

1. These HGST Terms and Conditions of Sale ("Ts&Cs") apply to any products that HGST ("Seller") has agreed to supply to you ("Customer") in an order acknowledgment or acceptance document. Any order acknowledgment and acceptance documents issued by HGST are expressly conditioned upon Customer's acceptance of these Ts&Cs. Unless the products listed in Customer's purchase order are covered by a valid, signed purchase agreement between Customer and HGST, these Ts&Cs, along with HGST's order acknowledgment and acceptance documents, constitute the entire agreement between Customer and HGST for the products listed in the purchase order. Any additional or different terms and conditions set forth in Customer's purchase order or any similar documents shall be of no effect and are expressly replaced by these Ts&Cs. In addition, these Ts&Cs replace all prior oral or written communications between the parties regarding the subject matter herein, and may only be modified by a written document signed by authorized representatives of each party.
2. Customer may order Products by sending a written purchase order. Customer acknowledges and agrees that purchase orders accepted by Seller may be transferred by Seller to any of its Affiliates. This means that Customer (and any and all applicable authorized purchasers) will receive the Products from, be invoiced by, and make payment to such Affiliate. All such Orders incorporate the terms and conditions of these T&Cs whether expressly referred to or not and will only be accepted on that basis. Orders will be accepted by Seller when it issues an acceptance document thereby creating the contract of sale for the Products. Seller will provide an estimated shipment date in the order confirmation. "Affiliate" shall mean a corporation, company, or other entity that controls, is controlled by, or is under common control with, a party to this Agreement. Such corporation, company, or other entity, however, shall be deemed to be an Affiliate only so long as such ownership and control exists.
3. Customer is responsible for all freight and duty charges, if applicable, from Seller's shipping location. Title and risk of loss for Products pass to Customer upon tender to the carrier for shipment and Products will be deemed accepted at that time. For those instances in which Seller has agreed to bear the cost of transportation for shipment of Products, the delivery terms shall be CPT Customer's destination, as mutually agreed by the parties (Incoterms 2010); title and risk of loss will pass upon tender to the carrier for shipment, and products will be deemed accepted at that time. Customer will be deemed to have accepted the Products upon delivery unless Customer notifies Seller otherwise in writing within seven (7) days of tender to the carrier that the Products do not conform to Seller's warranty, any other terms of these T&Cs, or Seller's confirmation of Customer's order. Seller may require minimum and/or multiple order quantities.
4. "Product" or "Products" shall mean hard disk drives (HDD), solid-state drives (SSD), and other storage solutions (including, without limitation, software) which are offered for sale by Seller.
5. "Product/Price Release Letter" shall mean the document issued by Seller which identifies the Products and prices for the Products.
6. **DELIVERY**
  - a. Due to uncertainties in the supply/demand situation, Seller may not have sufficient supplies of one or more Products from its sources of supply to meet its customer's requirements. Whenever such a situation exists and Seller's performance hereunder is not otherwise excused, Seller may reduce or delay deliveries of such Product(s).
  - b. Except for Customer's obligation to pay, neither party will be responsible for failing to perform under these T&Cs for acts of God, natural disasters, labor strikes, or other causes beyond its reasonable control. Failure by either party to demand performance or to exercise a right when entitled will not prevent the parties from doing so later for that default or any other one.
  - c. Seller retains the right to discontinue, or change the specifications of, any Product.
  - d. Seller may charge a cancellation fee if Customer cancels an order: (a) for standard Products, within fourteen (14) days before the scheduled shipment date specified in Seller's order acceptance; (b) for SSD and non-standard Products, less than thirty (30) days before the scheduled shipment date specified in the order acceptance.
7. **PRICES**

Prices for the Products are listed in Product/ Price Release Letters issued by Seller. Seller will confirm such prices in an order acceptance notice. Product prices do not include any taxes which apply or may apply to the Products sold pursuant to these T&Cs. Any such taxes will be added by Seller to the sales price if Seller is required by law to collect such taxes, and will be paid by Customer unless Customer provides Seller with

a proper tax exemption certificate in form and substance satisfactory to Seller. Customer is responsible for all taxes related to Products and services, except for taxes based on Seller's net income.

8. PAYMENT

Seller shall invoice Customer at the time the Products are shipped. Customer shall pay the full amount of the invoice within thirty (30) days of the invoice date, provided however, that Seller shall have the right in its sole discretion to require payment before shipment or payment via letter of credit. Seller may stop shipments to Customer if Customer does not comply with applicable credit terms or limits or these T&Cs. Late payment of invoices may be assessed a charge equal to the lesser of 1.5% of the balance due per month or the statutorily allowed maximum rate of interest in accordance with applicable law. At any time before, during and or after termination of these T&Cs, Customer agrees that it shall not under any circumstances set-off any amounts owed by Customer or its Subsidiaries to Seller for the Products.

9. CUSTOMER'S RESPONSIBILITIES

a. Integration of Product

Customer represents and warrants that Products will only be: (i) integrated or incorporated into systems sold under Customer's logo or trade name unless otherwise specified by Seller in writing; or (ii) distributed in incidental additional quantities for use as service or upgrade parts in systems Customer has sold; or (iii) integrated or incorporated into systems for Customer's use as an end user. Customer is responsible for the qualification of Products for use in Customer's applications.

b. Use Restrictions

(i) Customer represents and warrants that it will not knowingly integrate, promote, sell, or otherwise transfer any Product or technical data to any customer or end user for use in connection with any of the restrictions set forth in Section 14(b)(iii).

(ii) CUSTOMER HEREBY RELEASES AND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER, FROM AND AGAINST ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES FOR ALL INJURIES OR DEATH AND FOR LOSS TO OR DAMAGE TO PROPERTY, AND LOSS OF USE THEREOF, ARISING DIRECTLY OR INDIRECTLY OUT OF OR IN CONNECTION WITH ANY RESTRICTED USES AS DEFINED IN THIS SECTION 9 OF THE PRODUCTS BY CUSTOMER OR AN END USER.

c. Representations About Seller or Seller's Products

Customer represents and warrants that it will not: (a) make any representations or warranties about Seller, the work performed by Seller under the terms of these T&Cs or the Products or services other than those Seller specifically authorizes in writing; or (b) take any action or make any commitment on Seller's behalf.

d. Customer agrees to install mandatory engineering changes (such as those required for safety) on a Product. Any parts removed shall either be disposed of by Customer or be returned to Seller, as directed by Seller.

10. LIMITED WARRANTY

The applicable warranty period for Product shall be communicated to Customer and also stated in Seller's order acceptance.

a. Seller warrants Products to be free from defects in material and workmanship for the applicable warranty period.

b. Seller's sole liability and Customer's sole remedy for breach of warranty shall be limited as stated in this Section 10.

c. If Customer claims that any Products are non-conforming, Customer shall (i) promptly notify Seller in writing of the basis of such nonconformity; (ii) follow Seller's Return Materials Authorization (RMA) instructions for return of the Products; and (iii) at Seller's request, return the Products freight prepaid to the Seller designated location. Seller has the sole discretion to apply minimum return quantities. Product must be returned in its original packaging or packaging approved by Seller.

d. If Seller determines such Products do not meet the warranty, Seller will, at Seller's option, repair or replace the Products or issue a credit at the current warranty credit value as determined by Seller. If Seller replaces the Products, the returned Products become Seller's property. The applicable warranty period for all repaired or replacement Product is the remainder of the original Product's warranty period or ninety (90) days, whichever is greater. Seller will pay the freight charges for the return of the repaired/replaced Products. If requested by Seller, Customer will pay all freight charges for the return of Products which are determined by Seller to be "No Trouble Found". This warranty does not cover Products that are defective because of: (i) accident, abuse, misuse, negligence, modification, or improper maintenance; (ii) a failure caused by any item which Seller did not provide or for which Seller

- is not responsible; or (iii) use or storage in anything other than Sellers specified operating environment. The warranty is void if Product labels have been removed or altered.
- e. This warranty is not transferable. Furthermore, Seller does not warrant: (i) uninterrupted or error free operation or functionality of the Products; or (ii) that Seller will correct all defects. No course of dealing, course of performance, usage of trade, or description of Products or services shall be deemed to establish a warranty, express or implied.
  - f. Customer will not seek reimbursement from Seller for any expenses associated with Customer's compliance with applicable regulations of the United States (local, state and federal), European Union, and any other country or country group laws and regulations.
  - g. UNLESS OTHERWISE PROVIDED BY WRITTEN AGREEMENT, ALL SERVICES, PROTOTYPES, SAMPLES AND QUALIFICATION UNITS ARE PROVIDED "AS IS" WITHOUT WARRANTY OR INDEMNIFICATION OF ANY KIND BY SELLER.
  - h. THE FOREGOING WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR TERMS, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF NON-INFRINGEMENT AND NON-INTERFERENCE AND THE IMPLIED WARRANTIES OR TERMS OF MERCHANTABILITY, AND FITNESS OR USE FOR A PARTICULAR PURPOSE.
11. PATENTS AND COPYRIGHTS
- a. If a third party claims that a Product Seller provides to Customer infringes that party's patent or copyright, except with respect to open source software, Seller will defend Customer against that claim at Seller's expense and pay all costs, damages, and attorney's fees that a court finally awards, or if applicable, any settlement amount Seller negotiates, provided that Customer:
    - (i) promptly notifies Seller in writing of the claim; and
    - (ii) allows Seller to have sole control, and reasonably cooperates with Seller in, the defense and any related settlement negotiations. Customer may participate in such defense at Customer's own expense. If such a claim is made or appears likely to be made, Seller will take steps to enable Customer to continue to use the Product, or to modify or replace it with a functionally equivalent, non-infringing Product. If Seller determines that none of these alternatives is reasonably available, Customer agrees to return the Product that is in Customer's possession or control to Seller upon written request. Seller will then provide Customer a credit equal to the amount the Customer paid for such Product. This is Seller's entire obligation to Customer regarding any claim of infringement. However, unless otherwise required by a court order, such modification, replacement, or return shall be limited to only those Product(s) or Service(s) that are under the reasonable control of the Customer.
  - b. Seller shall have no obligation regarding any claim based on any of the following:
    - (i) anything Customer provides which is incorporated into a Product (including, but not limited to specifications, designs, documents, reports, or data);
    - (ii) Customer's modification of a Product;
    - (iii) the combination, operation, or use of a Product or service with any product data, or apparatus that Seller did not provide;
    - (iv) the use of the Product in other than its specified operating environment; or
    - (v) Infringement by a non-Seller product alone, as opposed to its combination with Products Seller provides to Customer as a system.
  - c. No license, immunity or other right is granted herein by either party to the other party, whether directly or by implication, estoppel, or otherwise, with respect to any patent, trademark, copyright, mask work, trade secret, or other intellectual property rights.
12. LIMITATION OF LIABILITY
- a. Circumstances may arise where, because of a default on Seller's part or other liability, Customer is entitled to recover damages from Seller. In each such instance, regardless of the basis on which Customer is entitled to claim damages from Seller (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), the following terms apply as Customer's exclusive remedy and Seller's exclusive liability. Seller is liable for no more than:
    - (i) payments referred to in the patents and copyrights terms above;
    - (ii) damages for bodily injury (including death) caused by the negligence of Seller and damage to real property and tangible personal property caused by the negligence of Seller
    - (iii) the amount of any other direct damages up to the charges for the Product that is the subject of the claim. This limit also applies to any of Seller's subcontractors. It is the maximum for which Seller and its subcontractors are collectively responsible.
  - b. Under no circumstances is Seller, or its subcontractors, liable for:

- (i) third-party claims against Customer for damages (other than those under the first two items listed in Section 12 a. above); or
- (ii) loss of, or damage to, any records or data.
- c. FURTHERMORE, EXCEPT FOR CLAIMS ARISING FROM CUSTOMER'S VIOLATION OF SELLER'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES (INCLUDING LOST OPPORTUNITIES, PROFITS AND SAVINGS), EVEN IF INFORMED OF THEIR POSSIBILITY.

### 13. TERMINATION

Seller may terminate these Terms and Conditions upon ten (10) days written notice. Any Terms and Conditions, which by their nature extend beyond expiration or termination shall remain in effect until fulfilled and shall bind the parties and their legal representatives, successors, heirs and assigns.

### 14. EXPORT REGULATIONS

- a. Customer agrees to provide any information and documentation reasonably requested by Seller necessary for Seller to comply, with all applicable national, federal, state and local laws, regulations and ordinances including, but not limited to, the regulations of the United States Departments of Commerce, the Treasury, and US Customs, or the laws of any other country, relating to the import and/or export of Products, software, and technical data to the extent they relate to the transactions contemplated herein.
- b. Customer shall neither sell nor transfer any Products or related technical data or software to:
  - (i) any person, company or other entity if the Customer knows or has reason to believe that the Products, software, or technical data will be re-exported, sold, transferred in violation of U.S. or local law and regulations, or the applicable laws and regulations of any other nation, or
  - (ii) any entity or individual appearing on any of the lists of prohibited persons or entities, or
  - (iii) any person, company or other entity if the Customer is aware of or has grounds for suspecting or knows that such Products, software, or technical data may be intended, in their entirety or part, or are for use in nuclear, chemical or biological weapons.
- c. Customer and Seller shall comply with all applicable import and export laws, including but not limited to if Customer sells or transfers its title and/or right to use all or part of the Products, software, or technical data to a third party or itself exports the Products, software, or technical data.
- e. Seller shall have the right to refuse to accept Purchase Orders for the Products, software, or technical data, or to deliver the Products, software, or technical data to fulfill any previously accepted Purchase Order, if Seller determines, in good faith, that such proposed sale or other disposition of the Products, software, or technical data poses an unreasonable risk of a violation of any applicable law or regulation, including those United States laws and regulations related to import or export transactions.

### 15. CONFIDENTIALITY

Any exchange of confidential information must be made under a separate confidentiality agreement signed by the parties, if there is no such agreement, the following shall apply.

The parties acknowledge that the existence of materials or discussions between the parties concerning the Products and other information, including, but not limited to, Seller's plans, roadmaps, specifications, data, functions, and code; manufacturing and process plans, Product samples, descriptions, results, flow charts, controls, and yields; test and quality specifications, plans, systems, data, and strategies; failure analysis process, results, and data; component lists, descriptions, and supplier-related information; source code, pricing, business opportunities, research, development and know-how, are considered confidential ("Confidential Information"). Confidential Information may be disclosed by: (i) presentation; (ii) delivery; (iii) authorized access, such as to a database; or (iv) any other express means that (a) is marked or identified by the disclosing party as confidential, or (b) given the totality of the circumstances and nature of the disclosure, would reasonably be considered confidential.

The party receiving the information ("Receiving Party") must keep all Confidential Information confidential using no less than the same degree of care that it exercises with respect to its own information of like importance; but in no event less than reasonable care, and may use it only for the purposes for which it was provided under the Agreement. Confidential Information may be disclosed only to employees or contractors obligated to the Receiving Party under similar confidentiality restrictions and only for the purposes for which it was provided to Receiving Party under the Agreement. The Confidential Information shall be used for the purpose of evaluating, negotiating and/or the execution of business between the parties.

The obligations above do not apply to information which: is or becomes known to the public through no act or omission of the Receiving Party; or the Receiving Party develops independently without using confidential Information of the other party. Within thirty (30) days of a written request by the disclosing party ("Disclosing Party"), Receiving Party shall:

(1) destroy or return to Disclosing Party all materials (including electronic and hard copy documents) received from Disclosing Party that contain Confidential Information, all materials it may have created that reveal or are based on any of Disclosing Party's Confidential Information, and all copies of the foregoing, and (2) deliver to Disclosing Party a statement that Receiving Party has complied with such request.

16. ASSIGNMENT

Assignment of these T&Cs, or any right or interest herein, or of any payment due to or become due hereunder, without written consent of Seller shall be void.

17. APPLICABLE LAW

The parties agree to comply with all applicable laws. The validity, construction and performance of these T&Cs will be governed by the laws of the State of California, United States. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these T&Cs. Neither party will bring a legal action against the other more than one (1) year after the cause of action arose, except for actions for non-payment or to enforce intellectual property rights. Both parties waive the right to a jury trial in any dispute arising out of these T&Cs. Both parties agree that any action concerning these T&Cs shall only be brought in the State or Federal Courts sitting in Santa Clara, California, and hereby consent to the personal jurisdiction of any such courts and to service of process in the manner provided for the giving of notices pursuant to these T&Cs. If, notwithstanding the foregoing, a California's court's judgment is not enforceable against a party, the other party may bring such an action in any court of competent jurisdiction. If any provision or provisions of these T&Cs shall be held to be invalid, illegal, or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

18. NOTICES

All notices, requests and other communications called for by these T&Cs shall be deemed to have been given if made in writing and either mailed, postage prepaid and return receipt requested, delivered by hand, or sent by nationally-recognized overnight courier service to the following or to an alternate as designated in writing by Seller to Customer:

To Seller:  
HGST Singapore Pte. Ltd.      and  
Attn: Legal Department  
4 Kaki Bukit Avenue 1, #03-08  
Singapore 417939

HGST, Inc.  
Attn: Legal Department, General Counsel  
3403 Yerba Buena Road, San Jose, CA 95135  
FAX: 408 717 9603

**END OF DOCUMENT**