terms. If NAPROTEK extends credit terms to Customer, all invoices shall be payable in full within thirty (30) days of the date of the shipment, unless otherwise approved by NAPROTEK and specified in the Purchase Order. Buyer shall advise NAPROTEK's billing department immediately of any discrepancies in regard to any invoice.



Buyer agrees that all line items not in question or dispute shall be paid within the prescribed payment term.

6. SHIPPING AND RISK OF LOSS; SECURITY INTEREST. (a) Delivery and Shipping. Unless otherwise specified, all products are sold F.O.B NAPROTEK's facility and accordingly, all risk of loss or damage in transit shall pass to Customer. Customer is responsible for all transportation, delivery, and insurance costs incurred in connection with the delivery of the products to the designated site. In the event that customer fails to supply NAPROTEK with shipping instructions in a timely manner, NAPROTEK shall have the right to arrange for shipment in any reasonable manner. The shipping schedule shall be computed from the date NAPROTEK receives Customer's order for products and/or services with full instructions, samples, materials and such other information or items as NAPROTEK may need in order to proceed with the design, assembly, manufacture, and/or test of the products ordered. Customer's receipt of products and/or services shall constitute a waiver of any claim for delay. In the event that NAPROTEK commences services before the receipt of a valid Purchase Order from Customer, NAPROTEK reserves the right to hold shipment of Customer parts until a valid Purchase Order is received. (b) Returns. No product shall be returned without authorization and shipping instructions first being obtained from NAPROTEK. All freight forwarding, transportation or any other shipping costs and custom clearance charges shall be paid by the Customer. (c) For custom-ordered goods and materials purchased for use in the assembly process, title transfers to the Customer upon placement in the Customer-Consigned Inventory location, or upon commencement of assembly services, whichever is first. (d). If the Customer chooses to leave consigned parts at NAPROTEK after completion of services for pick up at a later date, title on any attached NAPROTEK owned materials will be deemed to have transferred to the Customer upon notice that the goods are available at the NAPROTEK shipping dock and the Customer assumes risk of loss while left at the NAPROTEK facility.

7. COMPLETION OF SERVICES. Upon completion of requested services in accordance with Customer specifications, NAPROTEK's contractual obligations shall be considered completed and considered accepted by the Customer. If the Customer chooses to leave consigned parts at NAPROTEK after completion of services for pick up at a later date, NAPROTEK may proceed to invoice the customer for the services rendered upon notifying Customer of completion.

8. TAXES AND OTHER CHARGES. Customer shall pay any use tax, sales tax, excise tax, duty, custom inspection or testing fee, or other tax, fee or charge of any nature whatsoever, (other than taxes based on NAPROTEK's net income) imposed by any governmental authority, on or measured by any transaction between NAPROTEK and Customer.

9. OWNERSHIP OF WORK PRODUCT/LICENSE. For purposes of this Agreement, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, methods, models, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, manufacturing and business processes, information and materials selection, conceived or developed by NAPROTEK, whether alone or with others, which result directly or indirectly from the products and/or services sold hereunder. All Work Product shall at all times be and remain the sole and exclusive property of NAPROTEK. All test software and test hardware IP and work product will remain the property of NAPROTEK unless part of a written agreement. If customers consign test software and hardware, ownership of consigned software and hardware will remain with customer.



10. **TEST FAILURE VERIFICATION.** For projects that include funded electrical testing, basic electrical failure verification is included in this pricing proposal. Basic electrical verification includes the effort necessary for NAPROTEK to assure itself that failing devices are truly failures and were not caused by items including but not limited to improper load board seating, socket wear out or handler misalignment. It does not include any effort to determine the root cause failure of a device, characterization work or any other analysis not required to verify that failing devices are valid failures. Electrical and/or physical analysis for root cause failure determination is available, but will require a separate quotation. Electrical failure analysis will be charged by the hour. Any physical failure analysis work will be quoted on a line item basis as required.

11. **HARDWARE.** Costs for customer specific hardware (e.g. test load boards, probe cards, sockets, burn-in boards, etc.) that require replacement or rework due to normal production usage will be charged to the Customer. Replacement costs include labor for rework, material costs, ordering and shipping and handling.

12. **PATENTS.** NAPROTEK assumes no obligations or liability of any kind with respect to claims of infringement of United States or foreign patents, copyrights, trademarks or other proprietary rights arising out of or relating to the Buyer's purchase, importation, use, possession, sale, or delivery of any product or services provided to Buyer by NAPROTEK, and the Buyer shall indemnify, defend and hold NAPROTEK harmless from any and all such claims and liabilities, damages and expenses.

13. **CONFIDENTIALITY; NONDISCLOSURE.** Customer acknowledges that the Work Product provided to it by NAPROTEK is NAPROTEK'S proprietary information and is valuable and not otherwise obtainable from other sources and shall not be copied without NAPROTEK'S written permission. Customer agrees to exercise due diligence to protect and preserve in confidence the Work Product and other confidential information which NAPROTEK designates as such.

14. **WARRANTY.** (a) *Products.* NAPROTEK warrants that the products shall conform to the specifications set forth in Customer's specifications and/or NAPROTEK specifications. When NAPROTEK specifications differ from Customer specifications, NAPROTEK specifications shall prevail. NAPROTEK warrants products of its manufacture to be free from defects in material and workmanship for a period of (365) days from the date of shipment. (b) *Services.* NAPROTEK warrants that the assembly and/or manufacturing services performed for customer shall conform to the specifications set forth in Customer's specifications and/or NAPROTEK specifications. When NAPROTEK specifications differ from Customer specifications, NAPROTEK specifications shall prevail. NAPROTEK warrants products of its manufacture to be free from defects in material and workmanship for a period of (30) days from the date of shipment. NAPROTEK warrants its workmanship of repair for thirty (30) days from the date of repair. NAPROTEK's sole and exclusive obligation under these warranty provisions shall be, at its sole option, to repair or rework the defective products, reprocess any new products supplied by Customer, or provide Customer with an appropriate credit adjustment not to exceed the amount of the Customer's order; provided, that: (i) Customer reports the defect to NAPROTEK in writing and provides a description of the defect and complete information about the manner of its discovery within the warranty period; (ii) NAPROTEK has the opportunity to investigate the reported defect and determines that the defect arises from faulty material supplied by NAPROTEK, parts or workmanship and not from negligence, misuse, improper installation or operation, accident or unauthorized repair or alteration; and (iii) if deemed appropriate by



NAPROTEK, Customer returns the affected product, component or part to a location designated by NAPROTEK, at the expense of Customer. Failure of Customer to give notice within the warranty period shall be conclusive evidence of due fulfillment of the warranty on the part of NAPROTEK, and NAPROTEK shall be released from all liability under this warranty. No product shall be returned to NAPROTEK without authorization and shipping instructions from NAPROTEK. The warranties set forth herein shall be void if: (A) Customer violated its duties under the clauses of these terms and conditions of sale; or (B) Customer directly or indirectly sells, leases or transfers the products to a third party without NAPROTEK's prior written consent. THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.

Customers are obligated to pay NAPROTEK for services rendered in accordance with the agreed-upon payment terms, and NAPROTEK provided service is the exclusive remedy of Customer for product defects or any other claim of liability in connection with the purchase or use of NAPROTEK products and/or services.

15. REMEDIES. In addition to NAPROTEK's remedies as stated in paragraphs 2 and 4 above, and in addition to other available remedies, NAPROTEK shall have the following remedies: In the event Customer fails to make any payment when due, NAPROTEK shall be entitled to: (i) offset the overdue amount against any other funds of Customer in NAPROTEK's custody; (ii) terminate NAPROTEK's obligations under these terms and conditions of sale and treat the Agreement as if cancelled by Customer, in which case Customer shall be liable for any amount payable pursuant to paragraph 2 above; (iii) delay manufacture or delivery of all or part of the products and/or delay performance of the related services sold to Customer under this or any other agreement between Customer and NAPROTEK; and/or (iv) recover or require Customer to return forthwith, at Customer's expense (including proper insurance with respect thereto), all products and other materials which NAPROTEK provided to Customer and with respect to which Customer failed to make timely payment. NAPROTEK reserves the right to assign any overdue amount to a third-party collection agency. Customer will be responsible for all collection expenses.

If NAPROTEK at any time and in its sole discretion determines that Customer's financial condition or conduct jeopardizes NAPROTEK's right to payment, NAPROTEK may require payment in advance of shipping all or part of the products or performing related services pursuant to these terms and conditions of sale. NAPROTEK shall have the right to obtain an injunction against unauthorized copying or use of NAPROTEK Work Product or designated confidential information in violation of paragraphs 9 or 13 above.

16. LIMITATION OF LIABILITY. In addition to the limitations of NAPROTEK's liability set forth in paragraph 14 above and to any other limitations on NAPROTEK's liability under this Agreement, NAPROTEK's total liability to Customer for any and all causes of action, regardless of form, shall not exceed the aggregate purchase price of the products and services sold to Customer as stated in the Order herein attached and in other applicable conditions of sale signed by an authorized NAPROTEK representative. Except as herein provided, NAPROTEK shall not in any event have obligations or liabilities to the Customer or any other party for any expense, injury, loss, damage, loss of profits, loss of use, loss of information, increased costs of operation, delay, or direct, incidental, special or consequential damages, whether based on contract, tort



(including negligence), strict liability, or any other theory or form of action, even if NAPROTEK has been advised of the possibility thereof, arising out of or in connection with the assembly, manufacture, sale, delivery, use, repair or performance of the NAPROTEK products or services or any failure or delay in connection with any of the foregoing or for breach of any warranty set forth herein. The provisions of this section shall survive any termination of these terms and conditions of sale.

17. FORCE MAJEURE. NAPROTEK shall not be held responsible or liable for any loss or damage resulting from a delay in the delivery of the products or any failure to perform its obligations to Customer if the causes of such delay or failure are attributable to Acts of God, governmental authority, or Customer, or due to strikes, embargoes, supply shortages or other causes beyond the reasonable control of NAPROTEK. In the event any delay occurs because of these causes, the date of delivery shall be extended by at least the period of time attributable to the delay.

18. INDEMNIFICATION. Customer shall defend, indemnify and hold NAPROTEK harmless from any and all liability, claims, losses, damages, costs and expenses (including settlement costs, reasonable attorney's fees and costs) arising from Customer's breach of these terms and conditions of sale, including Customer's duties as described in paragraph 13 above. Customer shall also defend, indemnify, and hold NAPROTEK harmless from all third-party liability for any product manufactured by NAPROTEK when product is manufactured to Customer specifications. Customer shall also defend indemnify and hold NAPROTEK harmless in contract, tort or for copyright, trademark, patent, trade secret, trade dress or other intellectual property infringement for any products furnished and manufactured by NAPROTEK in accordance with designs and/or specifications proposed by Customer. If any lawsuit or arbitration, whether an action at law or in equity is commenced between NAPROTEK and Customer, the prevailing party as determined by the Court or arbitrator shall be entitled to recover its reasonable attorneys' fees and costs in addition to any other relief to which such party may be entitled.

19. CONSIGNED MATERIALS. Customer shall bear all risk of loss, at all times, on all consigned materials (including die and wafers), tooling and equipment shipped into NAPROTEK's facilities. The Customer will be responsible for maintaining appropriate insurance coverage for all such consigned materials, tooling and equipment while in-transit and in-house. A "lot" is defined as a group of parts/devices, received at NAPROTEK at the same time, which are to be kept separate from other parts/devices to protect identification integrity. Each lot received will be kept separate and charged separate unless otherwise specifically agreed upon between NAPROTEK and the Customer. In the event that the Customer instructs NAPROTEK to combine the processing of multiple lots, NAPROTEK will not be held liable for any undesirable mixing of lots.

20. GOVERNING LAW; ARBITRATION.

Governing Law. NAPROTEK's quotation and these terms and conditions shall be governed by the laws of the State of California, U.S.A., without regard to that state's law relating to conflicts of law. The United Nations Convention on the International Sale of Goods shall not apply to this quotation, or any transactions contemplated hereby. *Arbitration of Disputes.* Any controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this quotation, including any claim based on contract, tort or statute, shall be settled, at the request of any Party, by arbitration conducted in California, or such other



location upon which the Parties may mutually agree, before and in accordance with the then, existing Rules of Commercial Arbitration of the American Arbitration Association ("AAA"), except that for controversies, disputes or claims between NAPROTEK and a foreign corporation, the then-existing International Arbitration Rules of the AAA shall govern, and judgment upon any award rendered by the arbitrator may be entered by any state or federal court having jurisdiction thereof. The Parties hereby consent to the jurisdiction of an arbitration panel and of the courts located in, and venue in, California, with respect to any dispute arising under this Quotation. Any controversy concerning whether a dispute is an arbitrable dispute hereunder shall be determined by one or more arbitrators selected in accordance with this provision. The Parties intended that this agreement to arbitrate be valid, specifically enforceable and irrevocable. Initiation of Arbitration. A Party may initiate arbitration hereunder by filing a written demand for arbitration with the other Party to the dispute and with the American Arbitration Association ("AAA"). Arbitration hereunder shall be conducted in a timely, expedited manner. Selection of Arbitrator. Any arbitration shall be held before a single arbitrator, who shall be selected in accordance with the procedures of the American Arbitration Association ("AAA"), and shall be a member of the Large Complex Case Panel with significant intellectual property (patent and copyright) law and semiconductor manufacturing experience. If the Parties are unable to agree on a single arbitrator, then each of the Parties shall select an arbitrator and such arbitrators shall select a third arbitrator. The arbitration shall then be held before the panel of three arbitrators. Awards. The arbitrator(s) may, in its discretion, award to the prevailing Party in any arbitration proceeding commenced hereunder, and the court shall include in its judgment for the prevailing Party in any claim arising hereunder, the prevailing Party's costs and expenses (including expert witness expenses and reasonable attorneys' fees) of investigating, preparing and presenting such arbitration claim or cause of action.

21. MISCELLANEOUS. (a) *Assignment.* These terms and conditions of sale shall ensure the benefit of and shall be binding upon the heirs, successors, and assigns of the parties hereto. Customer shall not assign its duties and obligations hereunder without NAPROTEK's prior written consent. (b) *Waiver.* No waiver by NAPROTEK of any breach of the terms and conditions hereof by Customer shall be effective unless made in writing. Failure of NAPROTEK to object to provisions contained in any purchase order or other communication from Customer (including but not limited to penalty clauses) shall not be construed as acceptance of those provisions or as a waiver of these terms and conditions of sale. (c) *Integration and Merger.* These terms and conditions of sale, as well as the attached Order, and any special conditions of sale contained in a writing signed by an authorized NAPROTEK representative, are the complete and exclusive statement of the terms of the Agreement between Customer and NAPROTEK. All prior proposals, negotiations and representations, if any, pertaining to this transaction are merged into these terms and conditions of sale. Except as stated herein, no other terms, conditions, agreements or understandings, in any way modifying or adding to these terms and conditions of sale whether contained in Customer's work order or form of acceptance or elsewhere, shall be binding on NAPROTEK. NAPROTEK OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS. (d) *Severability.* If any provision of this Agreement is held to be invalid or unenforceable by an arbitrator or court, such invalidity or unenforceability shall attach only to such term or condition. The validity of the remaining terms and conditions shall not be affected thereby.