

Except as otherwise agreed to in writing by Toshiba International Corporation ("Supplier"), the following terms and conditions ("Terms") shall apply to Supplier's offer of sale ("Offer") of the equipment, parts, or software ("Goods") to the customer or person or entity purchasing the Goods ("Buyer"). For purposes of the Terms, Offer means all written quotations in which the Terms are referenced, unless waived or modified in a signed writing by Supplier, and all resulting contracts.

**ACCEPTANCE:** Buyer's written order accepting this Offer of Goods ("Order") or written direction to Supplier to proceed with engineering, procurement, furnishing, manufacturing, shipment or delivery of such Goods, shall constitute agreement to only these Terms. Acceptance of this Offer by Buyer must be expressly limited to these Terms. Any additional or contrary terms in Buyer's written purchase order, acknowledgment and other written direction will constitute a material alteration which Supplier objects to and rejects. Trade custom and/or usage are superseded by these Terms and shall not be applicable to broaden or narrow the express terms of this Offer or used otherwise in its interpretation.

**PRICES:** Prices are in United States Dollars and include the cost of the manufacturer's usual factory tests, inspection, packing, and delivery FCA Supplier designated facility or FCA place of shipment of Supplier's supplier (INCOTERMS® 2020). Such prices do not include any other costs applicable to the Goods, including without limitation, export packing, loading, unloading, handling, storage, transportation, installation, and insurance charges. The prices applicable to the Goods are those in effect at the time of Order. Buyer's payment of Supplier invoices containing clerical or pricing errors will not relieve Buyer's obligation to make full payment.

**TAXES:** Prices do not include any federal, state, municipal, or local property, license, privilege, business, occupation, stamp, documentary, sales, use, excise, gross receipts, duties, custom charges, value added or other similar taxes, fees or charges ("Taxes") which may now or hereafter be imposed by any governmental authority on the Goods, or services, related to the transaction between Supplier and Buyer. If Buyer holds a direct payment permit or claims an exemption from Taxes, Buyer shall provide Supplier with documentation acceptable to the taxing authorities involved. Otherwise, Buyer agrees to pay or reimburse Supplier any Taxes which Supplier or Supplier's subcontractors or suppliers are required to pay. Under no circumstances shall Supplier be responsible for any income and/or payroll taxes attributable to Buyer and/or Buyer's subcontractors. Buyer hereby agrees to indemnify Supplier for any liability arising out of income and/or payroll taxes attributable to Buyer and/or its subcontractors.

**PAYMENT:** Subject to credit approval by Supplier, all invoices shall be paid in full in United States dollars within thirty (30) days after the date of Supplier's invoice. Supplier shall invoice Buyer for the full purchase price of Goods shipped upon delivery of such Goods in accordance with the applicable INCOTERMS® 2020. In the event progress payments are required, Supplier shall invoice Buyer for such progress payments upon completion of the applicable milestone. If, in the judgment of Supplier, the financial condition of Buyer at any time prior to delivery does not justify the terms of payment specified in an Order, Supplier may require payment in advance, progress payments, payment security satisfactory to Supplier, or may terminate the Order and Buyer shall be liable for cancellation charges in accordance with the termination provisions provided herein. If delivery is delayed by Buyer, payment shall be due thirty (30) days from the date Supplier is prepared to make delivery. In the event Buyer fails to make payment by the date provided herein, Supplier may deduct such amounts due Supplier from all amounts it may owe Buyer, whether matured or unmatured, arising from this or any other transaction. Buyer agrees that any unpaid portion of the purchase price shall bear interest at the rate of twelve percent (12%) per annum from and after the date due and owing. Notwithstanding any other provision of an Order, Supplier does not intend to and shall not charge, collect or contract for interest in excess of the maximum rate permitted by law. Any such excess interest shall be applied first to reduce any unpaid portion of the purchase price and then to all other outstanding charges owed Supplier, until such time as each is paid in full, at which time any remaining excess shall be refunded to Buyer.

**DELIVERY:** Delivery dates are approximate and dependent upon (1) prompt receipt by Supplier from Buyer of all information necessary to permit Supplier to proceed with its work immediately and without interruption; (2) Buyer's compliance with all terms and obligations of the Order, including payment terms and continued solvency; and (3) Buyer's ability to provide Supplier with adequate assurance of Buyer's ability to fully perform its obligations under the Order, including assurances of payment, should Supplier reasonably request such assurances. Supplier shall deliver the Goods FCA Supplier designated facility or FCA place of shipment of Supplier's supplier, export packing not included (INCOTERMS® 2020). Partial deliveries shall be permitted. Upon such delivery, title to such Goods shall pass to Buyer. Buyer shall promptly inspect all Goods for quantity differences, damages and nonconformity. Buyer shall be deemed to have accepted all Goods not rejected within fourteen (14) days following delivery. Following acceptance, all claims of defect or non-conformity shall be governed by the WARRANTY provisions herein. In the event Buyer requests an extension of the delivery date and Supplier, in its sole discretion, agrees to extend such date, Supplier may upon written notice place such Goods in storage either at a Supplier operated facility or at another location. In such events, (1) all costs incurred by Supplier in connection with such storage, including, without limitation, costs of preparing such Goods for storage, placement into storage, handling, storage/demurrage, inspection, preservation and insurance (or if storage shall be at a Supplier operated facility, reasonable storage costs not to exceed five percent (5%) of the total price of the Goods being stored for each month of storage), shall be due and payable by Buyer upon receipt by Buyer of Supplier's invoices, and (2) Supplier's delivery obligations shall be deemed fulfilled and title and risk of loss to the Goods shall pass to Buyer, if it has not already passed, and (3) when conditions permit and upon payment of all amounts due hereunder, the parties shall arrange for shipment in accordance with delivery terms of the Order.

**MODIFICATIONS:** Supplier shall have the right to modify the design and/or method of manufacture of the Goods without advance notice to Buyer if, in the judgment of Supplier, such modification does not materially and adversely affect the performance of the Goods. Upon acceptance in writing by Supplier, Buyer may request reasonable changes in any one or more of the following: (1) drawings, plans, designs and specifications; (2) quantities; (3) delivery schedule; or (4) place, manner or time of delivery. If any such change increases or decreases the cost of the Goods to be provided and/or delays Supplier's performance, then Supplier shall be entitled to an equitable adjustment in price and/or time of delivery.

**FORCE MAJEURE:** In no event shall Supplier be liable for non-delivery or delays in delivery of the Goods or for failure or delay in the performance of any other obligations arising directly or indirectly from causes of any kind beyond Supplier's control, including, without limitation, acts of God, unforeseeable



circumstances, acts (including delays or failure to act) of any governmental authority (de jure or de facto), war (declared or undeclared), riot, revolution, priorities, fires, floods, weather, strikes, labor disputes, sabotage, epidemics, factory shutdowns or alterations, embargoes, delays or shortages in transportation, delay or inability to obtain or procure labor, manufacturing facilities or materials, or to obtain timely instructions or information from Buyer. The foregoing provision shall apply even though such causes may occur after Supplier's performance of its obligations has been delayed for other causes.

**WARRANTY:** Unless a different warranty is stated herein, affixed to the Goods by the manufacturer or Supplier, or is specified in writing in any maintenance or operating instructions pertaining to such Goods, Supplier warrants that the Goods sold by Supplier to Buyer will be free from defects in materials and workmanship. This warranty shall expire eighteen (18) months after the date on which the Goods are delivered by Supplier to the initial purchaser or twelve (12) months after the Goods are first placed in operation, whichever period shall first expire. If the Goods fail to conform to the foregoing warranty, Supplier shall, at its sole discretion, repair, replace or update, free of charge, or refund the purchase price paid for any such nonconforming Goods; provided Buyer (1) promptly notifies Supplier in writing of the nonconformity, (2) furnishes Supplier satisfactory proof thereof, and (3) if requested by Supplier, returns the nonconforming equipment, part or software to Supplier and pays all expenses incurred in connection with such return. Delivery of the repaired, replacement or updated equipment, part or software, shall be FCA Supplier designated facility or at Supplier's option, FCA a Supplier authorized service shop (INCOTERMS® 2020), export packing not included. Buyer shall pay all costs following such delivery, including, without limitation, all handling, transportation, assembly, installation, insurance, testing, and inspection charges. The warranty excludes (1) normal wear and tear; (2) Goods that have not been properly stored, assembled, installed, serviced, maintained, operated, or used within the limits of rated capacity and normal usage; (3) Goods not used in accordance with current operating and maintenance instructions furnished by Supplier, and (4) Goods that have been altered or modified in any manner without the written consent of Supplier. **THE FOREGOING OBLIGATION TO REPAIR, REPLACE, UPDATE OR REFUND THE PURCHASE PRICE PAID FOR THE GOODS SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF PURCHASER, ITS CUSTOMERS AND USERS OF THE GOODS FOR THE BREACH OF THE FOREGOING WARRANTY. SUPPLIER SHALL HAVE NO OBLIGATION TO DISASSEMBLE ANY NONCONFORMING GOODS OR TO INSTALL ANY REPAIRED OR REPLACEMENT PART, EQUIPMENT OR SOFTWARE OR TO PAY ANY COSTS INCURRED IN CONNECTION WITH SUCH DISASSEMBLY OR INSTALLATION. THERE ARE NO OTHER WARRANTIES OR CONDITIONS AND SUPPLIER HEREBY EXPRESSLY DISCLAIMS ALL OTHER EXPRESS, STATUTORY AND IMPLIED WARRANTIES AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OR CONDITIONS, AS APPLICABLE, OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**PATENTS:** Supplier shall defend any suit or proceeding brought against Buyer to the extent it is based upon a claim that the Goods furnished pursuant to this Order infringe any patent of the country in which the Goods are delivered to Buyer, if notified promptly in writing and given authority, information and assistance at Supplier's expense for the defense of such suit or proceeding, and Supplier shall pay all damages and costs awarded therein against Buyer. In the event such Goods are finally determined in such suit to infringe any such patents and the use of such Goods is permanently enjoined, Supplier shall, at its expense, and at its option: (1) procure for Buyer the right to continue using said Goods; (2) replace the same with non-infringing Goods; (3) modify such Goods to be non-infringing; or (4) remove such Goods and refund the purchase price thereof, less a reasonable charge for depreciation. The foregoing states the entire liability of Supplier for patent infringement by the Goods. Notwithstanding the foregoing, Supplier shall have no obligation to defend any suit or proceeding brought against Buyer to the extent it is based, in whole or in part, upon a claim that any application, method or process in which the Goods furnished by Supplier are used constitutes an infringement of any patent. Supplier shall have no liability or obligation to Buyer of any kind with respect to any such claim or with respect to any damages or costs awarded or any determination of infringement made on the basis of any such claim. In addition, the foregoing provisions shall not apply to any Goods manufactured to Buyer's design. As to such Goods or such claims, damages or costs, Supplier assumes no liability whatsoever for patent infringement and Buyer shall indemnify, defend, and hold Supplier harmless from and against all claims, damages, obligations, liabilities and suits (and all associated costs and expenses, including, without limitation, attorneys' fees and costs of litigation) arising as a result of the alleged infringement of patent rights caused by the manufacture or sale by Supplier of such Goods.

**TERMINATION:** Buyer may terminate the Order for its convenience only upon written notice to Supplier and upon payment to Supplier of cancellation charges in accordance with the cancellation schedule provided in the Order, or if none is provided, reasonable and proper termination charges, including but not limited to, all costs incurred prior to the notice of termination and all expenses incurred by Supplier attributable to the termination, plus a fixed sum of ten (10) percent of the Order price to compensate for disruption in scheduling, planned production and other indirect costs ("Cancellation Charges"). If an Order is suspended at Buyer's request or by virtue of Buyer's failure to respond to submittals or requests for information and such suspension exceeds an aggregate of sixty (60) days, Supplier may immediately terminate the Order and treat the suspension as a termination for Buyer's convenience subject to Cancellation Charges; or at Supplier's option, elect to charge Buyer for engineering or other costs as incurred by Supplier, retaining the right to terminate the Order and assess Cancellation Charges if such suspension continues. No termination by Buyer for default shall be effective unless, within fourteen (14) days after receipt by Supplier of Buyer's written notice specifying such default, Supplier fails to commence and diligently pursue correction of such default.

**LIABILITY:** The total liability of Supplier for any loss, damage, or claim, whether in contract, warranty, tort (including negligence and strict liability), or otherwise, arising out of or relating to this Offer or any contract based upon this Offer, shall not in any event exceed the price allocable to the Goods or service which gives rise to the loss, damage, or claim (except as further limited under the WARRANTY and PATENT provisions herein). Notwithstanding the foregoing, in no event shall Supplier be liable under any theory of recovery, including, without limitation, contract, warranty, or tort (including negligence and strict liability) for any indirect, incidental, special, exemplary, punitive, liquidated or consequential damages, including, without limitation, loss of profits, business, or information; loss of use of the Goods or any associated equipment; costs of capital, substitute Goods, facilities or services; costs of down time or labor; or claims of Buyer's customers for such damages, even if Supplier was advised of the possibility of such damages.

**SERVICES:** If Buyer requests Supplier to provide services on the Goods, including, without limitation, installation or commissioning, such request shall be set forth as a separate line item on the applicable request or Order. To the extent such request is accepted in writing by Supplier, Buyer shall pay Supplier's standard charges for all such services plus all travel and expenses incurred in connection therewith, including, without limitation, permits, licenses, authorizations and approvals required under applicable federal, state, and local laws, regulations, and ordinances to permit the purchase, installation, operation and use of the Goods. Supplier shall provide such services in accordance with its Standard Terms and Conditions of Field Services.

**EXPORT CONTROL:** Buyer acknowledges that the Order may concern products and/or technical data that may be controlled or restricted under the U.S. Export Administration Regulations or the Office of Foreign Assets Control, or other applicable laws and regulations relating to the export or import of products

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and/or technical data and may be subject to the approval of the U.S. Department of Commerce or Treasury, respectively, prior to export. Any export or re-export of Goods by Buyer, directly or indirectly, in contravention of the export control laws, economic sanctions laws or other applicable laws or regulations is prohibited, and Buyer shall comply with all such laws and regulations, as well as the U.S. Foreign Corrupt Practices Act and similar laws of applicable foreign jurisdictions. Buyer shall not seek to influence sales or other business affairs by means of bribery, kickbacks, illegal payments or other ethically questionable inducements, including gifts or anything of value. Additionally, the Goods shall not be sold for use in, or to parties that are suspected to be involved in, the development, production, use or stockpiling of weapons of mass destruction; to entities or individuals on any applicable lists of parties denied export privileges (including, without limitation, <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>), or to parties in any embargoed countries. This provision constitutes an independent covenant and continuing obligation of Buyer and shall survive the termination of any Offer or resulting contracts.

**NUCLEAR USE:** The Goods described herein shall not be used in conjunction with, or as a part of, any activity or process involving nuclear fission or fusion or any use or handling of any material defined in Chapter 2 of the U.S. Atomic Energy Act of 1954, as amended, unless Buyer, at its expense, arranges for insurance and indemnity (governmental and Buyer) satisfactory to Supplier protecting Supplier against liability of any kind and agrees to such other terms as Supplier may require with respect to sales of Goods for nuclear use.

**GOVERNING LAW:** This Offer may only be accepted in Harris County, Texas and any contract resulting from it shall be performable, in whole or in part, in Harris County, Texas and shall in all respects be governed, construed, and enforced according to the laws of the State of Texas, U.S.A (without giving effect to its conflict of laws principles). If Buyer's principal place of business is in the United States, then venue for all disputes arising out of this Offer or any contract resulting from it shall be in Harris County, Texas (or in the Southern District of Texas if such proceeding is in a United States District Court). If Buyer's principal place of business is located outside of the United States, any controversy or claim arising out of or relating to this Offer or any contract resulting from it shall be settled by arbitration administered by the International Center for Dispute Resolution® ("ICDR") in Houston, Texas in accordance with the latest International Dispute Resolution Rules and Procedures of ICDR ("ICDR Rules"). Judgment upon the award rendered by the arbitrator(s) may be entered in any court or forum having jurisdiction thereof. The arbitrator(s) shall provide Supplier and Buyer with a written explanation of the reasoning behind the decision and award. The arbitrators shall not have the authority to appoint a tribunal expert. Supplier and Buyer further agree to first mediate any controversy or claim in accordance with the ICDR Rules in a good faith attempt to resolve it prior to initiating arbitration. The prevailing party in any arbitration proceeding shall be entitled to recover its reasonable attorneys' fees and costs of arbitration from the other party. The United Nations Convention for the International Sale of Goods shall not apply to any contract arising from this Offer.

**GENERAL:** These Terms may not be waived or modified unless done in writing and signed by an authorized representative of Supplier. Any waiver by Supplier of a breach of any of these Terms shall not constitute a waiver or prejudice Supplier's right to otherwise subsequently demand strict compliance with that or any other term or condition. The provisions of these Terms as well as the provisions of any resulting contracts are severable and if any provisions are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or portions shall nevertheless be binding and enforceable. The election of Supplier to pursue any remedy shall not exclude pursuit of any other remedy otherwise available to Supplier or limit its right to declare Buyer in default. Any Offer is subject to change by Supplier prior to actual receipt by Supplier of written acceptance of such offer and shall expire thirty (30) days from the date of offer. The Terms are subject to change by Supplier at any time prior to an Order, and all Orders are subject to Supplier's published standard terms and conditions of sale in effect at the time of the Order.

**ENTIRE AGREEMENT:** These Terms shall be the only terms and conditions applicable to the sale of the Goods described herein and shall supersede all prior oral or written communications regarding the subject matter of the Offer or any resulting contract.