



## COHERENT TERMS AND CONDITIONS OF SALE JAPAN

- 1. SCOPE OF AGREEMENT.** These terms and conditions (“T&C”) shall apply to any transactions between the parties or their respective affiliates and are hereby incorporated by reference into each Sales Order Acknowledgement entered into between Coherent and/or its affiliates, on the one hand, and Buyer and/or its affiliates, on the other hand (each, a “SOA”). Unless otherwise expressly agreed in writing by the parties, with respect to any conflicts between this T&C and any SOA, purchase order, or other document, this T&C will control.
- 2. PRICE.** The prices for Products and Services (“Prices”) are those set forth in the applicable SOA. Coherent shall incur the cost of packaging for shipment. If the price of fuel, raw materials, or other production costs increases, Coherent and Buyer shall discuss the Prices in good faith.
- 3. PAYMENT TERMS.**
- a. All payments are due and payable 30 days from the date of delivery of Products or performance of Services unless otherwise set forth in the applicable SOA. All payments shall be made by the method specified in the applicable SOA. Interest will accrue on overdue balances from the original due date at the rate of 14.6% per year.
- b. If Products or Services covered by the any SOA are not delivered or performed at one time, Buyer will pay for the quantity of Products delivered or Services performed. In the event of any default by Buyer, Coherent may decline to make further shipments without in any way affecting its rights under such order.
- 4. TRANSPORTATION; INSURANCE, TITLE AND RISK OF LOSS.** All transportation will be at the expense of Coherent. Coherent reserves the right to select the means of transportation and routing. Title and risk of loss or damage will pass to Buyer upon delivery to Buyer at the place of delivery set forth in the applicable SOA.
- 5. INSPECTION AND ACCEPTANCE.** Buyer shall inspect Products upon tender of delivery; provided however, that such inspection shall not impair or impact the transfer of title as set forth in Section 4 and Products will be deemed accepted upon tender of delivery. Any errors, alleged defect or nonconformity discovered by Buyer in such inspection shall be resolved in accordance with Section 7. Services will be deemed accepted by Buyer upon being rendered.
- 6. TERMINATION PRIOR TO DELIVERY OR PERFORMANCE.** Unless otherwise agreed by the parties, Buyer may terminate each SOA upon notification to Coherent until the date 30 days prior to the date of delivery or performance set forth in such SOA, subject to a termination charge of 50% of the Prices. Thereafter such SOA may not be terminated by Buyer except with the prior written consent of Coherent.
- 7. LIMITED WARRANTY—LIMITATION OF REMEDIES.**
- a. Coherent warrants to Buyer that the Products delivered under each SOA will (1) comply with either the applicable Coherent published specifications or the specifications mutually agreed and confirmed in writing between the parties and (2) will be free from defects in material and workmanship under proper use, service and condition for a warranty period of 1 year from the date of delivery. If the Products include any service parts provided by Coherent pursuant to a service event, the warranty period for such service parts shall be 90 days from the date of shipment or the remainder of the initial warranty period, whichever is shorter. The warranty for any depot repairs of Products is 90 days from the date of return shipment by Coherent or the remainder of the initial warranty period, whichever is shorter. Coherent warrants to Buyer that it will provide any Services consistent with general industry standards. Except as set forth above, all (i) Services performed under each SOA, (ii) Products delivered as “samples”, “design verification units”, and/or “prototypes”, and (iii) Licensed Software are provided “AS IS,” “WITH ALL FAULTS,” and with no warranty whatsoever.
- b. This warranty is the only warranty made by Coherent with respect to the Products and Services, is nontransferable, and may only be modified or amended by a written instrument signed by a duly authorized officer of Coherent. Major sub-systems manufactured by other firms but integrated into Coherent’s system may be covered by the original manufacturer’s warranty and Coherent makes no warranty, express or implied regarding such sub-systems. Products or parts which are replaced or repaired under this warranty are warranted only for the remaining unexpired portion of the original warranty period applicable to the specific Product.
- c. Subject to the limitations of this Section 7, during an applicable warranty period, Buyer may return defective Products to Coherent at a place designated by Coherent. No Products may be returned to Coherent without first obtaining Coherent’s consent and a Returned Material Authorization Form. Transportation costs shall be paid and borne by Coherent. Prior to any return of Products by Buyer pursuant to any SOA or this T&C, Buyer will afford Coherent the opportunity to inspect such Products at Buyer’s location. The risk of loss of the goods shipped or delivered to Coherent for repair or replacement will be borne by Buyer.
- d. The remedies in this Section 7 are available only if Coherent is notified in writing by Buyer promptly upon discovery that a Product does not conform to this warranty, including a detailed description of such nonconformance and any and all identifying numbers within the warranty period for the individual Product, and it is established to Coherent’s satisfaction that such Products do not conform to this warranty and the Products have not been (i) repaired, worked on, or altered by persons not authorized by Coherent so as, in Coherent’s sole judgment, to injure the stability, reliability, or proper operation of such Products; (ii) subject to misuse, negligence or accident; or (iii) connected, installed, used or adjusted other than in accordance with the instructions furnished by Coherent. Coherent will, at its sole option, either repair, replace, or credit Buyer the Price for the applicable Product as Buyer’s sole remedy under this Section 7.
- e. If it is found that any Product that has been returned is still serviceable, the Product will be returned at Buyer’s expense. A fee for testing and examining Products so returned may be charged to Buyer.
- f. OTHER THAN AS SET FORTH IN SECTION 10, THE REMEDY IN THIS SECTION 7 CONSTITUTES COHERENT’S EXCLUSIVE LIABILITY AND OBLIGATION, AND BUYER’S EXCLUSIVE REMEDY FOR ANY PRODUCTS OR SERVICES COVERED BY ANY SOA. THIS WARRANTY IS EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES.
- 8. COHERENT’S RIGHTS TO SUBCONTRACT.** Coherent may subcontract any portion of the manufacture of a Product, delivery of Service, or other work as well as any of Coherent’s obligations and rights under any SOA or this T&C.
- 9. BANKRUPTCY OR INSOLVENCY OF BUYER.** If the financial condition of Buyer at any time is such as to give Coherent, in its judgment, reasonable grounds for insecurity concerning Buyer’s ability to perform its obligations under any SOA or this T&C, Coherent may: (i) by notice in writing to Buyer, terminate any SOA or this T&C without prejudice to any right or remedy which may have accrued or may accrue thereafter to Coherent; and (ii) require full or partial payment in advance and suspend any further deliveries until such payment has been received.
- 10. INDEMNITY.**
- a. Coherent will, at its own expense, defend or settle any suit against Buyer based on a third party claim that the Product in the form provided by Coherent to Buyer under any SOA infringes such third party’s United States patent (excluding processes or methods claimed by such patent), trademark, or copyright if: (i) such alleged infringement is not based on an Excluded Claim; (ii) Buyer gives Coherent immediate notice in writing of such suit; (iii) Buyer gives Coherent sole control over the defense and settlement of such suit; and

(iv) Buyer gives Coherent all needed information, assistance and authority to enable Coherent to defend or settle such suit. In the case of a final award of damages in any such suit, Coherent will not be liable for any settlement made without its prior written consent or legal fees incurred by Buyer in connection with any such settlement. In satisfaction of this Section 10(a), Coherent, at its sole discretion, may (i) replace or modify the allegedly infringing Products with non-infringing products that are functionally equivalent; (ii) obtain a license for Buyer to continue to use or sell the allegedly infringing Products; or (iii) accept the return of allegedly infringing Products and refund the amount paid by Buyer for such returned Products.

b. "Excluded Claims" are claims arising from or related to (i) the use of Products as a part of or in combination with any other devices, parts, processes or methods; (ii) Coherent's compliance with any instructions provided by or for Buyer; (iii) the use of Products contrary to any instructions issued by Coherent or in breach of this T&C or the applicable SOA; (iv) modifications or alterations to the Products; (v) the practice of any process or method relating to Buyer's or its customers' use of the Products; or (vi) use of the Products after receiving notice of such third party claim. Buyer will, at its own expense, indemnify and hold Coherent harmless from and against any liabilities, costs, damages, or losses resulting from any Excluded Claim to the same extent as set forth in Section 10(a).

c. THIS SECTION 10 STATES COHERENT'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY ANY PRODUCTS OR SERVICES DELIVERED OR PERFORMED UNDER ANY SOA, OR ANY PART THEREOF. THIS SECTION 10 IS IN LIEU OF AND REPLACES ANY OTHER EXPRESSED, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT. IN NO EVENT WILL COHERENT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR OTHER DAMAGES RESULTING FROM ANY SUCH INFRINGEMENT.

**11. NO PROPRIETARY RIGHTS.** Any and all intellectual property rights and all other proprietary rights developed relating to the Products and Services or in the course of performance any SOA shall be the sole and exclusive property of Coherent, and Coherent reserves the right to use such rights for other customers, or license their use to others. Sale of any Products by Coherent does not confer upon Buyer a license under any intellectual property or proprietary rights.

**12. CONFIDENTIAL INFORMATION.** All information provided by Coherent to Buyer shall be deemed confidential information, will remain the property of Coherent, and may be used, reproduced and disclosed by Buyer only to the extent necessary to use the applicable Products and Services purchased under and in accordance with the applicable SOA.

**13. SOFTWARE.** The following terms and conditions will apply to software and firmware in all forms provided by Coherent pursuant to each SOA, including any documentation ("Licensed Software"):

(i) Coherent retains full rights, title, and ownership including all intellectual property rights in and to the Licensed Software;

(ii) For standalone Licensed Software, Coherent grants to Buyer a non-exclusive, nontransferable, non-sublicenseable, limited license to internally use the Licensed Software as a development platform solely in connection with Coherent products;

(iii) For Licensed Software embedded in Coherent products, Coherent grants to Buyer a non-exclusive, limited license to use and distribute the Licensed Software (in machine code only) solely as incorporated in Coherent products;

(iv) Subject to mandatory applicable law, Buyer agrees not to engage in, and to take all reasonable steps to prevent, unauthorized use and disclosure of, including without limitation any effort to reverse engineer, disassemble, de-compile, modify, or otherwise attempt to derive, the source code of any Licensed Software or any portion thereof; and

(v) Buyer will not remove or destroy any trademark, copyright markings, legends, or notices placed upon or contained within the Licensed Software.

**14. APPLICABLE LAW; JURISDICTION AND VENUE.** Each SOA and this T&C, and any disputes arising from or relating thereto or hereto, will be governed by the laws of Japan without reference to its conflict of laws principles. Tokyo District Court will have exclusive jurisdiction and venue over any dispute arising out of any claim, or among the parties arising out of or relating to any SOA or this T&C, and Coherent and Buyer hereby consent to the jurisdiction of such court.

**15. LIMITATION OF LIABILITY.**

a. Coherent will not be liable for any loss, damages or penalty resulting from delay in delivery of the Products or performance of Services when such delay is due to causes beyond the reasonable control of Coherent. In any such event, the date of delivery or performance will be deemed extended for a reasonable time.

b. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY SOA OR THIS T&C, IN NO EVENT WILL COHERENT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTED PRODUCTS OR SERVICES, ANY, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES OR FOR LOST PROFITS OR LOSS OF BUSINESS WHETHER OR NOT COHERENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS HOWEVER CAUSED, UNDER ANY LEGAL THEORY. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF COHERENT ARISING OUT OF OR RELATED TO THE TERMS AND/OR SALE.

c. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY SOA OR THIS T&C, IN NO EVENT WILL COHERENT'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED IN ANY SOA (INCLUDING, FOR CLARITY, WITH RESPECT THIS T&C AS INCORPORATED IN SUCH SOA) EXCEED THE TOTAL AMOUNT PAID BY BUYER TO COHERENT PURSUANT TO SUCH SOA FOR THE PRODUCTS OR SERVICES ACTUALLY GIVING RISE TO SUCH LIABILITY. NO CLAIM, SUIT OR ACTION WILL BE BROUGHT AGAINST COHERENT MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS TRANSPIRED.

d. BUYER ACKNOWLEDGES THAT COHERENT HAS AGREED TO SELL PRODUCTS AND SERVICES TO BUYER AT THE PRICES IN RELIANCE UPON THE LIMITATIONS OF LIABILITY, DISCLAIMER OF WARRANTIES, EXCLUSION OF DAMAGES AND EXCLUSIVE REMEDIES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. BUYER AGREES THAT SUCH PROVISIONS WILL SURVIVE AND APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

**16. ELIMINATION OF ANTISOCIAL FORCES.** Each party represents and warrants to the other party that neither the party nor its officers is, will be, or was within the past 5 years, an organized crime group (including but not limited to "boryokudan"), a member of an organized crime group, or affiliated to an organized crime group or a member of an organized crime group.

**17. TERMINATION.** Upon any one of the following, with respect to or against the party hereof, the other party may, by written notice, terminate any SOA without incurring any liability: (a) a material breach of the obligations under such SOA or this T&C; (b) the filing of a petition in bankruptcy, civil rehabilitation, corporate reorganization, special liquidation or other similar proceedings; (c) insolvency or inability, or admission in writing of its inability, to pay its debts generally as they become due; (d) petition for provisional attachment, attachment or compulsory execution; (e) dissolution or liquidation; or (f) breach of Section 16. Any one of the following acts by Buyer will constitute a material breach of Buyer with respect to any SOA: (i) Buyer fails to make payment for any Products or Services in full when due; or (ii) Buyer fails to accept conforming Products or Services supplied under such SOA. In the event of the expiration or

termination of any SOA, this T&C shall terminate solely with respect to such SOA and shall remain in full force and effect with respect to any other SOAs then-currently in effect.

**18. SUBSTITUTIONS, MODIFICATIONS, AND CHANGES.** Coherent will have the right to make substitutions and modifications of the specifications of Products or Services sold by Coherent if such substitutions or modifications will not materially degrade overall performance.

**19. SAFETY-CRITICAL AND MILITARY APPLICATIONS.**

a. Unless expressly specified by Coherent in writing, Coherent products are not designed for any applications where the failure of such products would reasonably be expected to cause significant personal injury or death. Buyer will fully defend (at Coherent's option), indemnify and hold Coherent harmless from and against any cost, loss, liability, or expense arising out of or related to such use of Coherent products.

b. Coherent products are neither designed nor intended for use in military or aerospace applications or environments unless specifically designated by Coherent as military-grade. Buyer acknowledges and agrees that any such use of Coherent products which has not been designated as military-grade is solely at Buyer's risk, and that Buyer is solely responsible for compliance with all legal and regulatory requirements in connection with such use.

**20. GENERAL PROVISIONS**

a. Buyer agrees that it will comply with all applicable laws, regulations, and administrative rules. Coherent may suspend performance if Buyer is in violation of any applicable laws or regulations. Buyer will provide any additional documentation required by Coherent for compliance with applicable laws.

b. Buyer may not assign any of its rights or delegate any of its obligations under this T&C or any SOA, whether voluntarily, by operation of law, or otherwise. Coherent may assign its rights and/or delegate its obligations under this T&C or any SOA upon written notice to Buyer. Subject to the foregoing, this T&C and each SOA will bind each party and its respective successors and assigns.

c. Any waiver by Coherent of any right it may have or default by Buyer will not be deemed to be a continuing waiver of such right or default or a waiver of any other right it may have under any SOA or this T&C or other default, nor will any delay or omission by Coherent in exercising or availing itself of any right or remedy that it has or may have operate as a waiver of any right or remedy. No waiver by Coherent will be effective except pursuant to a writing signed by a duly authorized representative of Coherent.

d. Neither this T&C nor any SOA may be superseded, cancelled, or amended except in writing. If any provision of any SOA or this T&C is determined to be unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties and the remaining provisions will remain in full force and effect.

e. This T&C and each SOA will constitute the entire agreement between the parties with regard to the Products or Services sold under such SOA, and expressly supersedes and replaces any prior or contemporaneous agreements, written or oral, relating to such Products or Services.

**21. EXTENDED SERVICE CONTRACTS.** In the event that Buyer is purchasing an extended service contract from Coherent, then in addition to the provisions of Sections 1-20 hereof, the following terms shall also apply: (a) Coherent's service contract will not cover (in addition to the exclusions set forth above under Section 7) any defect or damage resulting from (i) unauthorized components and accessories manufactured or provided by anyone other than Coherent, (ii) improper or inadequate maintenance, (iii) Buyer-supplied interfacing, (iv) operation outside the environmental specifications for the Product, (v) improper site preparation and maintenance, (vi) unauthorized modification or misuse, and (vii) damage as a result of external causes, such as force majeure type factors; (b) Replacement parts may be new or refurbished at Coherent's sole discretion; (c) Coverage shall only apply to Buyer at the physical location provided by Buyer at the time such extended service contract is purchased; (d) Advantage Plus contracts may only be purchased in 12 month

increments, up to a maximum of 36 months; and (e) Extended service contracts are non-refundable.