

SILICONBLUE TECHNOLOGIES  
TERMS AND CONDITIONS OF SALE

1.0. TERMS AND CONDITIONS; ORDERS; CHANGES.

(a) Terms and Conditions. The terms and conditions of sale in this document (these “Terms and Conditions”) will be the only terms and conditions that will apply to any purchase order (“Purchase Order”) accepted by SiliconBlue Technologies Ltd. or its affiliate SiliconBlue Technologies Corporation (“SiliconBlue”) from the purchaser and/or licensee of SiliconBlue products (collectively, “Products”) for its own use or for resale (“you”) and SiliconBlue, subject to any written, mutually signed agreement between you and SiliconBlue. The Terms and Conditions may conflict with terms and conditions on forms or order blanks and/or otherwise specified by you for your purchase and license of Products. Therefore, SiliconBlue will accept your Purchase Order solely on your express understanding and agreement that the Terms and Conditions will be the only terms and conditions applicable to your Purchase Order, and SiliconBlue hereby objects to any other terms and conditions, subject to any written, mutually signed agreement between you and SiliconBlue.

(b) Orders and Acceptance. You agree that you will submit your Purchase Orders for Product to SiliconBlue as written Purchase Orders subject solely to the Terms and Conditions, stating the quantities and descriptions of Product required, applicable purchase prices and license fees, requested delivery dates, and billing/shipping instructions. SiliconBlue will accept or reject (at SiliconBlue’s sole discretion) your Purchase Order at SiliconBlue’s offices in Santa Clara, CA.

(c) Changes. SiliconBlue reserves the right to make any change in the specification of the Products which does not materially affect the installation, performance or price thereof; any such change shall not invalidate any Purchase Order placed with SiliconBlue or impose any liability on SiliconBlue. If SiliconBlue ceases to manufacture any Products after SiliconBlue’s acceptance of a Purchase Order covering such Products, SiliconBlue shall give notice of the fact in writing to you (but shall not be liable for any loss or damage occasioned thereby to you), whereupon you will have the option, to be exercised by written notice to SiliconBlue within ten (10) days of the date of such notice, either to take equivalent Products (if available from SiliconBlue) or to cancel the affected Purchase Order without further liability to SiliconBlue with respect to such discontinued Products under the affected Purchase Order(s). If you have not exercised such option within such ten (10) day period, the affected Purchase Order shall either (i) continue in effect, with any equivalent Products, if available from SiliconBlue, substituting for the discontinued Products, or (ii) shall be deemed terminated to the extent of such discontinued Products, if equivalent Products are not available from SiliconBlue.

(d) Repurchase. SiliconBlue may at any time, at its sole option, on giving reasonable notice to you, repurchase any Products sold to you at a price equal to the invoiced price of such Products, provided that SiliconBlue will only be entitled to repurchase such Products where such Products have not been sold by you and you have not entered into a contract with a third party to sell the Products. SiliconBlue will pay reasonable shipping expenses of any such requests.

2.0. PRICE AND TERMS OF PAYMENT.

(a) Prices; Taxes. Unless otherwise stated in writing by SiliconBlue, all prices quoted are in U.S. dollars, expire thirty (30) days after the date of a quotation, and are exclusive of transportation, insurance, federal, state, local, excise, value-added, use, sales, property (ad valorem), and similar taxes or duties

now in force or hereafter enacted. You agree to pay all taxes, fees, or charges of any nature whatsoever imposed by any governmental authority on, or measured by the transaction between you and SiliconBlue, in addition to the prices quoted or invoiced. In the event that SiliconBlue is required to collect the foregoing, such amounts will be paid by you unless you provide SiliconBlue with a valid tax exemption certificate authorized by the appropriate taxing authority. You agree to provide SiliconBlue with a valid resale certificate for products purchased for resale.

(b) Terms of Payment. If SiliconBlue has approved credit terms for your purchase, SiliconBlue will grant net thirty (30) day payment terms to you. Such payment terms require that you pay the purchase price in full not later than thirty (30) days after the date of SiliconBlue's invoice, which SiliconBlue will issue on its shipment of Product to you. You agree to make payment of the applicable prices and other amounts due, by wire transfer of immediately available funds to SiliconBlue's advised bank account or by such other method as SiliconBlue may request. SiliconBlue also reserves the right, in its sole discretion, at any time to request the immediate provision of a standby letter of credit, drawn upon a mutually agreeable bank, with a value equal to the amount of credit extended by SiliconBlue to you. If payment of any amount invoiced is not made by the due date, SiliconBlue shall, in addition to other rights and remedies under these Terms and Conditions, be entitled to: (i) charge interest on the outstanding amount at the rate of 1.5% per month, accruing daily, or the highest rate allowed by applicable law, if lower; and/or (ii) require payment by you in advance of delivery of any undelivered Products ordered under the affected or any other Purchase Order; and/or (c) refuse to make delivery of any undelivered Products ordered under the affected or any other Purchase Order, and without incurring any liability whatsoever to you for non-delivery or any delay in delivery; and/or (d) terminate the applicable Purchase Order. You shall reimburse SiliconBlue for all costs and expenses incurred by SiliconBlue in connection with the collection of overdue amounts, including attorneys' fees. Time is of the essence with respect to all payments hereunder.

(c) Purchase Money Security Interest. You agree that your Purchase Order constitutes a security agreement, under which you grant to SiliconBlue a purchase money security interest in Product purchased hereunder for the amount of its purchase price, and SiliconBlue hereby reserves such security interest. In order to perfect SiliconBlue's security interest, you agree that (i) you will execute any financing statements (e.g., UCC-1 forms) and amendments and supplements thereto, or other instruments that SiliconBlue, as a secured party, desires to file in compliance with the commercial code of any state, or any other law of the United States, and (ii) SiliconBlue may file such financing statements and your Purchase Order, or photocopy of your Purchase Order, with the appropriate governmental authorities at any time, alone or with other documents that SiliconBlue determines to be necessary or desirable to perfect or protect the security interest created hereby. Payment in full of the purchase price of any Product will release the security interest on that Product. You agree that, until such time as you have paid SiliconBlue all amounts due with respect to such Products: (A) if the Products are resold or otherwise disposed of by you, you will ensure that the entire proceeds of the sale are held on behalf of SiliconBlue and shall not be mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as monies belonging to SiliconBlue; (B) you shall be obliged to keep the Products free from the rights of third parties and shall not encumber, pledge or grant any security interest in or to the Products; and (C) if you fail to make payments when due, SiliconBlue retains the right to recover the Products from your premises (and for this purpose may enter into your premises), at your expense. Nothing in this clause 2.0(c) shall confer any right upon you to return or otherwise reject the Products.

3.0. DELIVERY; RISK OF LOSS AND TITLE. SiliconBlue will pack all Products for shipping in accordance with

standard commercial practices, and will deliver Products to you EXW (Incoterms 2000) SiliconBlue's manufacturing, warehouse or distribution facility ("Delivery"). Unless you specify a carrier to SiliconBlue in writing, SiliconBlue will select the carrier, but such carrier will not be the agent of SiliconBlue. Title to Product (except for software, see Section 8.0(d) below) will pass to you on Delivery. Any date(s) or time(s) quoted for delivery of the Products by SiliconBlue are estimates only and SiliconBlue shall not be liable for failure to deliver the Products on or within such date(s) or time(s) nor shall you be entitled to reject any shipment of the Products or to treat any Purchase Order as repudiated in the event of such failure. SiliconBlue will make best efforts to meet the quoted delivery dates. SiliconBlue may ship your ordered Products in one or more installment(s), unless you make a specific prior written request that SiliconBlue not make partial shipments under your Purchase Order. Where the Products are delivered in installments, each delivery shall constitute a separate contract and failure by SiliconBlue to deliver any one or more of the installments in accordance with these Terms and Conditions or any claim by you in respect of any one or more installments shall not entitle you to treat the Purchase Order as a whole as repudiated. You must report any discrepancies in quantities or type of Products received in a shipment as compared to the applicable invoice, within seven (7) days of your receipt of such shipment or such shipment shall be deemed to comply with its invoice.

4.0. ORDER CANCELLATION. If shipment dates specified to you are not suitable, you must notify SiliconBlue as promptly as possible, and in any event within fifteen (15) days of the date of notification of such scheduled shipment dates. If mutually satisfactory schedule dates cannot be set, you may delete that portion of your Purchase Order relating to the affected Products. Thereafter, you may cancel a Purchase Order only by filing written notice to SiliconBlue prior to the earlier of (i) the customer request date, or (ii) forty-five (45) days, for standard products, and ninety (90) days for custom products, in advance of your last scheduled shipment date. After such date, Purchase Orders may not be canceled. If the Products are custom products, which have been designed, manufactured, marked, programmed, or packaged to your specifications, you will also pay all costs, direct and indirect, incurred and committed by SiliconBlue for such Products, together with a reasonable allowance for prorated expenses and anticipated profits. If pricing for Products sold to you is based on minimum purchase volume commitments, you will pay for price adjustments due to the reduced quantity of Products actually shipped.

5.0. LIMITED WARRANTY. SiliconBlue represents and warrants that the Products shall be free from material defects caused by poor workmanship or faulty materials for twelve (12) months from the date of Delivery. SiliconBlue's sole liability and responsibility under this warranty is, at SiliconBlue's option, either (a) to replace any Product which is returned to SiliconBlue by you and which SiliconBlue determines does not conform with this warranty (a "Defective Product"), or (b) to issue a credit for any monies already paid to SiliconBlue in respect of a Defective Product, provided that: (i) you notify SiliconBlue in writing within ten (10) days of discovering such defects and ship such Defective Products to SiliconBlue's designated warranty service center under a duly issued RMA at your expense; (ii) if you redistribute the Products, SiliconBlue shall be required to interact solely with you and not with any of your customers or end users; (iii) all replacement Products shall be delivered to you in accordance with these Terms and Conditions; and (iv) you shall pay to SiliconBlue the cost (as certified by SiliconBlue) of any examination and investigation of Products returned to SiliconBlue, as well as any costs of repair or replacement, where in its reasonable opinion, SiliconBlue provides you with notice that such Products are not defective or were damaged as a result of misuse, neglect, accident, improper shipment, storage, installation, handling or repair or any other reason which is not attributable to SiliconBlue. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5.0, ALL PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL (INCLUDING ANY

WARRANTY OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT). YOUR SOLE AND EXCLUSIVE REMEDY UNDER ANY WARRANTY SHALL BE LIMITED TO THE REMEDIES CONTAINED IN THIS SECTION 5.0. NEITHER SILICONBLUE NOR ITS LICENSORS WARRANT THAT ANY PRODUCT WILL MEET YOUR OR ANY END-USER'S REQUIREMENTS.

#### 6.0. LIMITATION OF LIABILITY.

(a) Disclaimer. IN NO EVENT WILL SILICONBLUE BE LIABLE TO YOU, ANY END CUSTOMERS OR OTHER THIRD PARTIES FOR EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF USE, SAVINGS OR REVENUE, WHETHER OR NOT SILICONBLUE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT OR YOUR RELATIONSHIP WITH SILICONBLUE.

(b) Limitation. SILICONBLUE'S LIABILITY ARISING OUT OF THE TERMS AND CONDITIONS OF SALE AND/OR SALE OR USE OF PRODUCT, INCLUDING WITHOUT LIMITATION ANY AND ALL CLAIMS COMBINED, WILL NOT EXCEED THE AMOUNT OF THE PURCHASE PRICE OF PRODUCT PAID IN THE THEN-PRIOR SIX (6) MONTH PERIOD. IN NO EVENT WILL SILICONBLUE BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS BY YOU OR ANY OTHER PERSON OR ENTITY. THE LIMITATIONS IN THIS SECTION WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### 7.0. INDEMNIFICATION.

(a) By SiliconBlue. SiliconBlue will defend any suit or proceeding brought against you or your affiliates or their respective directors, officers, employees, agents or representatives ("Your Indemnitees") based on a claim that Products, solely as furnished to you by SiliconBlue, constitutes infringement of any copyright or patent. SiliconBlue will pay all settlements and costs finally awarded therein against Your Indemnitees, provided that Your Indemnitees (i) promptly inform SiliconBlue of such suit or proceeding, and furnish to SiliconBlue a copy of each communication, notice or other action relating thereto, (ii) give SiliconBlue the sole authority, and information and reasonable assistance necessary, to settle or litigate such suit or proceeding, and (iii) do not settle, or agree to settle, any such suit or proceeding without the prior written permission of SiliconBlue. If such Product is held in any such suit to infringe and your use of such Product is enjoined, SiliconBlue will have the option, at its own discretion and expense, to (a) procure for you the right to continue using such Product, (b) replace such Product with non-infringing Product, (c) modify such Product to make it non-infringing, or (d) refund the depreciated value of such Product, and accept its return. SiliconBlue will not be obligated to defend or be liable for costs and damages to the extent that infringement, or a claim of thereof, arises out of (1) use or combination of Product with products or data not provided by SiliconBlue, (2) a modification made to Product by you or a third party, (3) use of other than the latest unmodified release of Product made available to you by SiliconBlue if such infringement would have been avoided by the use thereof, or (4) use of Product after you receive notice, or have reason to believe, that Product infringes a patent or copyright of a third party. THE FOREGOING STATES THE ENTIRE LIABILITY OF SILICONBLUE FOR PATENT, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT BY ANY PRODUCT FURNISHED UNDER THE TERMS AND CONDITIONS.

(b) By You. You will defend any suit or proceeding brought against SiliconBlue or its affiliates or their respective directors, officers, employees, agents or representatives (the "SiliconBlue Indemnitees") based on a claim arising from your use or resale of Products, excluding claims for which SiliconBlue provides indemnification of you pursuant to Section 7.0(a) above. You will pay all settlements and costs

finally awarded therein against the SiliconBlue Indemnitees, provided that the SiliconBlue Indemnitees (i) promptly informs you of such suit or proceeding, and furnishes to you a copy of each communication, notice or other action relating thereto, (ii) give you the sole authority, and information and reasonable assistance necessary, to settle or litigate such suit or proceeding, and (iii) do not settle, or agree to settle, any such suit or proceeding without the prior written permission of you.

#### 8.0. GENERAL.

(a) Product Changes. SiliconBlue may make alterations to Product that SiliconBlue deems necessary to comply with specifications, changed safety standards or governmental regulations, at any time prior to shipment. (b) Product Use. SiliconBlue Products are not designed for use in hazardous or life threatening applications and must not be used or resold for such applications without the written approval of SiliconBlue's CEO. (c) Force Majeure. In no event will SiliconBlue be liable for delays or failure to fulfill its obligations hereunder arising because of acts of God, fire, labor disputes of any nature, accident, supplier failure or delay, insurrection, terrorism, or other causes beyond the reasonable control of SiliconBlue. (d) Licensed Products. All SiliconBlue software products (collectively, "Software") are licensed to you by SiliconBlue for your use pursuant to Sections 1 through 4 above and the terms and conditions in the SiliconBlue Software License Agreement that is included with Software, and for no other uses. When used in reference to Software, the word "purchase" and similar or derivative words are deemed to mean "license." Title to Software will remain with SiliconBlue and its licensors, notwithstanding anything to the contrary herein. (e) Export. You hereby agree that you do not intend to, and will not knowingly, without the prior written approval, if required, of the Office of Export Administration of the U. S. Department of Commerce or any other applicable U.S. Government agency, export, either directly or indirectly, any Product or any portion of Product, to any country for which such approval is required. (f) Assignment. You may not assign your Purchase Orders hereunder without the prior written permission of SiliconBlue; any attempt to assign any rights, duties or obligations that arise under such Purchase Orders without such permission will be null and void. (g) Resolution of Disputes. The Terms and Conditions will be governed by and interpreted in accordance with the laws of the State of California, excluding its choice of law rules and excluding any application of the United Nations Convention on Contracts for the International Sale of Goods. The parties hereby agree that any dispute regarding the interpretation or validity of, or otherwise arising out of, these Terms of Use, or relating to Products sold or licensed hereunder will be subject to the exclusive jurisdiction of the California state courts of Santa Clara, County, California (or, if there is exclusive federal jurisdiction, the United States District Court for the Northern District of California), and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts. In the event any action is brought under these terms for collection of a debt, the prevailing party shall be entitled to recover reasonable attorney's fees. (h) Unenforceable Provisions. In the event that any of the terms and conditions hereof will be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining terms and conditions will remain in full force and effect, provided that in such event the parties agree to negotiate in good faith substitute enforceable provisions that most nearly effect the parties' intent hereunder. (i) Complete Agreement. The Terms and Conditions constitute the entire agreement between the parties pertaining to the subject matter hereof and your Purchase Order, and any and all written or oral agreements heretofore existing between the parties hereto are expressly cancelled, excluding any written, mutually signed agreement between you and SiliconBlue that specifically references these Terms and Conditions, which shall remain in effect according to its terms. You acknowledge that you have not relied on any representations not expressly contained herein. Any modification of the Terms and Conditions must be in writing and signed by both parties hereto. Any such modification will be binding upon SiliconBlue only if and when signed by a duly authorized employee of SiliconBlue