

## Sanmina Corporation dba Viking Technology Terms and Conditions of Sale

1. These terms govern the sale of goods between Sanmina Corporation, dba Viking Technology (VIKING) and BUYER. If the reverse side of this document is entitled "ACKNOWLEDGEMENT," then this document acknowledges receipt of your order by VIKING as listed on the reverse side hereof and as described above, and confirms the VIKING willingness to sell the product which is the subject of the purchase order ("Product") ordered but only upon the terms and conditions set forth on the front and reverse sides hereof. If the reverse side of this document is entitled "INVOICE," then this document acknowledges receipt of your order by VIKING as listed on the reverse side hereof and as described above, and confirms that the sale of Product evidenced by the invoice is expressly conditioned on your acceptance of the terms and conditions set forth on the front and reverse sides hereof. In the event your purchase order is deemed to be an offer (rather than an acceptance of VIKING's prior offer), VIKING's acceptance of your offer is expressly conditioned on your agreement to the terms and conditions on the front and reverse sides of this document. By accepting the Product, you shall be deemed to have agreed to such terms and conditions unless written notice of any errors or objections is received by VIKING's vice president and corporate counsel (at 2700 North First Street, San Jose, CA 95134) within ten days of the date on which this document is sent. VIKING hereby objects to any additional or different terms set forth in any purchase order or similar document that you may issue. If you do not receive or cannot read these terms and conditions, please call VIKING's legal department at (408) 964-3500 or view them on VIKING's website at [http://www.vikingtechnology.com/uploads/terms\\_conditions.pdf](http://www.vikingtechnology.com/uploads/terms_conditions.pdf). This agreement is by and between the particular entities set forth on the front of this document and as described above and the BUYER, and shall not bind any other Sanmina affiliate.
2. **Pricing.** Unless otherwise specifically stated on the face of the purchase order, prices are in U.S. Dollars, include VIKING designed packaging, and are based on the BUYER's specifications and the projected volumes, minimum run rates, current exchange rates, and other assumptions provided to VIKING by BUYER. VIKING shall have the right to revise prices in the event of (a) any variation on the market prices of components, parts and raw material (collectively "Material"), including any such variations resulting from shortages, (b) changes to the specifications, (c) changes in the volumes upon which such prices were quoted or (d) changes in the exchange rate between the currency in which the pricing is calculated and the currency in which VIKING pays for its labor, overhead and Material. Prices do not include (x) export licensing of the Product or payment of broker's fees, duties, tariffs or other similar charges; (y) taxes or charges imposed by any taxing authority upon the manufacture, sale, shipment, storage, "value add" or use of the Product which VIKING is obligated to pay or collect (other than those based on net income of VIKING); or (z) setup, tooling, or non-recurring engineering activities. Any charges for these items shall be paid by BUYER in addition to the prices set forth on the face of this contract.
3. **Terms.** Payment terms are net thirty (30) days after date of invoice. On any invoice not paid by maturity date, BUYER shall pay interest from maturity to date of payment at the rate of 1.5% per month. VIKING shall be entitled at all times to set-off any amount owing from VIKING or its Affiliates to BUYER or its Affiliates against any amount payable to VIKING or its Affiliates from BUYER or its Affiliates, arising out of this or any other transaction. For purposes hereof, a party's "Affiliate" shall mean any entity that, directly or through one or more intermediaries, controls, is controlled by or is under common control by such party, including but not limited to a party's subsidiaries. Any pricing or quantity discrepancies must be brought to VIKING's attention within five (5) days after receiving this acknowledgement. VIKING may assign its right to payment to a third party without the need for consent from the Buyer.
4. **Security Interest.** VIKING reserves a purchase money security interest in Product sold to BUYER and the proceeds thereof, in the amount of the purchase price. In the event of default by BUYER in any of its obligations to VIKING, VIKING will have the right to repossess the Product sold hereunder without liability to BUYER. VIKING may file a copy of the invoice with the appropriate authorities at any time as a financing statement and/or chattel mortgage to perfect its security interest. At VIKING's request, BUYER will execute financing statements and other instruments that VIKING may request to perfect VIKING's security interest.
5. **Delivery and Acceptance.** Unless otherwise agreed in writing, all Product shipments shall be made "Ex Works" (Incoterms 2000) from the VIKING facility of manufacture. BUYER shall be the importer and exporter of record for all Products. In the absence of specific shipping instructions from BUYER, VIKING will ship by the method it deems most advantageous. Transportation charges will be collected on delivery or, if prepaid, will be subsequently invoiced to BUYER. Unless otherwise indicated, BUYER is obligated to obtain insurance against damage to the Product being shipped. Unless otherwise specified, the Product will be shipped in standard commercial packaging. When special or export packaging is requested or, in the opinion of VIKING required under the circumstances, any additional costs, if not set forth on the invoice will be separately invoiced. Title to and risk of loss or damage to the Product shall pass to BUYER upon VIKING's tender of the Product to the carrier. VIKING shall use reasonable efforts to notify BUYER of any anticipated delays; provided, however that VIKING will not be liable for any loss, damages or penalty resulting from delay in delivery when such delay is due to causes beyond the reasonable control of VIKING (including but not limited to a Force Majeure Event). In any such Force Majeure Event, the delivery date will be deemed extended for a period equal to the delay. Acceptance of the Product shall occur no later than fifteen days after shipment; Product not rejected during this fifteen-day period shall be deemed accepted, and all returns shall be handled in accordance with Section 8 (Limited Warranty). Product cannot be rejected based on criteria that were unknown to VIKING or based on test procedures that VIKING does not conduct.
6. **Changes.** Where BUYER controls the design of a Product, BUYER may upon sufficient notice make changes to the Product, including but not limited to changes in (1) drawings, plans, designs, procedures, specifications, test specifications or the bill of materials ("BOM"), (2) methods of packaging and shipment, or (3) delivery schedule (in accordance with Section 9). All changes other than changes in delivery dates shall be requested pursuant to an Engineering Change Notice ("ECN") and, if accepted by the parties, finalized in an Engineering Change Order ("ECO"). If any such change causes either an increase or decrease in VIKING's cost or the time required for performance of any part of the work under these terms (whether changed or not changed by any ECO) the prices and/or delivery schedules shall be adjusted in a manner which would adequately compensate VIKING for such change. VIKING reserves the right to charge an administrative fee for all ECN's in an amount not to exceed \$1,000 per ECN.
7. **Proprietary Information; No License.** VIKING retains for itself all proprietary rights (including without limitation, all patent, trademark, trade secret, copyright and other intellectual property rights (collectively "IPR") in and to all VIKING designs, manufacturing processes, engineering details, and other data pertaining to any Product sold except where the rights have been assigned pursuant to a written agreement executed by a corporate officer of VIKING. The Products are offered for sale and are sold by VIKING on the condition that such sale does not convey any right, express or implied, estopped or otherwise, under any IPR or process or manufacturing technology. VIKING expressly reserves all its IPR.

8. **Limited Warranty.** VIKING warrants to the BUYER of a VIKING Product as follows: when properly used and installed, the Product will be free from substantial defects in workmanship and will substantially conform to VIKING's specifications for the warranty periods as follows:

Product Type	Warranty Period
Standard DRAM Products	3 Years
Industrial and Military Grade DRAM Products	3 Years
Value Added DRAM Products (PNs starting with VPxxx)	1 Year
I-TEMP DRAM Products	1 Year
NVDIMM and ESS	1 Year
Standard 2.5" or 1.8" SSD Products	Lesser of 3 Years or TBW
Industrial and Military Grade SSD Products	Lesser of 3 Years or TBW
Value Added SSD Products (PNs starting with VPxxx)	Lesser of 3 Years or TBW
I-TEMP SSD Products	Lesser of 3 Years or TBW
Embedded SSD Products (e.g.; M.2, slimSATA, mSATA)	Lesser of 3 Years or TBW
eUSB and CF Cards	3 Years
SD and <i>micro</i> SD Cards	1 Year
Custom/Proprietary/Upscreened/Rambus Products	1 Year

VIKING SSD Products are warranted to be free from material defects and substantial defects in workmanship, subject to the conditions stated herein, for the shorter of: (i) a period of three (3) years for the 2.5" and 1.8" SSD Products, Embedded SSD Products (excluding eUSB and CF Cards), Industrial or Military Grade SSD Products, and Standard and Industrial DRAM, (ii) the period ending on the date when the SSD Product has exceeded its Total Bytes Written ("TBW") threshold as may be indicated by the SSD's SMART attribute settings. For specific information on the TBW threshold, please refer to the respective Product data sheet, which is available at [www.vikingtechnology.com](http://www.vikingtechnology.com). (iii) a period of one (1) year for the Value Added "VP" DRAM, I-TEMP DRAM, NVDIMM and ESS, SD and *micro*SD cards, and any Custom/Proprietary/Upscreened/Rambus products.

It is VIKING policy to obtain all our materials from the original manufacturer or a franchised distribution channel. Accordingly, materials obtained from the original manufacturer or a franchised distribution channel are warranted for 12 months for non-SSD Products. If directed by Buyer to obtain materials from sources other than the original manufacturer or a franchised distribution channel, those materials will not be warranted.

The limited warranty commences on the date the Product is purchased from VIKING. Subject to the preceding limitations, if the Product which is subject to limited warranty, fails to conform to the above warranty during the warranty period, VIKING at its option and sole discretion, will; 1) repair the Product; or 2) replace the Product with another Product where the replacement Product is an equivalent Product at the time a claim for warranty service is made to VIKING under this limited warranty; or 3) credit the then-current value of the Product (at the time a claim for warranty service is made to VIKING under this limited warranty) towards future purchase from VIKING; or 4) refund of the then-current value of the Product (at the time a claim for warranty service is made to VIKING under this limited warranty). The limited warranty will extend to a Product which is repaired or replaced for the balance of the applicable period of the original warranty or thirty (30) days from the date of return shipment from VIKING of a repaired or replaced Product, whichever period is longer. This limited warranty shall apply only to the original buyer of the Product. ALL CLAIMS FOR BREACH OF WARRANTY MUST BE RECEIVED BY VIKING NO LATER THAN THIRTY (30) DAYS AFTER THE EXPIRATION OF THE WARRANTY PERIOD. Buyer agrees to comply with SANMIINA's then current RMA policies and procedures when returning any product. To obtain warranty service for the Product, Buyer must request a Return Material Authorization (RMA) number. Upon verification that the Product is eligible for warranty, Buyer will be issued an RMA number. When returning Product, Buyer must include the RMA number on the outside of the package. VIKING will not accept any returned Product without an RMA number or that has an invalid RMA number on the package. Buyer must return the Product to the designated VIKING location in the original or equivalent packaging, with shipping charges pre-paid and assume the risk of damage or loss during shipment. If VIKING determines that the Product covered under the RMA number is a valid warranty claim, as described above, and the Product is to be repaired or replaced, the Product will be returned to the Buyer at the expense of VIKING. If VIKING determines that the Product covered under the RMA number is not a valid warranty claim, the Buyer may request the return of the Product and will assume the cost and risk of damage or loss during the shipment to return the Product. All non-warranty returns not requested by the Buyer to be returned to the Buyer within 90 days of receipt by VIKING will be scrapped in place at the VIKING location to which it was returned, with no liability to VIKING.

9. **Warranty Limitations and Exclusions.** VIKING does not warrant that the Product will be free from non-substantial design defects or errors. Further, this limited warranty does not cover: 1) any costs associated with the repair or replacement of the Product including labor, installation or other costs incurred by the BUYER, and in particular, any costs relating to the removal or replacement of any Product that is affixed to another device; or 2) damage to the Product due to external causes, including accident, problems with electrical power, abnormal electrical, mechanical or environmental conditions, usage not in accordance with product instructions, misuse, neglect, alteration, repair, improper installation, or improper testing; or 3) any Product which has been modified or operated outside of VIKING specifications or where the original identification markings (trademark or serial number) have been removed, altered or obliterated from the Product. This limited warranty replaces all other warranties for the Product and VIKING disclaims all other warranties, express or implied including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, non-infringement, course of dealing and usage of trade. All express warranties are limited in duration to the limited warranty period. No warranties apply after that period. Some jurisdictions do not allow limitations on how long an implied warranty lasts, so this limitation may not apply to buyers in those jurisdictions. VIKING's responsibility under this or any other warranty implied or express, is limited to repair, replacement, credit, or refund, as set forth above. These remedies are the sole and exclusive remedies for any breach of warranty.

Products.

All VIKING flash-based NAND storage products and all DRAM-based DIMM modules:

Requirements.

VIKING recommends customers qualify our components in the customer's intended application. The application is defined as the customer's system product in which the VIKING component operates, and is comprised of system hardware, firmware, operating system, and application software. The customer should expect that any change to the application, or use of the component in a different application, may result in an incompatibility with the VIKING component. In the event the customer modifies the application, or uses the component in a different application, the VIKING part should be requalified.

Remedies.

If, during the warranty period, a VIKING component fails to function in the same application in which it was qualified by the customer, the part will be serviced under the terms of the original VIKING warranty. If the application has been modified by the customer, or the customer has attempted to use the component in a new application, the warranty may no longer be valid.

10. **Cancellations/Reschedule.** No cancellations or reschedules are permitted within forty-five (45) days of the scheduled delivery date. Unless VIKING designates a Product as "non-cancelable, non-returnable" (in which case BUYER shall have no reschedule or cancellation rights), BUYER may reschedule all or part of a scheduled delivery once for a period not to exceed forty-five (45) days in accordance with the following schedule: (i) upon notice given between 45-75 days prior to the scheduled delivery date, BUYER may reschedule up to fifteen percent (15%) of any scheduled delivery; (ii) upon notice given between 76-120 days prior to the scheduled delivery date, BUYER may reschedule up to thirty percent (30%) of any scheduled delivery; and (iii) upon notice given more than 120 days prior to the scheduled delivery date, BUYER may reschedule fifty percent (50%) of any scheduled delivery. At the end of the forty-five day period described in the preceding sentence, BUYER shall either accept delivery of the rescheduled finished units or pay VIKING's Termination Charges set forth in Section 11.
11. **Termination.** Either party may terminate for default if the other party materially breaches these terms; provided, however, no right of default shall accrue until thirty (30) days after the defaulting party is notified in writing of the material breach and has failed to cure the breach or give adequate assurances of performance within such 30-day period. Notwithstanding the foregoing, there shall be no cure period for payment-related default. In addition, an order shall immediately terminate should either party (a) become insolvent; (b) enter into or file a petition, arraignment or proceeding seeking an order for relief under the bankruptcy laws of its respective jurisdiction; (c) enter into a receivership of any of its assets or (d) enter into a dissolution or liquidation of its assets or an assignment for the benefit of its creditors. In the event an order is terminated for any reason (including a breach by VIKING or a Force Majeure Event), BUYER shall pay VIKING, termination charges (collectively, the "Termination Charges") equal to (1) the contract price for all finished Product existing at the time of termination; (2) VIKING's cost (including VIKING's Delivered Cost for Material plus its Burdened Cost for labor) for all work in process; (3) VIKING's Delivered Cost of Material, including excess Material resulting from any minimum buy quantities, tape and reel quantities and multiples of packaging quantities required by the vendor; and (4) a reasonable profit. "Delivered Cost" shall mean VIKING's quoted cost (as set forth in the bill of materials provided to BUYER or, if no quoted cost exists, VIKING's standard cost) plus a fifteen percent (15%) materials margin; provided, however, that in the event these terms are terminated as a result of VIKING's breach, Delivered Cost shall mean VIKING's quoted cost (or, if no quoted cost exists, VIKING's standard cost). "Burdened Cost" shall mean VIKING's actual cost of labor including benefits and overhead.
12. **Limitation of Liability.** IN NO EVENT SHALL VIKING BE LIABLE TO BUYER FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR SPECIAL DAMAGES, OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS (HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY), EVEN IF VIKING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE PURPOSES OF THIS ORDER, BOTH LOST PROFITS AND DAMAGES RESULTING FROM VALUE ADDED TO THE PRODUCTS BY BUYER SHALL BE CONSIDERED CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL VIKING'S LIABILITY FOR A PRODUCT (WHETHER ASSERTED AS A TORT CLAIM, A CONTRACT CLAIM OR OTHERWISE) EXCEED THE AMOUNTS PAID TO VIKING FOR SUCH PRODUCT. IN ADDITION, IN NO EVENT SHALL VIKING'S LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO AN ORDER EXCEED \$250,000. IN NO EVENT WILL VIKING BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY BUYER. TO THE EXTENT PERMITTED BY LAW. IN NO EVENT SHALL VIKING BE LIABLE FOR ANY DAMAGES ARISING OUT OF ANY LATE DELIVERY UNLESS THE CAUSE OF THE LATE DELIVERY WAS COMPLETELY ATTRIBUTABLE TO VIKING'S BREACH OF THESE TERMS. THE LIMITATIONS SET FORTH HEREIN SHALL APPLY TO ALL LIABILITIES THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS AGAINST BUYER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE LIMITATION SET FORTH IN THIS SECTION SHALL APPLY WHERE THE DAMAGES ARISE OUT OF OR RELATE TO THESE TERMS.
13. **Indemnification.** BUYER shall indemnify, defend, and hold VIKING and VIKING's affiliates, shareholders, directors, officers, employees, contractors, agents and other representatives harmless from all demands, claims, actions, causes of action, proceedings, suits, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs and expenses incurred (including fees and disbursements of counsel) of every kind (i) based upon personal injury or death or injury to property to the extent any of the foregoing is proximately caused either by defective BUYER product (including strict liability in tort) or by the negligent or willful acts or omissions of BUYER or its officers, employees, subcontractors or agents, (ii) based on any breach of this agreement, (iii) that the BUYER product does not comply with any law, including but not limited to the RoHS Directive, the WEEE Directive, and any similar legislation or requirement and/or (iv) arising from or relating to any actual or alleged infringement or misappropriation of any patent, trademark, mask work, copyright, trade secret or any actual or alleged violation of any other intellectual property rights arising from or in connection with the BUYER products, except to the extent that such infringement exists as a result of VIKING's manufacturing processes.
14. **Force Majeure Event.** Neither party shall be responsible for any failure to perform due to a Force Majeure Event provided that such party gives notice to the other party of the Force Majeure Event as soon as reasonably practicable, specifying the nature and particulars thereof and the expected duration thereof. A "Force Majeure Event" shall mean the occurrence of unforeseen circumstances beyond a party's control and without such party's negligence or intentional misconduct, including, but not limited to, any act by any governmental authority, act of war, natural disaster, strike, boycott, embargo, shortage, failure of a vendor to timely deliver Material to VIKING, riot, lockout, labor dispute, or civil commotion.
15. **Credit Memo's.** Any credits issued by VIKING shall expire on the six month anniversary of the date on which they were issued. BUYER agrees that it has no right to assert any claim against VIKING in the event it failed to use any credit within said period, and releases VIKING from any liability from any such credit.
16. **Miscellaneous.** The terms and conditions set forth herein constitute the entire agreement of the parties, superseding all previous agreements covering the subject matter. These terms shall not be changed or modified except by written agreement, specifically amending, modifying and changing these terms, signed by a corporate officer of VIKING and an authorized representative of the BUYER. BUYER hereby acknowledges that it has not placed this order in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein. The failure by VIKING to enforce at any time any of these terms, to exercise any election or option provided herein, or to require at any time the performance by BUYER of any of the provisions herein will not in any way be construed as a waiver of such provisions. In the event the parties cannot resolve a dispute, the parties acknowledge and agree that the state courts of Santa Clara County, California and the federal courts located in the Northern District of the State of California shall have exclusive jurisdiction and venue to adjudicate any and all disputes arising out of or in connection with these terms. The parties consent to the exercise by such courts of personal jurisdiction over them and each party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. These terms shall be construed in accordance with the substantive laws of the State of California (excluding its conflicts of laws principles). Reasonable attorney's fees and costs will be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of these terms.