

TOSOH SMD, INC.

TERMS AND CONDITIONS OF SALE

(also available at <https://www.tosohsmd.com/our-products/sales-terms-and-conditions>)

If Tosoh SMD, Inc. has signed a supply or consignment agreement with the buyer, the terms and provisions of that signed supply or consignment agreement shall supersede the terms and conditions stated below.

1. **Acceptance.** BY ORDERING, PAYING FOR OR ACCEPTING ANY PRODUCT SOLD BY TOSOH SMD, INC. ("TOSOH"), THE BUYER NAMED IN TOSOH'S QUOTATION AND/OR ORDER ACKNOWLEDGEMENT ("BUYER") AGREES TO ALL THE TERMS AND CONDITIONS STATED BELOW. Acknowledgement, acceptance or receipt by any Tosoh employee or agent of Buyer's purchase order or other document containing pre-printed or customized terms that are contrary or additional to the terms of this Agreement (defined below) shall not vary this Agreement. Nor shall contrary or additional representations or statements, whether made in writing or verbally, by a Tosoh employee or agent vary this Agreement. All such contrary and additional terms, representations and statements are rejected. This Agreement may be changed only by a writing signed by an authorized representative of Tosoh stating that it is modifying this Agreement. The term "Agreement" means, collectively, (i) Tosoh's quotation, if one is issued, (ii) Buyer's written purchase order accepted by Tosoh, but only with respect to identification and quantity of the Products (defined below) ordered, (iii) Tosoh's acknowledgement or acceptance of Buyer's order, and (iv) these Terms and Conditions of Sale.

2. **Quotation; Order Acceptance; Pricing.** Tosoh may withdraw its quotation at any time and all purchase orders issued by Buyer, whether they are preceded by Tosoh's quotation or not, are subject to Tosoh's acceptance. Pricing for the products which are the subject of this Agreement ("Products") shall be as stated on Tosoh's order acknowledgement and invoice.

3. **Taxes; Customs; Shipping Charges.** Buyer shall reimburse Tosoh for all taxes, customs, duties, excises, tariffs, brokerage fees or other charges which Tosoh may be required to pay to any government (foreign, national or local) and which are levied directly upon, or measured directly by, the sale, production, transportation and/or export of the Products. Unless specified otherwise on Tosoh's quotation or order acknowledgement, in-transit insurance and shipping charges shall be detailed on Tosoh's invoice and shall be paid for by Buyer.

4. **Title; Risk of Loss.** Unless specified otherwise on Tosoh's quotation or order acknowledgement, Tosoh shall arrange for shipment of the Products by common carrier to Buyer's facilities, and shipment shall be EXW (Incoterms 2020) Tosoh's designated shipping point (located in Grove City, Ohio). Title and risk of loss on the Products shall pass to Buyer upon Tosoh's tender of delivery of Products to the common carrier at Tosoh's designated shipping point. Tosoh retains, and Buyer hereby grants, a security interest (or charge, lien, or similar right under applicable local law) in each Product and proceeds thereof until Buyer has made payment in full for the Products. Buyer will, upon request by Tosoh, provide all cooperation required by Tosoh to perfect such security interest. Tosoh reserves the right to repossess the Products if Buyer failed to make full payment for the Products.

5. **Payment Terms.** Tosoh shall invoice Buyer on or after the date of each shipment hereunder. Unless specified otherwise on Tosoh's quotation or order acknowledgement, terms of payment shall be net 30 days and any delinquent payment shall bear interest at the rate of one-half of one percent (0.5%) per month, up to the maximum rate of interest permitted by applicable law. Delivery of the Products shall be subject to receipt of cash or credit arrangements made by Buyer for the purchase price. If payment is not made in accordance with the applicable payment terms, or if Buyer's credit standing has been impaired at any time, Tosoh may withhold delivery of the Products until satisfactory cash or credit arrangements have been made, and may demand in writing that Buyer provides adequate assurance of its ability to make payments under such terms. In addition, Tosoh shall have the right to cease any further delivery should Buyer voluntarily declares or places itself into, or is involuntarily placed into, bankruptcy or other similar insolvency proceedings. Buyer shall pay all costs (including reasonable attorneys' fees) incurred by Tosoh to collect amounts due under this Agreement.

6. **Inspection.** Buyer shall be responsible for inspection of the Products upon arrival at Buyer's designated location. All claims relating to quantity delivered, damage to or condition of the Products included in a shipment will be deemed waived by Buyer unless written notice thereof shall be given to Tosoh within 15 days after arrival at Buyer's designated location.

7. **Force Majeure.** Tosoh shall not have any liability for its full or partial failure to perform hereunder if the failure is due to Force Majeure which is: (i) an act of God or the public enemy, fire, explosion, perils of the sea, flood, drought, war, riot, sabotage, accident, embargo, epidemic, pandemic; (ii) interruption of or delay in transportation; inadequacy,

shortage or failure of normal sources of supply of materials or equipment; equipment or facility breakdowns; or labor strike or trouble; (iii) compliance by Tosoh with any direction, order or request of any governmental agency or authority; or (iv) any circumstance, without limiting the foregoing, of like or different character that is beyond the reasonable control of Tosoh.

8. **Allocation.** If, for reasons of Force Majeure or otherwise, Tosoh is unable to supply contracted quantities of Products to all its customers, Tosoh may satisfy its obligations under this Agreement by allocating to Buyer in any commercially reasonable manner a share of Tosoh's available supply of Products.

9. **Delivery Date.** Tosoh shall not be obligated to deliver a Product earlier than the lead time period stated by Tosoh from time to time to Buyer for the Product. If Tosoh expects a delay in the delivery of the Products (for reasons other than Force Majeure) for more than 15 days beyond Tosoh's lead time period for the Product, Tosoh shall immediately inform Buyer, and Buyer will make a decision within two business days of receipt of such notice from Tosoh on whether to accept the delay or cancel this Agreement or portion of this Agreement concerning the delayed items. This will be Buyer's sole remedy for any delay in delivery. There will be no penalty against Tosoh or right for Buyer to cancel should the delay be less than 15 days. Tosoh may deliver all or any partial quantity of the Products before any stated delivery date, provided Tosoh shall provide advance written notice to Buyer.

10. **Warranty; Remedies.** Tosoh warrants that for a period of one (1) year following delivery of the Products to Buyer's facility, the Products (i) will meet the specifications that have been agreed between Buyer and Tosoh in writing and (ii) will be free of defects in material and workmanship when properly used in their intended use/application. If the foregoing warranty is breached, Buyer will return the applicable Products pursuant to a Tosoh Return Material Authorization at Tosoh's risk and expense. At Tosoh's option, Tosoh shall (a) promptly repair or replace the non-conforming Products at no cost to Buyer or (b) refund to Buyer the appropriate amount not to exceed the purchase price of such non-conforming Products. If Tosoh finds that returned Products are conforming and without defects, Buyer shall bear all return shipping cost, and the Products will be returned to Buyer, or otherwise disposed pursuant to Buyer's instructions, at Buyer's cost. The foregoing warranty shall not cover any Products sold, transferred to or shared with a third party by Buyer, or defects caused by (1) improper handling or storage, (2) a Product modification without Tosoh's prior written consent, (3) use of the Products outside their intended use/application, or (4) improper use of the Products. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. TOSOH MAKES NO OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESS OR IMPLIED, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY, OR WARRANTIES THAT WOULD OTHERWISE ARISE FROM COURSE OF DEALING OR PERFORMANCE. BUYER REPRESENTS THAT IT HAS NOT RELIED ON ANY STATEMENT, REPRESENTATION OR WARRANTY OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS SECTION. IN THE EVENT THE PRODUCTS FAIL TO CONFORM TO THE FOREGOING WARRANTY, BUYER'S SOLE AND EXCLUSIVE REMEDY IS, AT TOSOH'S OPTION, THE REPAIR OR REPLACEMENT OF THE PRODUCTS OR REFUND OF THE PURCHASE PRICE. IF ANY IMPLIED WARRANTIES APPLY AS A MATTER OF LAW, THEY ARE LIMITED IN DURATION TO THE LENGTH OF THE WARRANTY STATED ABOVE.

11. **Intellectual Property Infringement.** In the event a third party brings a lawsuit or claim against Buyer due to the infringement or alleged infringement by a Product of (i) a U.S. issued patent, or (ii) a trademark, copyright or other intellectual right ("Infringement Claim"), Buyer will give prompt notice of same to Tosoh. Tosoh shall defend Buyer in such Infringement Claim and Tosoh shall be responsible for the legal and related costs and expenses of such defense as well as the costs and expenses of any settlement or compromise of such Infringement Claim, provided Buyer shall give Tosoh full and complete authority, information and assistance (at Tosoh's expense) for such defense and no settlement or compromise shall be made without Tosoh's prior written consent. Concurrent with defending the Infringement Claim and/or in the event a Product is held to constitute infringement, Tosoh, at its option in its sole discretion, shall have the right to do any one or more of the following: (a) retain the right for Buyer to continue using the Product; (b) modify the Product so that it becomes non-infringing; or (c) remove it, grant Buyer a credit for the purchase price thereof, and cease further supply of like Products. Tosoh's obligations do not extend to lawsuits or claims of infringement arising from (1) Tosoh's compliance with Buyer's design, specifications or instructions, (2) Buyer's use of the Product in combination with other items or products, or (3) Buyer's manufacturing process used on the Product (any circumstance listed in clauses (1) - (3), an "Exception"). The foregoing remedy is exclusive and constitutes Tosoh's sole obligation for any claims of intellectual property rights infringement. Buyer shall defend Tosoh in any lawsuit or claim of intellectual property infringement arising from an Exception, and Buyer shall be responsible for the legal and related costs and expenses of such defense as well as the costs and expenses of any settlement or compromise of such lawsuit or claim, provided Tosoh shall give Buyer full and complete authority, information and assistance (at Buyer's expense) for such defense and no settlement or compromise shall be made without Buyer's prior written consent.

12. **Limitation of Remedies.** TO THE EXTENT TOSOH IS HELD LEGALLY LIABLE TO BUYER UNDER THIS AGREEMENT, TOSOH'S MAXIMUM LIABILITY IS LIMITED TO THE ACTUAL PURCHASE PRICE OF THE PRODUCTS AT ISSUE. SUBJECT TO THE PRECEDING SENTENCE, IN NO EVENT WILL TOSOH OR ITS AFFILIATES, CONTRACTORS AND SUPPLIERS BE LIABLE FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING DOWNTIME COSTS AND LOST PROFITS OR REVENUES, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, AND REGARDLESS OF WHETHER OR NOT TOSOH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER THE REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. The allocation of risk in these Terms and Conditions of Sale is material to this transaction, the limitations of liability in this Section will be given full effect, and Buyer acknowledges and agrees that Tosoh would not enter into this transaction without these limitations of liability.

13. **Export Controls.** By accepting delivery of the Products, Buyer warrants and represents that Products sold under this Agreement are for ultimate use in the country of destination (ship to location) identified on Tosoh's quotation or order acknowledgement, and Buyer will not export the Products outside of such country of destination without first consulting with Tosoh regarding any export control laws that may be applicable to such export. If Tosoh determines in its reasonable judgment that export outside of the country of destination identified on Tosoh's quotation or order acknowledgement requires a license or other clearance from a governmental agency with authority over the export, Buyer shall not make the export without first obtaining such required license or other clearance.

14. **Confidentiality.** The receiving party agrees to disclose the disclosing party's Confidential Information (defined below) only to its employees, affiliates, contractors and suppliers ("Representatives") who need to know that information to enable receiving party to perform the Agreement or to use the Products and who are legally required, by contract or otherwise, to maintain the confidentiality of the information in accordance with this Agreement. Notwithstanding the foregoing, Customer may not disclose any Confidential Information received or derived from Tosoh to contractors or suppliers of Customer that are in the business of designing, making or selling products competitive with the Products. Receiving party shall protect disclosing party's Confidential Information with at least the care with which it protects its own confidential information of a similar nature but in any event, not less than a reasonable standard of care, and shall be liable for any disclosure of disclosing party's Confidential Information by receiving party's Representatives that breaches this Agreement. Disclosing party's "Confidential Information" means any information or materials disclosed or made available by a party to the other party, that (i) in the case of a written or other tangible disclosure, disclosing party affixes a "Proprietary", "Confidential" or similar legend indicating the confidential nature of the information, (ii) in the case of an oral or visual disclosure, disclosing party makes an oral statement at the time of disclosure to identify the information as confidential and delivers to receiving party a written summary of the information confirming that disclosing party regards the same as Confidential Information within 30 days of disclosure, and (iii) if given the nature of the information disclosed and the circumstances of the disclosure, a reasonable person would believe such information to be the confidential information of disclosing party, such information shall be "Confidential Information" for purposes of this Agreement, regardless of whether any identification, marking, or summarization of such information set forth in clauses (i) and (ii) were made. This Agreement and the activities contemplated herein are considered Confidential Information of the parties. Confidential Information excludes information that receiving party can demonstrate (a) is generally available to the public through no breach of these terms by receiving party; (b) was already known to receiving party prior to its disclosure by disclosing party; (c) was rightfully disclosed to receiving party by a third party, subject to no restrictions of confidentiality or restricted use; or (d) was developed by receiving party without reference to or use of disclosing party's Confidential Information. Confidential Information may be disclosed by receiving party to the extent disclosure is required by law or by the order of a tribunal with jurisdiction, provided: (1) receiving party notifies disclosing party of such mandatory disclosure as soon as reasonably possible; (2) disclosing party is provided a reasonable opportunity to contest such disclosure or to seek a protective order; and (3) receiving party reasonably cooperates (at disclosing party's expense) with disclosing party's efforts to do so. Disclosing party remains the owner of the Confidential Information and disclosure only provides receiving party with the limited right to use stated above. Receiving party acknowledges that disclosure or use of Confidential Information in breach of these terms may cause irreparable harm to disclosing party, monetary damages may be an inadequate remedy for such breach, and disclosing party will have the right, in addition to all other rights and remedies, to seek injunctive relief for any breach of these terms. In the event the parties have or will enter into a non-disclosure agreement, the terms of that non-disclosure agreement shall supplement, be in addition to these terms.

15. **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of Ohio (without regard to principles of conflict of laws). The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the transactions covered by this Agreement. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts located in the County of Franklin, State of Ohio, except actions or proceedings seeking equitable remedies for a breach of the confidentiality

or restricted use obligations may be brought in any court which has subject matter jurisdiction over the controversy. To the extent necessary, the parties hereby submit to, and agree not to contest, the jurisdiction of such courts. The prevailing party in an action or proceeding shall be entitled to recover its costs and expenses incurred in connection with settling or resolving the dispute, including its reasonable attorneys' fees.

16. **Assignability**. Neither party may assign this Agreement without the consent of the other, which consent shall not be unreasonably withheld; provided Tosoh retains the right to use contractors and suppliers to perform work on and/or provide materials for the Products.

17. **Entire Contract; Amendment**. This Agreement reflects the entire agreement between the parties with respect to the subject matter hereof and there are no understandings or warranties, express or implied, except as set forth herein.

18. **Separability; Waivers**. The provisions of this Agreement shall be deemed to be separable; if any part thereof is held to be invalid for any reason, the other terms and conditions hereunder shall remain in full force and effect. A party's waiver of any breach or failure to enforce any of the provisions contained herein shall not be deemed to affect, limit or waive such party's right thereafter to require compliance with the provisions contained herein.