

**BROADCOM SEMICONDUCTOR SOLUTIONS TERMS AND CONDITIONS OF SALE****1. APPLICABILITY**

These terms and conditions ("Terms") govern the sale by Broadcom of Broadcom Products and/ or license of its Software (if any) to the customer identified in a Broadcom order acknowledgement form or in Broadcom's valid quotation ("Customer"). These Terms, together with any special terms provided on Broadcom's valid quotation, constitute the exclusive and entire agreement between Broadcom and Customer and may not be changed except by an amendment signed by Broadcom's and the Customer's authorized representatives. Except to the extent Customer has a written, signed, separate agreement with Broadcom governing the purchase and sale of Products and/or licensing of Software, (a "Customer Agreement"), these Terms supersede any previous communications, representations or agreements between the parties, regarding the sale of Products and the license of Software. Broadcom's acceptance of Customer's order is conditioned upon Customer's acceptance of these Terms regardless of the form and timing of Customer's acceptance. Customer's additional or different terms and conditions will not apply and are deemed rejected by Broadcom. Customer's purchase of Products and/or license of Software constitutes Customer's acceptance of these Terms.

- "Application Software" means all computer programs, code and related documentation that are not Firmware, but are related to a Broadcom hardware product, and include, without limitation, software that performs one or more specific tasks directly for the end user (or for other software applications) and updates, upgrades and documentation related thereto provided by Broadcom. Application Software as used in these Terms excludes VMware, Mainframe, Enterprise and Cybersecurity software products offered by Broadcom.
- "Broadcom" means Avago Technologies International Sales Pte. Limited (Reg#200512231E) or an affiliate thereof that accepts the Customer's order, whichever is the case; provided that with respect to intellectual property rights, or the licensing of any Product-related technology or Software, "Broadcom" means Avago Technologies International Sales Pte. Limited. (Reg#200512231E), or an affiliate thereof that holds the relevant intellectual property rights.
- "Custom Product" means either (i) a Standard Product modified per Customer requirements or non-published (limited release) standards; or a Product designed, configured, tested or manufactured to meet Customer requirements.
- "Firmware" means computer programs and/or data structures embedded or running on a Product to enable its basic operation and updates, upgrades and documentation related thereto provided by Broadcom.
- "Force Majeure" means any act or occurrence that is beyond Broadcom's reasonable control, including, without limitation, war, civil commotion, act of God, pandemic, epidemic, strike or other stoppage (whether partial or total) of labor, any law, decree, regulation or order of any government or governmental body (including any court or tribunal), fire, flood, earthquake or other natural disaster, shortages of materials, declared acts of terrorism, disruption of normal production, inadequate yield of Products despite reasonable efforts, or an interruption of the means of transportation.
- "Product" means, as provided by Broadcom to Customer, any hardware product and its associated Firmware.
- "Standard Product" means a Product based on Broadcom published Specifications that are routinely offered for sale by Broadcom to a broad

base of customers.

- "Software" means Firmware and Application Software.

**2. ORDERS**

If Customer would like to purchase Products or Software, it must submit a purchase order to Broadcom. No order will be binding on Broadcom unless and until the Customer receives a written acknowledgment sent by electronic or other means. Orders must specify delivery dates in accordance with the lead time quoted by Broadcom. Customer agrees that all orders are non-cancellable and non-refundable once acknowledged by Broadcom.

**3. PRICES**

Prices and currency are as stated on Broadcom's valid quotation. Prices exclude delivery charges and are valid for the period indicated on the quotation. If special shipping instructions are agreed Broadcom will bill additional charges separately.

Prices exclude any sales, value added, GST, withholding, or other tax, or customs duties or fees, which Customer shall pay in addition to the purchase price if applicable. If Customer claims exemption from tax, Customer must provide a certificate of exemption acceptable to the relevant taxing authority.

Customer shall provide VAT-ID numbers to support VAT exemptions of intra-community supplies where appropriate as governed by applicable national legislation. Customer shall notify Broadcom immediately if the VAT-ID number provided becomes invalid or is changed or amended in any way. Broadcom reserves the right to retroactively charge VAT if VAT has been incorrectly exempted.

Broadcom may increase prices of Products and Application Software scheduled for shipment upon written notice to Customer. Customer may reject such price increase in writing in which case Broadcom may cease filling any Customer orders for the affected Products and/or Application Software with no further obligations to Customer. If Broadcom does not receive a written rejection within ten (10) days following the notice the price increase will become effective at the end of such ten (10) days.

**4. DELIVERY**

Broadcom will endeavor to ship for Delivery on Broadcom's acknowledged delivery date ("Acknowledged Date"). Broadcom may update the Acknowledged Date prior to Delivery by providing written notice to Customer. "Delivery" occurs when Broadcom places Product and/or Application Software at Customer's or Customer's representative's disposal in accordance with the Incoterms or other shipping terms specified by Broadcom in its written order acknowledgment. Broadcom may make partial deliveries, which may be separately invoiced. Delivery delay will not relieve the Customer of its obligation to pay for Products or Application Software or to accept subsequent deliveries.

Any lead times or shipment dates (requested and/or quoted) provided by Broadcom are estimates only and Broadcom is not liable for any loss, damage, costs or expenses for any failure to deliver in accordance with the given lead time or shipment date. Broadcom may deliver the Products in installments. In the event that Broadcom's ability to supply Product becomes constrained, Broadcom may, as Broadcom deems reasonable, reduce quantities or delay shipments to Customer and may allocate production and delivery among its customers.

In the event of shipment errors, such as wrong Product, Application Software, quantity, or shipment to the wrong location, Customer must notify Broadcom within thirty (30) days from invoice date. Broadcom will then verify the claim and ship replacement parts or correct the error, as appropriate.

## 5. TRANSFER OF TITLE AND ACCEPTANCE

Subject to Section 9, title and risk of loss and damage to Products will pass to Customer upon Delivery. The Products and Software are deemed accepted upon Delivery. Broadcom reserves, and Customer hereby grants to Broadcom, a purchase money security interest in all Products shipped to Customer (and all resulting proceeds) until Broadcom receives payment in full for those Products and any related charges, and any account balance in Broadcom's favor, including subsequent claims, has been cleared. Broadcom may file a financing statement with appropriate authorities to perfect Broadcom's security interest. At Broadcom's request, Customer shall promptly execute all documents necessary to protect Broadcom's interest in the secured property.

## 6. PAYMENT

Unless otherwise specified, upon Broadcom's credit approval, payment is due thirty (30) days from invoice date. Broadcom reserves the right to charge a fee on late payments calculated at the rate of two percent (2.0%) per month or the maximum amount allowable by law, whichever is less, unless agreed otherwise. All payments shall be made in U.S. dollars. Each shipment (including partial shipments) will constitute an independent transaction and will be separately invoiced. Customer shall pay for same in accordance with the specified payment terms without regard to other shipments, deduction, or setoff. Broadcom may change credit or payment terms at Broadcom's discretion if Customer's financial condition or previous payment record so warrant. Broadcom may discontinue performance if Customer fails to pay any sum due, or if Customer fails to cure any other breach of this or any other Broadcom agreement after ten (10) days' prior written notice of the breach. Customer shall reimburse Broadcom any expenses Broadcom incurs in collecting any outstanding amount due (including without limitation, attorneys' fees).

## 7. RESCHEDULED DELIVERY, NO RETURNS

Customer may not cancel orders or reject Delivery of any Product or Application Software. No reschedule of Delivery is allowed, unless Broadcom gives prior written permission. Customers may not return Products or Application Software, except as provided in Section 8 (Warranty) and as permitted by applicable law.

## 8. WARRANTY

Except as otherwise required by law, the following warranties will apply to Products and Software paid for by Customer (and not to indirect purchasers and users):

Broadcom warrants against material defects in the production units of the Product and workmanship during the Warranty Period. Broadcom further warrants that, during the Warranty Period, Product will substantially conform to Broadcom's relevant published technical or functional specifications in effect on the date Broadcom ships Customer's order ("Specifications").

Broadcom warrants that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the hardware designated by Broadcom during the Warranty Period. Broadcom further warrants that, during the Warranty Period, Software will substantially conform to Specifications. Broadcom does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.

For purposes of this Section 8, "Warranty Period" means the period of time beginning with shipment and continuing (i) one year for Product and (ii) ninety (90) days for Application Software. In the event that Broadcom confirms defects or non-conformance to Specifications during the Warranty Period, Broadcom will, at its option, repair or replace the affected Products

or Application Software, or refund the net purchase price of the affected Products or Application Software. Customer shall abide by Broadcom's policies concerning return of materials.

Some Products may contain remanufactured parts equivalent to new in performance. Unless Broadcom otherwise agrees in writing, Broadcom may make process or materials changes affecting the performance or other characteristics of Product and Application Software. Product and Application Software supplied after such a change will continue to meet Broadcom's published Specifications, but may not be identical to Product or Application Software supplied as samples or under prior orders.

The above warranties do not apply to and Broadcom makes no warranties with respect to: die, or any other Products or Application Software which are not finished and fully encapsulated, including prototypes, reference designs and software; defects resulting from improper or inadequate maintenance; higher assembly, use with Customer or third party supplied software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specifications; abuse, negligence, accident, loss or damage in transit; improper site preparation; unauthorized maintenance or repair. Broadcom does not warrant that any Software is error free or that Customer will be able to operate the Software without problems or interruptions. Broadcom does not warrant that the Software or any equipment, system or network on which such Software is used will be free of vulnerability to intrusion or attack.

**PRODUCTS AND APPLICATION SOFTWARE WHICH ARE NOT FINISHED OR FULLY ENCAPSULATED ARE SOLD STRICTLY "AS IS." THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. EXCEPT FOR THE LIMITED WARRANTY STATED IN THIS SECTION, ALL WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, WITH RESPECT TO ANY PRODUCT, SOFTWARE, SERVICE, OR OTHER ITEMS DELIVERED UNDER THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.**

## 9. LICENSES

Broadcom and its third party suppliers own and retain all rights, title and interest in the Software. Third party suppliers may protect their rights in the Firmware and Application Software in the event of any violation of applicable license terms. Software provided by Broadcom to Customer is licensed, not sold.

Subject to Section 2, Broadcom grants Customer a non-transferable, worldwide, non-exclusive limited license to use, perform, display, reproduce and distribute the Software in accordance with the documentation provided therewith and solely as incorporated into, or for use in connection with, other hardware Products (and not for use on a standalone basis) directly, or through resellers by means of multiple tiers of distribution, to end users. Documentation provided with or for Software may include license terms provided by Broadcom and Broadcom's third party suppliers, which will apply to the use of Software and take precedence over these license terms to the extent of any conflict. In the absence of documentation specifying the applicable license, Customer is granted the right to use one (1) copy of the Software on one (1) machine or instrument, or as otherwise indicated on the quotation. Broadcom further grants to Customer a non-exclusive, worldwide, non-transferable license to sublicense to Customer's resellers only its right to distribute the Software as set forth above. The licenses granted in this Section are subject to the restrictions set forth below. Customer may sublicense the right to use and reproduce the Software to its contract manufacturers ("CMs") and/or original design manufacturers ("ODMs") for purposes of manufacturing Customer's products, provided that

each such CM and ODM agrees to abide by the terms hereof and Customer shall remain responsible for any failure of its CMs or ODMs to so comply.

Customer shall not distribute or disclose the Software, nor permit any reseller or third party to distribute or disclose the Software, except pursuant to an agreement with terms at least as protective as those set forth herein. The sale of any Product or Application Software by Broadcom shall not in any way confer upon Customer, or upon anyone claiming under Customer, any license (expressly, by implication, by estoppel or otherwise) under any patent claim of Broadcom or others covering or relating to any combination, machine or process in which such Product and/or Application Software is or might be used, or to any process or method of making such Product and/or Application Software. Except and only to the extent as expressly permitted herein, or required to be permitted by applicable law, Customer shall not itself or allow any reseller or third party to: (a) reproduce the Software; (b) modify, incorporate into or with other software, or create a derivative work of any part of the Software; (c) reverse-engineer any Products Software or decompile, disassemble, or otherwise attempt to derive the source code of the Software except to the extent such restriction is prohibited by applicable law; (d) distribute, sublicense, lease, rent, loan or otherwise transfer the Software to any third party; (e) remove Software from any Product into which such Software has been embedded; or (f) use the Software to provide processing services to third parties or otherwise use the Software on a service bureau basis, electronically distribute or timeshare the Software or market the Software by interactive cable or remote processing services.

Customer's licenses hereunder will terminate upon Customer's breach of these license terms. Customer must destroy all copies of the Software immediately upon such termination and shall provide a certificate of such destruction upon Broadcom's request.

If Software or technical data is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the Government's rights in Software, technical data and accompanying documentation shall be only the customary commercial licenses provided to end user Customers as set forth in these Terms.

Customer agrees that it will not remove any copyright notices, proprietary markings, trademarks or trade names from any Product or Application Software. Customer shall reproduce Broadcom's copyright notice and all other proprietary notices on all copies of Product and Application Software, including copies in machine-readable form. All copies of Software (including any derivative works) shall be and remain the property of Broadcom or, if applicable, Broadcom's licensor.

Customer shall not use the name Broadcom or any of Broadcom's trademarks or service marks as part of its corporate or other legal name, or as part of the name under which it conducts business. In addition, Customer shall not have the right to use the Broadcom name, trademarks or service marks in any other way unless and until a Broadcom trademark license has been duly executed between Customer and Broadcom.

## **10. LIMITATION OF REMEDIES AND LIABILITY**

FOR PURPOSES OF THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, "BROADCOM" SHALL INCLUDE BROADCOM, ITS AFFILIATES, SUBSIDIARIES, AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS OF EACH OF THEM.

SUBJECT TO APPLICABLE LAW AND NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS, IN NO EVENT WILL BROADCOM, BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DOWNTIME COSTS, LOSS OF DATA, RESTORATION COSTS, LOST PROFITS, OR COST OF

COVER) REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY.

EXCEPT FOR BROADCOM'S OBLIGATION TO MAKE WARRANTY REFUNDS UNDER SECTION 8 (WHICH IS LIMITED TO THE PRODUCT AND/OR APPLICATION SOFTWARE PURCHASE PRICE), AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, BROADCOM'S LIABILITY TO CUSTOMER IS LIMITED TO THE LESSER OF (i) THE AMOUNT ACTUALLY PAID BY CUSTOMER TO BROADCOM FOR THE PRODUCT OR APPLICATION SOFTWARE THAT IS THE SUBJECT OF SUCH DAMAGES, OR (ii) ONE HUNDRED THOUSAND UNITED STATES DOLLARS (\$100,000.00 USD). MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT.

THIS SECTION 10 APPLIES WHETHER OR NOT DAMAGES WERE FORESEEABLE, EVEN IF BROADCOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED IN THESE TERMS. THE LIMITATIONS SET FORTH IN THIS SECTION WILL NOT APPLY TO DAMAGES FOR BODILY INJURY OR DEATH PROXIMATELY CAUSED BY BROADCOM, FOR WHICH CUSTOMER HAS THE RIGHT TO PROVEN DIRECT DAMAGES.

THE REMEDIES IN THESE TERMS ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

## **11. CONFIDENTIALITY**

Customer may acquire knowledge of information relating to Broadcom's business, Products or Application Software ("Broadcom Confidential Information") and agrees to keep such Broadcom Confidential Information in confidence. Customer agrees not to use the Broadcom Confidential Information except as permitted by Broadcom in writing. Customer agrees not to copy, alter or directly or indirectly disclose any Broadcom Confidential Information. Customer agrees to use the degree of care and means that it uses to protect its own information of like kind, but in no event less than reasonable care to prevent the disclosure or unauthorized use of Broadcom Confidential Information. Customer may disclose Broadcom Confidential Information which is required to be disclosed pursuant to an enforceable requirement of a government agency or law so long as Customer provides prompt notice to Broadcom of such requirement prior to disclosure. All Broadcom Confidential Information is and shall remain the property of Broadcom. Upon Broadcom's written request, Customer shall return, transfer or assign to Broadcom all Broadcom Confidential Information and all copies thereof.

## **12. END OF LIFE**

Broadcom may, without liability, terminate production of any Product and Application Software and may, in that event, offer certain existing Customers an opportunity to make a final buy of the Product and/or Application Software. Broadcom must receive an order for the final buy within the Broadcom stated notice period, with shipment to be completed as scheduled by Broadcom. Final buy Products and Application Software shall under all circumstances be non-cancellable and non-returnable.

## **13. GENERAL**

**Bankruptcy.** If Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Broadcom may cancel any unfulfilled obligations.

**Notices.** Any notice required by these Terms shall be in writing and will refer to these Terms. Notices to Broadcom shall be sent to <legal-notice.pdf@broadcom.com> and notices to Customer shall be sent to Customer's

contact email address. In addition, physical notices may be sent by reputable courier service or by registered or certified mail (return receipt requested) to Broadcom's headquarters at 3421 Hillview Ave, Palo Alto, California, 94304, Attn: Chief Legal Officer (or Broadcom's then-current headquarters address), or to Customer's physical address. Notice will be considered received upon the earlier of (i) confirmed receipt by email, or (ii) confirmed physical delivery.

**Force Majeure.** Broadcom will not be liable for performance delays or for non-performance due to events of Force Majeure, and Broadcom's performance will be excused for the time that the Force Majeure continues. If such an event occurs, Broadcom may, at its option, (i) extend the Delivery date and/or (ii) allocate its available supply among its customers.

**Assignment.** Customer shall not assign these Terms or any of its rights or delegate any of its duties under these Terms without the prior written consent of Broadcom. Subject to the foregoing, these Terms will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assigns. Any attempted assignment in violation of this Section shall be null and void.

**Legal Compliance.** Customer shall comply with applicable federal, state, local laws, regulations and ordinances, and other applicable laws and regulations. Broadcom may suspend performance if Customer is in violation of applicable laws, regulations, or ordinances. Customer acknowledges that any Products, Application Software, and/or technical information (including, but not limited to services and training) provided hereunder may be subject to export controls, including but not limited to export controls administered under the U.S. Export Administration Regulations (EAR). Upon delivery of such Products, Application Software and/or technical information (including, but not limited to services and training), Customer shall be responsible for ensuring compliance with all applicable export laws and regulations relating to the export thereof, and shall not export or re-export any Products, Application Software and/or technical information (including, but not limited to services and training) received from Broadcom in violation of any applicable law. Customer agrees that none of such items, nor any direct product therefrom, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to prohibited or embargoed countries, nor be used for any prohibited end-use, such as nuclear activities, chemical/biological weapons, or missile projects, unless expressly authorized by the U.S. Government. If requested, Customer agrees to sign written assurances and other export-related documents as may be required to comply with U.S. export regulations or any other governmental regulatory agency requirement.

**Governing Law, Attorneys Fees.** These Terms will be governed by and construed in accordance with the substantive laws in force in: (a) Singapore if Customer's headquarters are in a member state of the Association of Southeast Asian Nations, Mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan, or the Republic of Korea, b) England and Wales if Customer's headquarters are the European Economic Area, or c) in the State of California, if Customer's headquarters are in any jurisdiction not described above. The respective courts of Santa Clara County, California when California law applies and the competent courts of London, England, when the law of England and Wales applies, shall each have non-exclusive jurisdiction over all disputes relating to these Terms. When Singapore law applies, any dispute arising out of or in connection with these Terms, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") for the time being in force, which rules are deemed to be incorporated by reference into this section. There shall be one arbitrator, selected jointly by the parties. If the arbitrator is not selected within thirty (30) days of the written demand by a party to submit to arbitration, the Chairman of the SIAC shall make the selection. All judicial or arbitration proceedings

for disputes related to these Terms will be in English. Notwithstanding any provision in these Terms, Broadcom or Customer may request any judicial, administrative, or other authority to order any provisional or conservatory measure, including injunctive relief, specific performance, or other equitable relief, prior to the institution of legal or arbitration proceedings, or during the proceedings, for the preservation of its rights and interests or to enforce specific terms that are suitable for provisional remedies. These Terms will not be governed by the following, the application of which is hereby expressly excluded: (x) the conflict of law rules of any jurisdiction, (y) the United Nations Convention on Contracts for the International Sale of Goods, and (z) the Uniform Computer Information Transactions Act, as enacted in any jurisdiction.

The prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred in any litigation arising under these Terms.

**Waiver.** Neither party's failure or delay to exercise any of its rights under these Terms will be deemed a waiver of forfeiture of those rights.

**Severability.** These Terms shall be applied to the extent permitted by applicable law. To the extent that any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.

**Nuclear/Medical Uses.** BROADCOM'S PRODUCTS AND APPLICATION SOFTWARE ARE NOT SPECIFICALLY DESIGNED, MANUFACTURED OR AUTHORIZED FOR SALE AS PARTS, COMPONENTS OR ASSEMBLIES FOR THE PLANNING, CONSTRUCTION, MAINTENANCE OR DIRECT OPERATION OF A NUCLEAR FACILITY OR FOR USE IN MILITARY, NAVIGATION AND AVIATION OR MEDICAL DEVICES OR APPLICATIONS. CUSTOMER IS SOLELY LIABLE, AND SHALL INDEMNIFY AND HOLD BROADCOM HARMLESS FOR ALL LOSS, DAMAGE, EXPENSE OR LIABILITY IN CONNECTION WITH SUCH USE, IF PRODUCTS OR APPLICATION SOFTWARE ARE USED FOR THESE APPLICATIONS.

**Government Contracting.** Unless otherwise separately agreed in writing by Broadcom, no provision herein shall be deemed an acceptance of any provisions required in any U.S. Government contract or subcontract relating thereto ("Government Contract") nor shall any provision of any Government Contract become part of these Terms, imposed upon or binding on Broadcom.

**Language.** These Terms are in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding on the parties hereto.

**Qualcomm Settlement.** For information concerning Broadcom Corporation's settlement agreement with Qualcomm Incorporated, go to [https://docs.broadcom.com/docs/supplemental\\_information](https://docs.broadcom.com/docs/supplemental_information).