

OFFER AND AGREEMENT FOR SALE OF PRODUCTS
(CUSTOM PROJECTS)

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SALES TERMS AND CONDITIONS

Unless otherwise agreed in writing by an authorized representative of Seller, these Sales Terms and Conditions shall apply to any and all orders placed by Buyer for unreleased products of Seller without regard to whether Seller has issued a new quote with respect to such order. Any released products will be sold under Seller's standard sales terms and conditions, including its standard warranty for released products. In these sales terms and conditions, the Cree company designated in the quotation is referred to as "Seller" and the party to whom Seller's quotation is addressed is referred to as "Buyer."

1. ACCEPTANCE OF ORDERS. Seller's acceptance of all orders and all offers and sales by Seller are subject to and expressly conditioned upon Buyer's assent to the terms and conditions of this Agreement, and Buyer's acceptance of any offer by Seller must be made on such terms and conditions exactly as offered by Seller. Any of Buyer's terms and conditions which are different from or in addition to those contained in this Agreement are objected to by Seller and shall be of no effect unless specifically agreed to in writing by Seller. Commencement of performance or shipment shall not be construed as acceptance of any of Purchaser's terms and conditions which are different from or in addition to those contained herein. If a contract is not earlier formed by mutual agreement in writing, acceptance by Buyer of products or services furnished by Seller pursuant hereto shall be deemed assent to all of the terms and conditions of this Agreement.

This Agreement shall be governed by the laws of the State of New York as if made and to be performed entirely within such state. The UN Convention on the International Sale of Goods shall not apply.

2. PRICES. The prices stated in this Agreement do not include transportation, insurance or any sales, use, excise or other taxes, duties, fees or assessments imposed by any jurisdiction. All applicable taxes will be paid by Buyer, unless Buyer provides Seller with appropriate tax exemption certificates. Any taxes at any time paid by Seller which are to be paid by Buyer hereunder shall be invoiced to Buyer and reimbursed to Seller. All prices and other terms are subject to correction for typographical or clerical errors.

3. TERMS OF PAYMENT. Buyer shall pay for products in cash upon delivery, unless an earlier or later time for payment is specified in the quotation (in which case payment shall be due at the time so specified). Each shipment shall be considered a separate and independent transaction and payment for each shipment shall be due accordingly.

Seller may, at its option, elect to extend credit to Buyer. If Seller extends credit to Buyer, invoices will be issued upon shipment and payment shall be due in full within thirty (30) days from the invoice date or such other date specified in the quotation. Seller reserves the right to change the amount of or withdraw any credit extended to Buyer.

Amounts not paid when due shall be subject to interest at the rate of one and one-half percent (1½%) per month or, if less, the maximum rate permitted by law.

In the event of the bankruptcy or insolvency of Buyer, or the filing of any proceeding by or against Buyer under any bankruptcy, insolvency or receivership law, or in the event Buyer makes an assignment for the benefit of creditors, Seller may, at its election and without prejudice to any other right or remedy, exercise all rights and remedies granted Seller in Section 7 as in the case of a default by Buyer under this Agreement.

4. DELIVERY, TITLE AND RISK OF LOSS. Products shall be shipped EXW Seller's manufacturing facilities or inventory hub (Incoterms 2000) to any location designated by Buyer (subject to Section 15) and shall be deemed delivered to Buyer when delivered to the transportation company at the shipping point. Unless otherwise agreed in writing by Seller, all transportation charges and expenses shall be paid by Buyer, including the cost of any insurance against loss or damage in transit which Seller may obtain. Seller reserves the right to ship products freight collect.

Seller hereby reserves, and Buyer hereby grants to Seller, a purchase money security interest in all products purchased under this Agreement, together with all proceeds thereof, including insurance proceeds. Such security interest secures all of Buyer's obligations arising under this Agreement, and any other agreements between Buyer and Seller, until all amounts due Seller hereunder have been paid in full. Buyer agrees upon Seller's request to sign appropriate financing statements evidencing Seller's security interest.

Subject to the security interest reserved to Seller, title and risk of loss and/or damage to products shall pass to Buyer upon delivery of the products to the transportation company at the shipping point. Confiscation or destruction of or damage to products shall not release, reduce or in any way affect the liability of Buyer. In the event Buyer rejects or revokes acceptance of any products for any reason, all risk of loss and/or damage to such products shall nonetheless remain with Buyer unless and until the same are returned at Buyer's expense to such place as Seller may designate in writing.

All products must be inspected upon receipt and claims filed by Buyer with the transportation company when there is evidence of shipping damage, either concealed or external.

5. PERFORMANCE. As the products are unreleased, Seller shall not be liable for any delay in delivery or failure to perform or any resulting damage for any reason whatsoever. Buyer may terminate this Agreement for Seller's delay in delivery or failure to deliver or perform any part of this Agreement for any reason or refuse to comply with any provisions hereof if the delay or failure extends beyond six (6) months from the originally targeted due date. As the products are unreleased, termination of this Agreement, as provided above, shall be Buyer's sole and exclusive remedy for any delay in or failure of Seller to deliver products by the due dates.

6. ACCEPTANCE. As the products are unreleased, all products delivered hereunder shall be deemed accepted by Buyer as conforming to this Agreement, and Buyer shall have no right to revoke any acceptance.

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7. DEFAULT AND TERMINATION. Buyer may terminate this Agreement if Seller materially defaults in the performance of its obligations hereunder and fails to cure such default within sixty (60) days after written notice thereof from Buyer. Such termination shall be Buyer's sole remedy in the event of a default by Seller.

Buyer shall be deemed in material default under this Agreement if Buyer fails to pay any amounts when due hereunder, cancels or attempts to cancel this Agreement prior to delivery or refuses delivery or otherwise fails to perform any of its obligations hereunder or fails to pay Seller any sums due under any other agreement or otherwise. In the event of a material default by Buyer, Seller may, upon written notice to Buyer, (1) suspend its performance and withhold shipments, in whole or in part, (2) terminate this Agreement, (3) declare all sums owing to Seller immediately due and payable and/or (4) recall products in transit, retake same and repossess any products held by Seller for Buyer's account, without the necessity of any other proceedings, and Buyer agrees that all products so recalled, taken or repossessed shall be the property of Seller, provided that Buyer is given credit therefor. Exercise of any of the foregoing remedies by Seller shall not preclude exercise of any of the others, and neither the existence nor exercise of such remedies shall be construed as limiting, in any manner, any of the rights or remedies available to Seller under the Uniform Commercial Code or other laws.

8. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS. To the extent that the products include silicon carbide or Group III-nitride based semiconductor wafers (including semi-insulating wafers and epiwafers), Buyer may use the purchased wafers for research, development and production in all fields other than the bulk growth of silicon carbide and Group III-nitride based materials. As a condition of sale, Buyer warrants that it will not use any of the purchased wafers in the bulk growth of silicon carbide or Group III-nitride based materials or in the development of processes for bulk growth of such materials. Growth of one or more silicon carbide or Group III-nitride epitaxial layers on a single substrate having an aggregate epitaxial thickness of less than 150 microns will not be considered bulk growth for purposes of this Agreement. Buyer may not transfer the wafers to a third party before dicing unless Buyer gives the third party written notice of the limited license in substantially the following form: "This material is licensed for limited use and may not be used for the bulk growth of silicon carbide or Group III-nitride based materials or the development of processes for the bulk growth of such materials."

The sale of products or provision of services hereunder does not convey any express or implied license under any patent, copyright, trademark or other proprietary rights owned or controlled by Seller, whether relating to the products sold or any manufacturing process or other matter. All rights under any such patent, copyright, trademark or other proprietary rights are expressly reserved by Seller. Furthermore, Buyer agrees not to infringe, directly or indirectly, any patents of Cree, Inc. or its subsidiaries with any combination or system incorporating a product sold hereunder. This Agreement supersedes and replaces any Restricted Use Agreement previously executed by Buyer.

9. NO WARRANTY. THE PRODUCTS ARE EXPERIMENTAL IN NATURE AND MADE AVAILABLE TO RECIPIENT FOR EVALUATION AND TESTING PURPOSES ONLY, EXCLUSIVE OF ANY WARRANTY, INCLUDING,

WITHOUT LIMITATION, ALL WARRANTIES OF NONINFRINGEMENT, MANUFACTURABILITY, YIELD, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED. SELLER DOES NOT WARRANT THAT THE PRODUCTS WILL MEET BUYER'S REQUIREMENTS OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. THE PRODUCTS ARE ACCEPTED "AS IS," AND BUYER'S RELIANCE ON THE PRODUCTS IS AT BUYER'S OWN RISK. Buyer acknowledges that: (a) the products may not be in final form or fully functional and may contain errors, design flaws or other problems; (b) the products may not satisfy Seller's or Buyer's target performance specifications; (c) the products are not commercially available products and there is no guarantee that commercially available products will be released by Seller or available on terms or in quantities acceptable to Buyer.

10. LIMITATION OF LIABILITY AND CLAIMS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM USE OF THE PRODUCTS. SELLER'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE SHALL IN NO EVENT EXCEED THE AMOUNT, IF ANY, RECEIVED BY SELLER HEREUNDER. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSS OR DAMAGES OF ANY KIND, HOWEVER CAUSED, OR ANY PUNITIVE, EXEMPLARY OR OTHER DAMAGES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR PRODUCTS OR SERVICES FURNISHED BY SELLER MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUED.

11. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement of the parties and supersedes all prior negotiations, proposals, agreements and understandings, whether oral or written, relating to the products to be purchased hereunder or otherwise relating to the subject matter of this Agreement. Any representation, warranty, course of dealing or trade usage not expressly contained or referenced herein shall not be binding on Seller.

12. ATTORNEY'S FEES. In the event of default in payment of the purchase price or any part thereof, Buyer agrees to pay Seller's expenses, including reasonable attorney's fees and expenses, incurred by Seller in enforcing payment thereof, including all expenses incurred in connection with any arbitration or judicial proceeding.

13. ARBITRATION. Any controversy or claim (including, without limitation, any claim based on negligence, misrepresentation, strict liability or other basis) arising out of or relating to this Agreement or its performance or breach, which involves an amount in excess of \$50,000 (exclusive of interests and costs), shall be settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce if arbitration is demanded by either party. The location of the arbitration shall be the City of Raleigh, North Carolina if Seller's principal office is located in the United States, and Hong Kong if Seller's principal office is located outside of the United States. The decision in such arbitration shall be final and binding and any award rendered thereon may be entered in any court having jurisdiction.

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14. ASSIGNMENT. Buyer shall not assign or transfer any rights or claim under this Agreement without the prior written consent of Seller, and any purported assignment made without such consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties.

15. EXPORT CONTROL. Seller's export of the products, and any technical information related thereto, may be subject to United States and/or other national or international (e.g., UN) laws and regulations controlling the export and re-export of technical data and products, or limiting the export of certain products to specified countries (e.g., embargo regulations). Seller shall not be obligated under these Sales Terms and Conditions to export, transfer or deliver any products or related technical information to Buyer if prohibited by applicable law or until all necessary governmental authorizations have been obtained. Seller shall not be liable under these Sales Terms and Conditions for any expenses or damages resulting from failure to obtain or delays in obtaining any required government authorizations. Buyer shall comply fully with all export administration and control laws and regulations of the U.S. government and/or other national or international (e.g. UN) laws and regulations as may be applicable to the export, re-export, resale or other disposition of any products purchased from Seller.

16. USE OF PRODUCTS/PRODUCT SAFETY. Seller does not assume any responsibility for any use of the products supplied under this Agreement. Buyer assumes sole responsibility for use of the products and any consequences resulting therefrom. Buyer will not, without Seller's prior written consent, use the sample products for any purpose inconsistent with the purpose set forth in this Agreement. Buyer may test and evaluate the external electronic, optical and physical characteristics of the sample products but may not reverse engineer, disassemble or otherwise attempt to discover the underlying structure of the sample products or attempt to determine any method, mask, process, or material used in their manufacture without prior written approval from Seller. In particular, the sample products may not be intentionally broken or cut or analyzed using SIMS, microscope, X-Ray, TEM, STEM, AFM or other similar tests. Buyer will use all reasonable efforts to protect the products against unauthorized disclosure or use and will, in any event, use at least the same degree of care as Buyer employs to protect its own information of like nature. At Seller's request, Buyer shall provide Seller with copies of all data and information generated by Buyer in the course of performing testing or analysis of the products. Buyer may provide the products to customers approved by Seller as a component part of Buyer's product application (but not as stand alone products) provided that Buyer is solely responsible for qualification of the products for use in its application. In no event will Seller be responsible for the replacement of products or for any costs or damages incurred by the recipient or a third party due to degradation in performance of the products. Buyer shall comply fully with all industry safety standards applicable to the manufacture, distribution or sale of items incorporating the products supplied by Seller, including but not limited to International Standard IEC 60825-1, as amended, published by the International Electrotechnical Commission, including all marking, labeling, and supplemental user and service information (if any) required by the Standard. Buyer shall comply fully with all applicable safety-related laws, rules and regulations of any governmental body having jurisdiction to regulate the manufacture, distribution or sale of items incorporating the

products supplied by Seller. Buyer shall obligate all persons and entities buying such products from Buyer (other than end users) to comply with such industry standards, laws, rules or regulations applicable to such person or entity. Buyer shall defend and hold Seller harmless against any expense, loss, costs or damages relating to any claimed failure by Buyer to comply with such industry standards, laws, rules or regulations or from any bodily injury, illness or property damage resulting from products manufactured by Buyer which incorporate the products supplied by Seller.

17. GENERAL. If the products purchased from Seller are to be used in the performance of a government contract or subcontract, no government requirements or regulations shall be binding upon Seller unless specifically agreed to by Seller in writing. No modification, amendment, rescission, waiver or other change in this Agreement shall be binding on Seller unless agreed to in writing by Seller's authorized representative. The invalidity or unenforceability, in whole or in part, of any provision herein shall not affect the validity or enforceability of any other provision herein. Failure or delay on the part of either party to exercise any right, power, privilege or remedy herein shall not constitute a waiver thereof. The section headings contained herein are for convenience of reference only and are not to be used in the construction or interpretation of this Agreement.