

## SILICON SENSING SYSTEMS LIMITED

### MEMS FOUNDRY SERVICES

#### STANDARD TERMS & CONDITIONS

##### 1. DEFINITIONS

In these Conditions the following titles shall have the meanings ascribed to them:

“SSSL” means Silicon Sensing Systems Limited.

“Quotation” means SSSL’s letter attached hereto and all documents attached or referenced therein together with these Standard Conditions of Sale.

“Purchaser” means the person, firm or company to whom the Offer is addressed.

“Articles” means all equipment, material and services to be supplied by SSSL in accordance with the Quotation.

“GDPR” means General Data Protection Regulation (EU) 2016/679

“Data Protection Act” means the Data Protection Act 2018

##### 2. ACCEPTANCE

The Quotation shall become a binding contract upon acceptance by the Purchaser within the validity period of the Quotation either by formal written acceptance or by facsimile accepting all the terms thereof. The accepted Quotation shall constitute the entire contract between SSSL and the Purchaser, and supersede all other previous communications, representations or agreements between the parties.

##### 3. PRICES

- (a) The prices of the Articles are those specified in the Quotation, and unless otherwise stated elsewhere therein such prices shall be valid for a period of 30 days only from the date of the Quotation.
- (b) Unless otherwise stated elsewhere in the Quotation all prices include the cost of delivery FCA Plymouth (Incoterms 2020) or FCA Osaka (Incoterms 2020). Any other delivery required may be the subject of an extra charge.
- (c) The prices are inclusive of the cost of packing, but to commercial standard only; any other standard of packing required will be the subject of an extra charge. Packing will not be suitable for reconsignment unless specifically requested by the Purchaser, whereupon such packing may be the subject of an extra charge.
- (d) The prices quoted apply only to the quantities and delivery schedule specified in the Quotation.

##### 4. PAYMENT

- (a) Unless otherwise specified elsewhere in the Quotation, payment of the price or of any stage payment for which the contract provides shall be made by the Purchaser within 30 days of the date of SSSL’s invoice therefor.
- (b) Without prejudice to any other of SSSL’s rights or remedies the Purchaser shall in addition to payment of the price pay interest at the rate of 2% per annum above the then current SSSL lending rate of the NatWest Bank on any sum remaining unpaid after the due date until the date of actual payment.
- (c) Notwithstanding SSSL’s rights under condition 9 hereof, if the Purchaser fails to make any payment within 30 days after the same shall have become due SSSL shall have the right by notice in writing forthwith to suspend all further work or deliveries until such default be made good without prejudice to any other rights or remedies which may be available to SSSL.
- (d) If the Purchaser should fail to take delivery of the Articles SSSL shall be entitled forthwith to invoice for the Articles and payment shall be due thereon as if delivery had been made notwithstanding SSSL’s right of lien (including lien for storage or demurrage charges).

##### 5. OWNERSHIP

Ownership in the Articles shall not pass to the Purchaser until SSSL has received payment in full.

##### 6. DELIVERY

- (a) Unless otherwise stated elsewhere in the Quotation SSSL shall deliver the Articles FCA Plymouth (Incoterms 2020) or FCA Osaka (Incoterms 2020), whichever alternative is specified in the Purchaser’s acceptance of the Offer or, if none, whichever alternative SSSL deems at its discretion to be the most appropriate. The risk in the Articles shall pass to the Purchaser on delivery.
- (b) A default by SSSL in respect of any particular delivery under the contract shall not affect any other delivery under the contract nor entitle the Purchaser to repudiate the whole or any other part of the contract.
- (c) All delivery dates or periods given in the Quotation are deemed to be computed from the date of receipt of the Purchaser’s order. However, whilst every reasonable effort will be made to meet contractual delivery dates, times or dates for delivery are estimates only unless specified to the contrary elsewhere in the Quotation, and SSSL shall not be liable for the results of such delay.

##### 7. ACCEPTANCE/REJECTION PERIOD

- (a) Articles delivered under the contract will be deemed to have been finally accepted if SSSL does not receive notice of rejection within ten days of the date of such delivery.
- (b) Any Article rejected outside the fifteen day period stipulated in (a) above but returned and accepted as a valid warranty within the terms of Clause 8 will be repaired or replaced (at SSSL’s option) under warranty. However, SSSL will not accept debit notes nor issue credit notes for Articles returned after the expiry of the said fifteen day period.

##### 8. WARRANTY

- (a) Except as provided in (c), SSSL will repair or at its option replace any Article found within a period of twelve months from date of delivery to be defective due to faulty workmanship or defective materials provided that:
  - (i) the Purchaser has notified SSSL in writing of the alleged defect within 30 days of discovery hereof and has thereupon returned the Article to SSSL properly packed and at the Purchaser’s risk and expense; and
  - (ii) the Article has been stored, maintained, installed, operated and used in accordance with the applicable specifications, manuals or instructions issued by SSSL and in accordance with sound engineering practice; and
  - (iii) the Article has not been subjected to any misuse or neglect or been involved in any accident.
- (b) Except as otherwise agreed in writing, SSSL shall not be responsible for any dismantling or reassembly costs incurred by the Purchaser or any third party in connection with this Condition.
- (c) Upon completion of the repair or replacement of any Article accepted by SSSL as a valid warranty the unexpired period of the warranty shall then apply with respect thereto and shall run from the date of delivery of such repaired or replacement Article.
- (d) Where a repair or a replacement of an Article is accepted by SSSL as a valid warranty claim SSSL shall reimburse the Purchaser’s reasonable transportation costs of returning the defective Article, and the repaired or replacement Article shall be delivered to the Purchaser at SSSL’s expense and risk. Ownership of any Articles replaced hereunder shall re-vest in SSSL.
- (e) Where SSSL sells Articles which are made to a design furnished by, or defective or imperfect materials provided by, the Purchaser, SSSL warranty obligations shall extend solely to workmanship and to materials and not provided by the Purchaser or its representative and not to fitness for purpose nor satisfactory quality.
- (f) Articles represented by the Purchaser as being defective shall not form the subject of any claim for work done by the Purchaser or for any loss, damage or expense whatsoever and however arising, directly or indirectly, from any alleged defect except as provided in Condition 13.

- (g) SSSL warrants that, except as provided in (e) above and unless stated to the contrary elsewhere in the Quotation, the Articles are of satisfactory quality, and conform to the applicable specifications and descriptions elsewhere in the Quotation (if any).
- (h) The foregoing provisions of this Condition represent the entire liability of SSSL, its employees and agents in respect of defective Articles and all other conditions, warranties and liabilities as to quality, description, fitness for purpose or otherwise, whether expressed or implied by statute or common law are hereby excluded.

#### **9. TERMINATION**

If the Purchaser shall make default in, or commit any breach of any of, its obligations to SSSL hereunder or if any distress or execution shall be levied upon the Purchaser or its property or assets or if the Purchaser shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against the Purchaser or if the Purchaser shall be a company and any resolution or petition to wind up such company's business shall be passed or presented otherwise than for reconstruction or amalgamation or if a receiver of any such company's undertaking, property or assets or any part thereof shall be appointed SSSL shall have the right forthwith to determine the contract in whole or in part upon written notice being given to the Purchaser or delivered to the Purchaser's last known address without prejudice to any debt, claim, cause of action or right which SSSL may make or exercise.

#### **10. OVERSEAS CUSTOMERS OR END USERS**

- (a) Any Quotation made by SSSL to an overseas Purchaser and any contract resulting therefrom is conditional upon export clearance being authorised by the appropriate authority.
- (b) Any non-UK tax, duty or other impost on sums payable by the Purchaser to SSSL under the contract will be to the Purchaser's account.

#### **11. EXCUSABLE DELAY**

SSSL shall not be in default by reason of any failure to perform its obligations hereunder if such failure arises by reason of any event beyond SSSL's reasonable control including but not limited to acts of God, war, fire, flood, strikes, riots or civil commotion, sabotage, an epidemic or pandemic event resulting from widespread disease on a national or global scale, action of any government or any act of omission of the Purchaser or of a third party. SSSL undertakes to advise the Purchaser at the earliest opportunity if such a situation arises and is likely to affect SSSL's performance hereunder, and SSSL shall take all reasonable steps to minimise the effects of such delay.

#### **12. INTELLECTUAL PROPERTY RIGHTS**

Unless otherwise specified elsewhere in the Quotation, and subject to the rights of third parties, all intellectual property rights of whatever sort in the Articles are vested in and remain with SSSL.

#### **13. LIMITATION OF LIABILITY**

- (a) Except as otherwise stipulated hereunder, SSSL shall not be liable for any loss sustained by any person or damage to property whatsoever and howsoever arising, directly or indirectly, out of or in consequence of any act or omission of SSSL in performance of the contract.
- (b) The Purchaser shall indemnify and hold SSSL harmless against any claim by, or loss or damage to, any person or property directly or indirectly occasioned by or arising from:
  - (i) The use or operation of the Articles (excepting claims in respect of patent or other intellectual property infringements which are dealt with under Condition 14 hereof).
  - (ii) Default (which term shall include but not be limited to non-compliance with any obligation hereunder, any delay or giving of wrong information and any lack of required information) of an obligation of the contract or misuse of an Article by or on the part of the Purchaser.
- (c) Nothing contained in these Conditions shall affect SSSL's liability as may be imposed by the Unfair Contract Terms Act 1977 for death or personal injury caused by the negligence of SSSL.
- (d) SSSL's total liability whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in performance or connection with the contract shall be limited to the price of the Articles as set out in the Quotation and Condition 3 above or £100,000 (GBP), whichever is the lower.
- (e) The remedies set forth in this Condition 13 are the sole and exclusive remedies of the Purchase for any claims, expenses or damage arising out of or related to products delivered under these Conditions. In no event shall SSSL be liable in tort or in contract for any loss of profit or business, incidental, special, indirect or consequential damages.

#### **14. PATENT INDEMNITY**

- (a) In respect of the infringement of letters patent or any other intellectual property rights relating to any part of the Articles, SSSL's liability shall be limited to Articles of SSSL design and relate solely to infringement of United Kingdom patents. In the event of such infringement SSSL's obligations shall be limited to (at SSSL's option) either replacing the infringing item by a non-infringing item, or securing at its own cost a licence permitting use of said item by the Purchaser (or end user, as applicable) without infringement, or paying a sum of money to the Purchaser in compensation for loss of use, such amount not to exceed the original contract price of the said item.
- (b) SSSL shall, as far as it legally may, allow to the Purchaser the benefit of any reliefs or indemnities received from the supplier of any infringing item not of SSSL's design.
- (c) No liability shall be accepted by SSSL in respect of infringements arising by combination of the Articles with any other items, or from their use for a purpose not specified or disclosed to SSSL.
- (d) This indemnity is conditional upon SSSL receiving the earliest possible notice from the Purchaser of any claim being made or any actions threatened or brought against the Purchaser and the Purchaser permitting SSSL to conduct any litigation which might ensue and all negotiations for the settlement of the claim.
- (e) The Purchaser for its part warrants that any design or instructions furnished by it shall not be such as will cause SSSL to infringe any letters patent or other intellectual property right and shall indemnify SSSL in respect of any such infringement.

#### **15. ASSIGNMENT**

The Purchaser shall not assign or transfer its rights and obligations under these Conditions without the express prior written consent of SSSL. The rights and obligations set forth in these Conditions shall not be imposed upon any party other than SSSL and the Purchaser to whom these Conditions apply. Only those parties to these Conditions are bound by the terms and can enforce the obligations.

#### **16. MODERN SLAVERY ACT**

In performing its obligations under the Conditions herein, the Purchaser shall act in accordance with all applicable Modern Slavery laws including, but not limited to, the regulations incorporated within the Modern Slavery Act 2015. The Purchaser shall take all reasonable measures to ensure that no activity of modern slavery or human trafficking exists within any part of its business or supply chain and shall ensure that all its business activities are executed in full compliance with SSSL's Modern Slavery Act Statement which is accessible from SSSL's website at [www.siliconsensing.com](http://www.siliconsensing.com).

#### **17. CYBER SECURITY**

The Purchaser shall uphold an acceptable standard of protection of security and communication within its practices and policies, a standard of which is generally recognised by Cyber Security laws as good practice and compliance. The Purchaser shall communicate to SSSL any circumstances where such compliance is not achievable.

#### **18. GDPR AND THE DATA PROTECTION ACT**

In compliance with the General Data Protection Regulation (EU) 2016/679 (GDPR) and the Data Protection Act 2018, the Purchaser shall ensure the security and protection of all personal information and shall provide a compliant approach to data protection laws. The Purchaser shall implement data protection roles, policies, procedures, controls and measures across any part of its business at a generally recognised standard, to ensure consistent compliance with the aforementioned legislation.

## 19. SUB-CONTRACTING

SSSL reserves the right to sub-contract the fulfilment of the contract or any part thereof.

## 20. LIEN

In addition to any right of lien to which SSSL may by law be entitled, SSSL shall in the event of the Purchaser's insolvency be entitled to a general lien on all items in SSSL's possession (notwithstanding that such items or any of them may have been paid for) for the unpaid price of any other items sold and delivered to the Purchaser by SSSL under the same or any other contract.

## 21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No third party will have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any obligations under these Conditions.

## 22. WAIVER

Any failure, delay or indulgence on the part of SSSL in exercising any power or right conferred hereunder shall not operate as a waiver of such power or right or preclude the exercise of any other right or remedy hereunder.

## 23. NOTICES

Any notice or other communication sent to the Purchaser in connection herewith shall be sufficient if sent to the address notified to SSSL for that purpose or, in the absence of such notification, to the Purchaser's address last known to SSSL.

## 24. LAW

The construction, validity and performance of the contract shall be governed by English law.

## 25. GENERAL

If at any time any term or condition hereof is or becomes illegal or void as a consequence of the operation of law then the remaining provisions hereof shall remain in full force and effect.

## 26. MEMS FOUNDRY SERVICES SUPPLEMENTARY TERMS

In addition to the above Standard Terms and Conditions the following Conditions shall apply in respect of any Purchase Order/Agreement/Contract for the provision of MEMS Foundry Services by SSSL or any Group/Subsidiary Company of SSSL. In the event of any conflict or inconsistency between the conditions of this Clause and the above mentioned Standard Terms (1 to 25 Inclusive) then the conditions of Clause 26 shall prevail.

### (a) Definitions

"Purchaser Supplied Goods" means the parts/material provided by the Purchaser to be processed by SSSL using its MEMS Foundry Service.  
"Object" means the Purchaser Supplied Goods having been processed by SSSL's MEMS Foundry Service.

### (b) Purchaser Supplied Goods

- (i) The Purchaser shall supply as many parts (including any trials parts/material) at its expense as SSSL shall require for its Foundry Service in order for SSSL to determine the optimal conditions of process for its Foundry Service.
- (ii) The Purchaser shall provide a written record of the Purchaser Supplied Goods upon their delivery to SSSL and/or its Subsidiary/ Group Company. SSSL shall thereafter inspect the Purchaser Supplied Goods utilising the written record provided by the Purchaser. In the event that SSSL discovers any damage or defects with the Purchaser Supplied Goods, SSSL shall notify the Purchaser and request the necessary replacement parts/material. Should further damage or defects be discovered by SSSL during the Foundry Service processing then SSSL will suspend the processing and determine with the Purchaser an acceptable course of action.
- (iii) Any unused Purchaser Supplied Goods shall be returned to the Purchaser following completion of the Object.

### (c) Storage of Purchaser Supplied Goods

- (i) Purchaser Supplied Goods such as masks and tools which are owned by the Purchaser may be stored at SSSL and/or its Subsidiary/Group Company following completion of the Foundry Service.
- (ii) The maximum storage period for Purchaser Supplied Goods shall be 12 months from date of last use, following which period SSSL may dispose of these items.

### (d) Delivery

- (i) SSSL shall deliver the Object to the Purchaser in accordance with the terms of Clause 6. Above.
- (ii) The Purchaser shall inspect the Object immediately upon delivery and shall advise any defects within ten (10) days of such delivery.
- (iii) If SSSL is satisfied that any part of the Object has a defect following inspection by the Purchaser then SSSL shall produce replacement parts of the Object within a reasonable period thereafter and without additional charge to the Purchaser. The Purchaser shall supply free of charge to SSSL any additional Purchaser Supplied Goods required to effect such replacement action.
- (iv) SSSL does not guarantee any yield or quantity resulting from the delivered Object.
- (v) In the event that SSSL determine that it is not reasonably possible to complete the Object, or the Purchaser cancels the Object, then SSSL will advise the Purchaser accordingly and submit its charges for the activity with respect to the Object to the Purchaser.
- (vi) SSSL or any Group Company/Subsidiary shall not have any liability or obligation whatsoever with regard to the Object upon completion of the acceptance period at Sub-Clause 26 (d) (ii) above.
- (vii) For the avoidance of doubt the terms of Clause 8 (Warranty) shall not apply to any Purchaser Order/Contract for the provision or supply of any Articles and/or Object processed or produced at a prototype stage and/or for which any design validation has not been properly completed and agreed and accepted as such in writing by an authorised representative of SSSL.

### (e) Confidentiality

WHEREAS SSSL and the Purchaser (each a "Disclosing Party", and together the "Parties") contemplate that they may disclose Proprietary Information (as defined below) to the other party (the "Receiving Party") relating to the activities under any Purchase Order for the Foundry Service (the "Purpose").

- (i) "Proprietary Information" means any information, knowledge, or data that is received by a Receiving Party from the Disclosing Party in furtherance of or pursuant to the Purpose, and that is (a) in writing and clearly marked with a proprietary or confidential legend at the time of disclosure; (b) in a machine-readable form, with the information or the media in which it is provided being clearly marked with a proprietary or confidential legend at the time of disclosure, or if such marking is not practicable, such information or media being identified as proprietary or confidential by written communication of the Disclosing Party prior to or contemporaneously with its disclosure; (c) disclosed orally or visually, with the information being identified as proprietary or confidential at the time of disclosure, and reduced to writing and clearly marked with a proprietary or confidential legend within thirty (30) days of the initial disclosure; or

- (d) incorporated or embodied in a sample product or other equipment, material or item clearly marked with a proprietary or confidential legend at the time of disclosure.
- (ii) A Receiving Party shall not disclose Proprietary Information to a third party without the Disclosing Party's express written consent.
  - (iii) A Receiving Party shall safeguard Proprietary Information using at least the same degree of care the Receiving Party uses to protect its own Proprietary Information, but with no less than reasonable care under the circumstances.
  - (iv) A Receiving Party shall not use Proprietary Information except in furtherance of the Purpose for the mutual benefit of the Parties. A Receiving Party shall not use Proprietary Information for any other purpose, including, without limitation, to design, manufacture, repair or overhaul the Disclosing Party's products, or parts thereof, to reverse engineer such products or parts, to compare such products or parts to those other than the Disclosing Party's or to design products or parts similar to Disclosing Party's, or to obtain appropriate governmental/quasi-governmental manufacturer approval or other governmental approval to manufacture such products or parts, without the Disclosing Party's express prior written consent. A Receiving Party shall not make or permit to be made any copies of Proprietary Information except as required for the Purpose.
  - (v) A Receiving Party shall permit access to Proprietary Information only to (a) persons who have a need to know for the Purpose and are bona fide employees or contract labour personnel of such Receiving Party, (b) such Receiving Party's information technology system administrators and service providers in the ordinary course of business, and (c) such Receiving Party's accountants, attorneys and similar professional advisors; provided that each such recipient is obligated to protect Proprietary Information under terms and conditions at least as restrictive as the terms and conditions of these Conditions. Disclosure to any other persons, including consultants, contractors, subsidiaries and affiliates of a Receiving Party, shall be treated as disclosure to a third party.
  - (vi) All Proprietary Information shall remain the property of the Disclosing Party. Upon expiration or termination of these Conditions, unless otherwise promptly requested by the Disclosing Party in advance of such expiration or termination, a Receiving Party shall return or destroy (and, in the case of destruction, promptly provide a certification of such destruction to the Disclosing Party) all Proprietary Information in its possession, including, without limitation, any copies, summaries, and/or compilations made of or from Proprietary Information, and shall make no further use of Proprietary Information. Notwithstanding the immediately preceding sentence, a Receiving Party is not obligated to return or destroy (a) any Proprietary Information stored on back-up media for purposes of disaster recovery in the ordinary course of business that may be subject to destruction in due course, provided that such Receiving Party is precluded from accessing such Proprietary Information after expiration or termination but prior to its destruction, and (b) residual or latent data such as resulting from deleted files, automatically created temporary files, printer spool files, and metadata that can only be retrieved by computer forensics experts and is generally considered inaccessible without the use of specialised tools and techniques.
  - (vii) The obligations under these Conditions as to any Proprietary Information shall continue for five (5) years from the date of expiration or termination of these Conditions.
  - (viii) Nothing in these Conditions shall restrict the right of a Receiving Party to use or disclose information that is: a. in the public domain at the time the Disclosing Party first disclosed it to the Receiving Party hereunder, or subsequently became publicly known through no wrongful act of the Receiving Party; b. known to the Receiving Party, other than through receipt under a separate Confidentiality Undertaking or similar agreement, prior to receipt under these Conditions; c. disclosed to the Receiving Party without restriction by a third party who had the lawful right to disclose such information; d. independently developed by the Receiving Party without the use of or reference to Proprietary Information; or e. required to be disclosed by judicial process, provided that the Receiving Party promptly provides notice of such process to the Disclosing Party and cooperates with any efforts of the Disclosing Party to contest disclosure, limits disclosure to the extent strictly required, and otherwise continues to protect such information as Proprietary Information until such time as one of the foregoing exceptions (a) through (d) are satisfied.
  - (ix) The Disclosing Party represents and warrants that it has the full right and authority to enter into these Conditions and to disclose the Proprietary Information to a Receiving Party pursuant to the terms hereof. The Disclosing Party makes no other representations or warranties concerning Proprietary Information, and hereby disclaims all other representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any warranties concerning the quality, accuracy or completeness of the Proprietary Information. In no event shall either Party be liable for indirect, incidental, special, consequential, punitive or exemplary damages, including, without limitation, loss of income, revenue, profits or opportunities, arising out of or relating to these Conditions or Proprietary Information.
  - (x) Except for the limited rights expressly granted to the Receiving Parties in these Conditions, neither the execution of these Conditions, nor the furnishing of information hereunder, shall be construed as granting to a Receiving Party any right or license under any patent, copyright, trademark, trade secret or other intellectual or industrial property right.
  - (xi) Neither Party may assign or transfer its rights and obligations under these Conditions without the express prior written consent of the other Parties (not to be unreasonably withheld), except that each Party, upon prior written notice to the others, may assign or transfer these Conditions (a) in connection with the sale of the business to which these Conditions relate or (b) to a subsidiary or affiliate of the Party.
  - (xii) Without regard to the duration of its other obligations hereunder, a Receiving Party shall control access to, and use of, Proprietary Information and the direct product thereof in accordance with all applicable U.K., Japanese and U.S. and foreign export laws and regulations, including, without limitation, the Arms Export Control Act and the International Traffic in Arms Regulations (ITAR), 22 C.F.R. parts 120 - 130 and the Export Administration Act and the Export Administration Regulations (EAR), 15 C.F.R. parts 730 - 774 ("Export Laws and Regulations"). In connection with and without limiting the general applicability of the foregoing, the Disclosing Party shall, in addition to the marking requirements of paragraph 1, conspicuously mark any Proprietary Information controlled under the Export Laws and Regulations (detailing the nature of control) and no Receiving Party shall make or permit disclosure of such Proprietary Information or the direct product thereof to any other company, entity, person, or destination unless (a) the Receiving Party has received the Disclosing Party's express written consent to do so and (b) authorisation under applicable Export Laws and Regulations have been obtained.
  - (xiii) To the extent that any provision of these Conditions is invalid under any applicable statute or rule of law, such provision or portion thereof shall be deemed to be omitted without affecting the continued validity of the remaining provisions.