



Updated: 9/9/2022

## **VERSALOGIC CORPORATION STANDARD TERMS AND CONDITIONS OF SALE**

### **1. SCOPE**

These Terms and Conditions of Sale apply to the sale of all products and/or services (collectively the "Products") delivered or provided by VersaLogic Corporation ("VersaLogic"), an Oregon corporation, pursuant to (a) any request for quotation, purchase order form, terms and conditions of purchase document, or other document or correspondence, including e-mail transmissions, provided to VersaLogic by Buyer, or (b) any purchase order ("Order") placed by Buyer and accepted or performed by VersaLogic. These Terms and Conditions of Sale shall govern all Orders, even if not specifically referenced. Any proposal for additional or different terms, or any attempt by Buyer to vary in any degree any of the terms hereunder, is hereby objected to and rejected.

### **2. HEADINGS NOT CONTROLLING**

The headings of these Terms and Conditions of Sale are solely for the purpose of document organization and reference and shall not affect their interpretation. Where required hereunder, items stated in the plural shall be deemed to refer to the singular and vice versa.

### **3. APPLICABILITY/ACCEPTANCE OF TERMS/ENTIRE AGREEMENT/CONFLICTING PROVISIONS**

Unless otherwise provided hereunder, the sale by VersaLogic of any Products described in an Order shall be governed solely by these Terms and Conditions of Sale and other such provisions, if any, agreed upon in writing by a duly authorized representative of VersaLogic (an "Agreement"). Any oral understandings are expressly excluded. VersaLogic does not waive these Terms and Conditions of Sale if it fails to object to provisions appearing on, incorporated by reference in, or attached to Buyer's Request for Quote ("RFQ") or Order Form. Such provisions are hereby expressly rejected. Buyer's silence, or acceptance and/or use of Products constitute its acceptance of these Terms and Conditions of Sale. No modification or addition to these Terms and Conditions of Sale shall be effective unless agreed to in writing and signed by an authorized representative of VersaLogic. These Terms and Conditions of Sale shall apply to any RFQ or Order for Products by the Buyer, and any quotation or written or otherwise documented Order confirmation or acceptance by VersaLogic, whether or not specifically referenced in such documents. VersaLogic reserves the right to reject any RFQ or Order submitted for its acceptance, however any RFQ or Order so accepted shall be accepted subject solely to these Terms and Conditions of Sale. In the event of any conflict between these Terms and Conditions of Sale and the provisions contained in any RFQ or Order, or other similar document issued to VersaLogic by the Buyer, the provisions of these Terms and Conditions of Sale shall prevail and control.

If any provision(s) or portions of provision(s) of these Terms and Conditions of Sale shall be held to be invalid, illegal, or unenforceable by a court of law, the remaining provision(s) or portions of provision(s) not so held shall be valid and enforceable to the extent possible.

### **4. ASSIGNMENT**

Neither party shall assign these Terms and Conditions of Sale and/or any Order, or any portion thereof, without the advance, written consent of the other party, which consent shall not be unreasonably withheld. The non-assigning party shall not have any obligation to an assignee of the assigning party unless such consent is obtained. Notwithstanding the foregoing, VersaLogic may assign these Terms and Conditions of Sale and/or any Order to any entity controlled by or under common control of VersaLogic Corporation.

### **5. WAIVER**

Failure by VersaLogic to assert any or all of its rights upon any breach of these Terms and Conditions of Sale by Buyer shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach,

nor shall any waiver be implied from the acceptance of any payment from Buyer. No waiver of any right shall extend to or affect any other right VersaLogic may possess, in law or in equity, nor shall such waiver extend to any subsequent similar or dissimilar breach.

## **6. EXCUSABLE DELAY / FORCE MAJEURE**

Neither party hereto shall be in default or liable for any delay or failure to comply with an Order if such delay or failure is due to causes beyond its reasonable control including, without limitation, acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, civil unrest, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, government regulations, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service (a "Force Majeure Event"), provided that the affected party notifies the other party in writing within fifteen (15) calendar days after discovery of the Force Majeure Event. If the Force Majeure Event extends for a period of six months, either party may, at its option, terminate the Order without penalty or liability and without being deemed in default or in breach thereof. Nothing herein is intended to excuse either party from the payment of sums of any money which it may be required to pay hereunder.

## **7. QUOTATIONS**

Quotations provided by VersaLogic to Buyer are neither a contractual agreement nor a guarantee to supply Products, but serve as VersaLogic's good faith assurance that Buyer's requirements have been reviewed and can be met under the conditions documented in such quotation.

## **8. PRICES**

Unless VersaLogic provides notice to Buyer to the contrary, prices for VersaLogic's Products as set forth in VersaLogic's quotation remain in effect until the documented expiration date or the last day of the "quotation is valid for" time period set forth in the quotation. When a time period is listed, such time period shall start on the date the quotation is issued which is set forth in the header of the quotation. The quoted prices are exclusive of all taxes, freight, customs, duties, and other applicable charges, all of which shall be paid by Buyer. Any taxes, customs, duties, fees, charges or assessments of any nature levied by any governmental authority in connection with any transaction under any Agreement or Order, including but not limited to Federal, State, Municipal, excise, sales or use taxes or import duties upon the production, sales, distribution, or delivery of Products or furnishing of services hereunder, whether levied against Buyer, against VersaLogic or its employees, or against any of VersaLogic's subcontractors or their employees, shall be the responsibility of Buyer and shall be paid directly by Buyer to the governmental authority concerned. If VersaLogic or its subcontractors, or the employees of either, are required to pay any such levies, fines, penalties, or assessments, then Buyer shall reimburse such payor promptly upon submission of the applicable document. This clause shall survive the acceptance and complete performance of the Order by the parties herein.

## **9. ORDERS**

Buyer shall issue to VersaLogic Corporation firm documented Orders for each purchase required. Phone Orders shall not be accepted until backup documentation is provided which contains or references an Order Number and the name and valid signature, written or electronic, of the person authorized to issue the Order. All Orders are subject to credit approval and confirmation of delivery schedule by VersaLogic prior to acceptance by VersaLogic. It is understood by Buyer that an Order may require credit enhancement, such as advanced payment, letter of credit or other guarantee, prior to acceptance. VersaLogic's acceptance of an Order shall only occur upon delivery to Buyer of a written confirmation executed by VersaLogic and transmitted to Buyer in e-mail or other format; however in the event VersaLogic performs an Order without such confirmation, such performance (and tacit acceptance of the Order) shall be solely under these Terms and Conditions of Sale.

**10. ORDER LEAD TIMES AND DELIVERY DATES**

Quoted lead times and scheduled shipment dates are VersaLogic's reasonable estimate, based on finished goods inventory, component availability, and projected manufacturing build schedule, and do not constitute a guarantee.

Expediting fees shall be assessed and quoted under the following conditions:

- a) Buyer requests delivery sooner than quoted lead-time
- b) Buyer requests shipment sooner than that listed on VersaLogic's Order acknowledgement
- c) Buyer requests a new, accelerated delivery schedule for a previously accepted NCNR (Non-Cancelable, Non-Returnable) Order with multiple delivery dates

VersaLogic shall not be liable for delay in delivery arising from heavier than anticipated demand, delays caused by default or delay of subcontractors, problematic component availability, or other causes beyond its control and without its fault or negligence. Should any of these factors affect delivery date, VersaLogic shall provide timely and reasonable notification to Buyer.

**11. CANCELLATION/TERMINATION OF ORDERS**

Buyer shall not cancel an Order, in whole or in part, without the written agreement of VersaLogic. End-of-life last time buys are non-cancelable and non-returnable. Cancellation of Orders for standard Products is permitted only if written notice of cancellation is delivered to VersaLogic at least thirty (30) days before the initially scheduled delivery date. Cancellation of Orders for custom Products is not permitted unless specifically assented to in writing by VersaLogic. Cancelable Orders may be subject to payment of reasonable cancellation charges, at VersaLogic's sole discretion, which shall include but not be limited to expenses already incurred for labor and material costs, overhead, commitments made by VersaLogic, and a reasonable profit. In the event of cancellation, Buyer shall have no rights to partially finished Products.

**12. REQUESTS TO DELAY SHIPMENT**

VersaLogic may grant Buyer authorization to delay a scheduled shipment not more than once, and only if Buyer gives at least forty-five (45) days written notice before the initially scheduled delivery date. The rescheduled delivery date may be no later than ninety (90) days after the original delivery date listed on VersaLogic's Order confirmation.

**13. PAYMENTS**

a) Domestic - After formal credit approval, payment terms are net thirty (30) days from the date of invoice, unless otherwise specified in VersaLogic's quotation. Otherwise, terms are cash in advance. Buyer shall pay interest on amounts not paid when due equal to the lesser of one and one-half percent (1.5%) per month or the maximum legally permissible rate. Remittances must be made to the address on the invoice. Installation costs are the sole responsibility of Buyer. A 3.5% surcharge will be added to all credit card transactions.

b) International - Open account terms shall be considered by VersaLogic, in VersaLogic's sole discretion, if Buyer possesses a first-class standing in the operating country and can demonstrate favorable trade arrangements with other U.S. suppliers. Buyer agrees, upon request, to provide VersaLogic with financial information acceptable to VersaLogic to assist VersaLogic in determining from time to time the credit terms, if any, that VersaLogic may extend to Buyer. VersaLogic reserves the right to revoke open account terms at any time based on unsatisfactory payment performance or credit risk or at VersaLogic's sole discretion, in which case Buyer agrees to provide a Letter of Credit or such other credit enhancement, at Buyer's sole expense, as may be required by VersaLogic. All payments shall be made in United States Dollars, net thirty (30) days from date of invoice. All payments received after thirty (30) days shall accrue interest at the rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum legally permissible rate.

**14. TRANSPORTATION, DELIVERY, AND TITLE**

All sales and deliveries of Products shall be “FOB VersaLogic’s authorized shipping point.” Buyer is responsible for all transportation, insurance, duties, taxes, and other applicable expenses. These expenses shall be paid by Buyer or shall be added to VersaLogic’s invoice to Buyer if prepaid by VersaLogic. VersaLogic’s responsibility for any loss or damage to the Products ends, and title to the Products passes, when Products are delivered to the carrier, to Buyer, or to Buyer’s agent (including, without limitation, any test house or freight forwarder), whichever occurs first. Buyer shall pay for storage charges if Products are held by VersaLogic at Buyer’s request pending instructions or rescheduled delivery, if applicable.

**15. CHANGES**

a) Product Changes - Unless otherwise requested by the Buyer and agreed to in writing by VersaLogic, VersaLogic at all times shall have the right, and is entitled at its sole discretion, to make substitutions, changes, additions or improvements to the Products being delivered under an Order without liability or obligation to incorporate such changes, additions or improvements in any Product manufactured, sold or delivered prior to incorporation of the change, addition or improvement. Such right may be exercised only if such changes do not adversely affect form, fit or function of the Product.

**16. QUALITY ASSURANCE**

VersaLogic maintains a quality system registered to ISO 9001-2015. Unless otherwise specified, all Products are manufactured in accordance with the processes defined under this standard, with the exception of third-party Products supplied by VersaLogic, which are manufactured under such third-party’s quality system.

**17. TITLE RETENTION AND SECURITY INTEREST**

Title to the Products shall pass to Buyer upon delivery; however, VersaLogic shall retain a security interest in such Products, in the amount of their sales price, until payment has been made by Buyer. Default by the Buyer under an Agreement or any Order shall result in VersaLogic’s right to repossess the Products sold without liability to Buyer. Upon VersaLogic’s request, Buyer shall promptly execute financing statements (UCC-1), and other such instruments, with appropriate authorities, as evidence of VersaLogic’s security interest in the delivered Products. To the extent permitted by law, Buyer, for itself, its successors and permitted assigns, irrevocably waives and surrenders its right to object to the repossession of the Products by VersaLogic in the event Buyer is involved in bankruptcy proceedings, or breaches these Terms and Conditions of Sale.

**19. INTELLECTUAL PROPERTY RIGHTS**

VersaLogic owns all legal rights, title and interest in and to the Products, including any trade names, trade secrets, trademarks, service marks, logos, patents, copyrights, confidential information, know-how and other forms of intellectual and industrial property, whether those rights are registered or not, and wherever in the world those rights may exist. Such rights, title, and interest are protected by worldwide copyright laws and treaty provisions, and they may not be copied, reproduced, modified, published, uploaded, transmitted, or distributed in any way without VersaLogic’s prior written consent. Except as expressly provided herein, VersaLogic does not grant any express or implied right to Buyer under any patents, copyrights, trademarks, or trade secret information. VersaLogic shall retain all proprietary rights in and to all designs, engineering details, intellectual property, and other data pertaining to any Product sold, except where such rights are assigned under written agreement signed by a corporate officer of VersaLogic. Unless such prior written agreement is provided by VersaLogic, in no event shall Buyer permit such data, drawings or information to be (1) disclosed to any third party other than Buyer’s customer; (2) used by the Buyer or Buyer’s customer for manufacture of like or similar goods; (3) used for purposes of duplicating or reverse-engineering VersaLogic’s proprietary designs or processes; or (4) used by a party other than the Buyer or Buyer’s customer for any purpose whatsoever.

**20. INSPECTION AND ACCEPTANCE**

Buyer shall inspect Products delivered promptly after Buyer takes custody of such Products. Buyer shall have fifteen (15) days from date of delivery to Buyer’s location to notify VersaLogic of any nonconformance to

specifications. Products shall be deemed accepted by Buyer, and any claim for nonconformance waived, unless Buyer notifies VersaLogic in writing of any shortages, damage, or non-conformity within such (15) day period. In such event, VersaLogic shall have a reasonable opportunity to correct the nonconformance.

## **21. RETURNS FOR REPAIR OR CREDIT**

Buyer must notify VersaLogic in writing in the event a nonconforming Product must be returned to VersaLogic for repair. After receipt of a Return Material Authorization ("RMA") number, Buyer may return the nonconforming Product to VersaLogic, transportation charges prepaid. Buyer shall reference the RMA number, provide the part number, description, and quantity of the Product being returned, provide information regarding the nature of the nonconformance and, where applicable, details of the installation in which the Product was used. An evaluation fee shall be charged for non-warranty repairs and a confirming purchase order in the amount quoted by VersaLogic to cover the repair fee must be received by VersaLogic prior to diagnosis and repair. VersaLogic's repair procedures shall govern the repair process. All RMA returns must be carefully packed in ESD safe packaging materials and shipped to: VersaLogic Corporation, 10230 SW Spokane Ct., Tualatin, OR 97062.

All VersaLogic repairs are warranted to be free from defects in workmanship for ninety (90) days or the remainder of the original warranty period, whichever is greater, subject to the terms of VersaLogic's limited warranty.

Returns for convenience shall be at VersaLogic's sole discretion, on a case by case basis, and shall be subject to a restocking fee. Product(s) accepted for return must be returned unopened and undamaged within thirty (30) days of original shipment. Returns for credit shall not be accepted unless Buyer has obtained VersaLogic's prior written consent.

Completed domestic warranty repairs shall be returned to Buyer via Standard Ground Service via common carrier at VersaLogic's expense. Completed International warranty repairs shall be returned to Buyer via common carrier at customer's expense. If Buyer requires an alternate shipping method, Buyer must notify VersaLogic Customer Support at the time the RMA is requested. Additional charges may apply. If the repair is not covered by warranty, Buyer shall be billed for return shipping charges.

## **22. LIMITED WARRANTY**

VersaLogic warrants that board-level Products, associated serialized accessories, and expansion products manufactured by VersaLogic shall be free from material defects in workmanship, materials and media for a period of five (5) years from date of shipment. All third-party products and accessories not of VersaLogic design and manufacture are subject to the applicable manufacturer's warranty period or two (2) years, whichever is shorter. Calibration of analog cards and consumable Products (including without limitation batteries, fuses, etc.) are provided by VersaLogic "As Is" and without warranty of any kind. Upon written notice from Buyer of defects covered by this warranty, and upon return of defective Product(s) under VersaLogic's RMA procedures, VersaLogic shall repair or replace, at its option, any Product determined to be materially defective in workmanship, materials or media, and if such Products cannot be repaired or replaced within a reasonable time, VersaLogic shall refund to Buyer the purchase price paid for such Product. Repairs requiring third party supplied components, assemblies and other materials shall be subject to market availability. In the event that a Product has been subjected to misuse, abuse, neglect, alteration, improper maintenance or storage, exposure to or damage by electrostatic discharge (ESD), or repair not expressly authorized by VersaLogic, the foregoing warranty with respect to such Product shall be void. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, THE ORDERED PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. VERSALOGIC SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, COMMERCIAL ACCEPTABILITY AND/OR FITNESS OR ADEQUACY FOR ANY PARTICULAR PURPOSE, QUALITY, PRODUCTIVENESS OR CAPACITY, AND/OR WARRANTY FOR NON-INFRINGEMENT. VERSALOGIC DOES NOT WARRANT THAT THE OPERATION OF THE PURCHASED PRODUCTS SHALL BE ERROR-FREE. THIS WARRANTY MAY NOT BE EXTENDED NOR ALTERED EXCEPT BY WRITTEN AUTHORIZATION OF VERSALOGIC.

This limited warranty shall not apply to any Product, or parts thereof, that (a) has had the Serial Number, Model Number, or other identification markings altered, removed or rendered illegible; (b) has been damaged by or subject to improper installation or operation, misuse, accident, neglect and/or has been used in any way other than in strict compliance with VersaLogic's operation and installation manual; (c) has become defective or inoperative due to its integration or assembly with any equipment or products not supplied by VersaLogic; (d) has been exposed to or damaged by electrostatic discharge (ESD); (e) has been repaired, modified or otherwise altered by anyone other than VersaLogic, and/or has been subject to the opening of any sealed components, enclosures or covers without VersaLogic's prior written consent. If any warranty claim by Buyer falls within any of the foregoing exceptions, Buyer shall pay VersaLogic its then current rates and charges for such services.

Software and/or firmware is warranted only to the extent provided in any applicable software license, and VersaLogic makes no warranty or representation that the operation of software/firmware shall be uninterrupted, error free, or that it shall meet Buyer's specific requirements. VersaLogic disclaims all liability with respect to Buyer's data, including software, stored in returned Products.

### **23. LIMITATION OF LIABILITY**

The sole exclusive remedies of Buyer are those specifically set forth herein. VersaLogic's maximum liability for any and all claims arising directly or indirectly from the performance of its obligations under any Agreement with or Order from Buyer, including any warranty set forth herein, whether resulting from breach of contract, breach of warranty, tort, products liability, negligence or otherwise, shall not exceed the aggregate purchase price of the Products which are the subject of the claim. UNDER NO CIRCUMSTANCES SHALL VERSALOGIC BE LIABLE TO BUYER OR ANY THIRD PARTY FOR LOSS OF BUSINESS, LOST PROFITS, OR ANY OTHER ECONOMIC LOSS, OR ANY INCIDENTAL, EXEMPLARY, INDIRECT, SPECIAL, PUNITIVE, COVER, OR CONSEQUENTIAL DAMAGES, EVEN IF VERSALOGIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **24. INDEMNITY**

Buyer shall defend, indemnify, and hold VersaLogic, its directors, officers, personnel, successors and assigns, harmless from and against any expenses, damages, claims, actions, losses, suits, judgments, or liabilities of any nature (including without limitation attorneys' fees and expenses) which are threatened, brought against, or incurred by VersaLogic arising from any actions, omissions or misrepresentations of Buyer, its employees or agents, in the use, promotion, or resale of Products provided by VersaLogic.

### **25. INTELLECTUAL PROPERTY INDEMNITY**

VersaLogic agrees to defend, indemnify, and hold Buyer harmless from and against all expenses, damages, losses, liability and causes of action (including, but not limited to reasonable attorney's fees and expenses) claimed by a third party and arising from, or alleged to have been caused by or arise from VersaLogic's negligence or strict liability involving the design and/or manufacture of the Products, and any claims arising out of or relating to the willful misconduct or negligent acts or omissions on the part of VersaLogic, its employees or agents, including, but not limited to, injury or death to all persons (including employees or agents of Buyer) as well as damage to any property, except as may result from the negligent or willful misconduct of Buyer, its employees and /or agents.

VersaLogic's indemnity shall not apply where infringement would not have occurred from the normal use for which the Products were designed. In the event of any claim that a Product furnished hereunder infringes any United States, Canadian or European patent, VersaLogic may at its option and expense (a) procure for Buyer the right to continue using the Product, or (b) replace the Product with a substantially equivalent non-infringing Product, or (c) modify the Product so that it becomes non-infringing, or (d) grant Buyer a credit for the purchase price paid for such Product. Buyer agrees to pay all costs and expenses incurred by VersaLogic in its defense, and the amount of any judgment against VersaLogic in any suit or proceeding against VersaLogic based upon a claim of infringement resulting solely from the Buyer combining any Product furnished hereunder with any item not

manufactured or furnished by VersaLogic, or from the sale or use of any such combination by Buyer. In the event any Product to be furnished under an Order is to be made in accordance with drawings, samples or manufacturing specifications submitted by the Buyer, and is not the design of VersaLogic, Buyer agrees to defend, indemnify and hold VersaLogic harmless to the same extent and subject to the same requirements as set forth in VersaLogic's obligation to Buyer herein. VersaLogic shall not be obligated to defend nor be liable for costs and damages resulting from a modification of Product after delivery to Buyer, or from other fault, action, or omission of Buyer. VersaLogic may decline to make further shipments to Buyer hereunder if infringement has occurred for such reasons. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE PARTIES FOR PATENT, COPYRIGHT, TRADE SECRET, OR OTHER PROPRIETARY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL CONDITIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO INTELLECTUAL PROPERTY (PATENTS, TRADE SECRET, MASK WORKS, TRADEMARKS, COPYRIGHTS, OR THE LIKE).

## **26. CONFIDENTIALITY AND PROPRIETARY RIGHTS**

The design, production, and operation of the Products, in any form, are proprietary information and trade secrets of VersaLogic ("Proprietary Rights"), and such Proprietary Rights shall not be disclosed or otherwise transferred by Buyer or Buyer's employees to any other person or entity at any time. Buyer shall not modify, reverse engineer, improve, or otherwise change any Product or parts thereof, or any of VersaLogic's Proprietary Rights related thereto, and shall not use, appropriate or copy any of VersaLogic's Proprietary Rights, either for itself or for others. Buyer also agrees not to incorporate or in any way use any of VersaLogic's Proprietary Rights or confidential information (disclosed separately or embodied in any of the Products) in its or any other party's products or businesses. Furthermore, Buyer shall not use VersaLogic's name, trademarks, trade dress, logos, or the equivalent thereof in advertising or sales materials or in any other manner whatsoever without the prior express written approval of VersaLogic.

VersaLogic's Proprietary Rights are unique and valuable, and breach by Buyer of the obligations set forth herein would result in irreparable injury to VersaLogic for which monetary damages alone would not be adequate remedy. Therefore, in the event of breach or threatened breach by Buyer, VersaLogic shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief by way of monetary damages.

## **27. PROPERTY RIGHTS**

As set forth in Section 19 herein, VersaLogic shall solely own and have exclusive worldwide right, title and interest in and to all United States and foreign patents, trademarks, service marks, copyrights, mask works, trade secrets, and all other intellectual and industrial property rights in any way related to the Products, to VersaLogic's Proprietary Rights, and to all modifications, improvements and derivative works related thereto. Title to all of VersaLogic's Proprietary Rights embodied in the Products shall always remain with VersaLogic, and Buyer's use thereof shall be restricted under a non-exclusive license granted by VersaLogic. Subject to Buyer's performance of all obligations hereunder, VersaLogic hereby grants to Buyer a personal, non-exclusive, non-transferable, and indivisible license to use VersaLogic's Proprietary Rights only as they are embodied in the Products and for no other purpose whatsoever. Buyer shall not remove VersaLogic trademark notices, copyright notices, patent markings, or mask work notices on or in the Products or on any other materials supplied by VersaLogic. Sections 26 and 27 shall survive the termination of any Agreement or Order.

## **28. UNITED STATES GOVERNMENT CONTRACT**

If an Order is identified by Buyer as being made for use under a United States Government contract, only those Federal Acquisition Regulations and Department of Defense Supplements (FAR/DFAR) which are included in the Buyer's prime/subcontract with the United States Government, or are required to be included by Executive Order

of the United States Government, shall be incorporated herein, and only to the extent to which VersaLogic must comply pursuant to law.

If an Order is identified by Buyer as being made for use under a United States Government contract, VersaLogic requires incremental payments on any such Order in the form of either Progress Payments in accordance with DFAR 232.501-1 at the rate of 80% or Milestone Payments in accordance with a schedule to be mutually agreed upon by VersaLogic and Buyer. Under no condition shall United States Government Cost Accounting Standards apply.

## **29. EXPORT CONTROL**

The Products and/or information covered by these Terms and Conditions of Sale may be subject to the export regulations of the Government of the United States, Canada or the Buyer's country, if outside of North America. Any or all Products may be subject to export or resale restriction or regulation, and Buyer acknowledges that it shall comply with such regulations or restrictions. If applicable, Buyer shall bear the costs and risks involved in bringing the Products to Buyer's final destination, including duties, taxes and other official charges payable upon importation. VersaLogic shall have no responsibility for any such duties, taxes or other such charges. Buyer shall bear the cost of carrying out Customs formalities and clearance fees. Buyer shall be the Principal Party in Interest as defined in the U.S. Export Administration regulations with respect to all exported Products. Buyer shall be responsible for any export fees and charges. Notwithstanding the foregoing, Buyer shall not export, re-export, resell, transfer, or disclose, directly or indirectly, any Product, technical data or software obtained hereunder outside the same country without (i) complying with applicable export control laws, (ii) notifying and obtaining written permission of VersaLogic, and (iii) providing such reasonable assurances as VersaLogic may request. VersaLogic shall not be liable to Buyer for any failure to provide Products, services or technical data as a result of one these country's: (1) refusal to grant an export or re-export license; or (2) cancellation of an export or re-export license.

## **30. SEVERABILITY**

If any provision of these Terms and Conditions of Sale is determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purpose of the dispute in question, and all other provisions shall remain in full force and effect.

## **31. INSOLVENCY/BANKRUPTCY/FINANCIAL DEFAULT**

If the Buyer fails to pay any sum due to VersaLogic hereunder, or shall fail to satisfy any of its obligations hereunder, and such default shall continue for ten (10) days after the notification by registered letter advising of such default, or if the Buyer becomes subject to any proceedings under bankruptcy laws or other insolvency laws such as the assignment of its business for the benefit of creditors, the filing of a petition under the Bankruptcy Code or similar statute, or the appointment of a receiver or similar officer to take charge of Buyer's property, then VersaLogic shall have the right to immediately repossess the Products and to terminate the Agreement and/or Order. Upon any such termination, the Buyer shall remain liable for all unpaid charges and sums due to VersaLogic and shall reimburse VersaLogic for all costs including reasonable attorney's fees and damages suffered or incurred by VersaLogic as a result of the breach by the Buyer of its obligations hereunder. The remedies provided herein shall be cumulative and in addition to all other remedies available to VersaLogic in law or in equity.

## **32. SETOFF**

All amounts owed by Buyer to VersaLogic under an Order shall be due and payable according to the terms of such Order. Buyer is prohibited from and shall not set off such amounts or any portion thereof, whether or not liquidated, against any sums owed or alleged to be owed by VersaLogic to Buyer, its parent, affiliates, subsidiaries or other divisions or units under other transactions with VersaLogic, its parents, affiliates, subsidiaries or other divisions or units.



**33. DISPUTE RESOLUTION (FOR CONTRACTS WITH NON-U.S. ENTITIES)**

If Buyer is a non-U.S. entity, any dispute, controversy or claim arising out of or relating to an Agreement or Order, or the breach, termination or invalidity thereof, shall be settled by binding arbitration in accordance with the International Chamber of Commerce ("ICC") Rules of Arbitration ("Rules") that are in force at the commencement of the arbitration. If the dispute involves \$5 million or less, the arbitration shall be conducted by a sole arbitrator. Either party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. If the parties have not reached agreement on the choice of an arbitrator within thirty (30) days after receipt of a proposal made in accordance with provisions of this paragraph, the sole arbitrator shall be appointed by the ICC in accordance with the Rules. If the dispute involves more than \$5 million, the arbitration shall be conducted by a tribunal of three arbitrators, one arbitrator to be named by VersaLogic, one arbitrator to be named by Buyer, and the third arbitrator (who shall serve as the chairperson of the tribunal) to be appointed by the two party-appointed arbitrators. If the two party-appointed arbitrators fail to appoint a third within fifteen (15) days of the appointment of the second of the two party-appointed arbitrators, then either party may request that the chairperson be appointed by the ICC in accordance with the Rules. The place of arbitration shall be Geneva, Switzerland. Any arbitral tribunal constructed pursuant to this Section shall apply the law of England to all disputes. The arbitration shall be conducted in English. The award of the arbitrator shall be final and binding upon the parties and may be entered and/or enforced in any court of competent jurisdiction. The parties acknowledge that the arbitration and any award rendered pursuant to it shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Notwithstanding the foregoing, VersaLogic may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights.

**34. DISPUTE RESOLUTION (FOR CONTRACTS WITH U.S. ENTITIES)**

If Buyer is a U.S. entity, any controversy or claim arising out of or relating to an Agreement or Order, or its breach, termination or invalidity thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. In any arbitration hereunder, the parties may agree on the selection of a single arbitrator, but if they cannot so agree, each such party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. No arbitrator may be affiliated, whether directly or indirectly, with any of the parties, including, without limitation, as an employee, consultant, partner, or shareholder. The arbitrator(s) shall permit each of the parties to the arbitration to engage in a reasonable amount of discovery. In the event either party requests arbitration, the arbitration shall be held in Washington County, Oregon. The award by the arbitrator or arbitrators shall be final, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, VersaLogic may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights.

**35. APPLICABLE LAW**

All Agreements and Orders shall be interpreted in accordance with the laws of the State of Oregon, excluding that body of laws known as conflict of law or choice of law, and excluding the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

**36. COST OF COLLECTION AND ATTORNEYS' FEES**

In the event any action is taken by VersaLogic to collect amounts owed by Buyer to VersaLogic, Buyer shall be liable for all costs and expenses incurred by VersaLogic in relation thereto, including legal fees.

**37. DOCUMENTATION AND MANUALS**

All documentation, installation, maintenance, and operations manuals will be in English and in VersaLogic standard format. VersaLogic retains all rights in and to the documentation and manuals. Copying or translating the documentation or manuals, in whole or in part, into another written or electronic format or language is prohibited unless specifically authorized by VersaLogic in writing. Should such copying be authorized, Buyer shall reproduce and include all VersaLogic proprietary and copyright notices and other legends in the same manner that VersaLogic provides such notices and legends. Any translation requirements are Buyer's responsibility.

**38. DISCONTINUED OR OBSOLETE COMPONENTS**

In the event that VersaLogic receives notification or becomes aware that a component part required to complete the manufacture or delivery of a Product becomes obsolete or discontinued, and such component does not have a VersaLogic approved alternate, VersaLogic shall notify the Buyer. VersaLogic shall also propose corrective action, at VersaLogic's option, of either: a) an end-of-life buy of the component in sufficient quantities to fulfill the requirements of the Order; b) a pin-for-pin compatible replacement component; or c) a redesign of the next higher assembly to replace the component. In any event, upon such notification, Buyer shall promptly review and approve the corrective action proposed by VersaLogic. Approval of any action to be taken by VersaLogic shall be issued as an Order Amendment and may include an equitable adjustment to cost and schedule, if applicable.

**39. LIFE SUPPORT AND NUCLEAR APPLICATIONS**

VersaLogic's Products are not authorized for and should not be used as critical components in life support systems or nuclear facility applications without the specific written consent of VersaLogic Corporation.

Life support devices or systems are those, which support or sustain life, whose failure to perform, when properly used in accordance with instructions provided, can be reasonably expected to result in personal injury or death.

Nuclear facility applications include, but are not limited to, (1) those in a nuclear reactor, or (2) any device designed or used in connection with the handling, processing, packaging, preparation, utilization, fabrication, alloying, storing, or disposal of fissionable material or waste products thereof.

Buyer's use of VersaLogic's Products for life support or nuclear facility applications is at Buyer's own risk, and Buyer agrees to defend, indemnify, and hold VersaLogic harmless from any and all claims, suits, or expense resulting therefrom.

(End)