

## TERMS & CONDITIONS OF SALE

- 1. CONDITIONAL ACCEPTANCE.** NuSil Technology LLC ("**Seller**") hereby accepts the order received from you ("**Purchaser**"), subject to Purchaser's acceptance of these terms and conditions. Seller's acceptance is subject to the availability of inventory and to Seller's prices and terms in effect at time of shipment. These Terms & Conditions of Sale ("**Terms**") may not be modified or amended, except by a written instrument executed by an authorized officer of Seller. In the event of any conflict between these Terms and the provisions of any purchase order submitted to Seller, these Terms shall prevail and govern the rights and duties of the parties.
- 2. PRICE AND PAYMENT TERMS.** The payment terms shall be those stated on the front of this form under the section titled "TERMS" and the payment due date shall be measured from the date of shipment. The payment due date is the date by which Seller must receive payment of the purchase price. IF SELLER DOES NOT RECEIVE PAYMENT OF THE ENTIRE PURCHASE PRICE ON OR BEFORE THE DUE DATE, THEN INTEREST SHALL ACCRUE ON THE UNPAID BALANCE FROM THE DUE DATE AT A MONTHLY RATE OF 1.5%, OR THE MAXIMUM RATE ALLOWED BY APPLICABLE LAW, WHICHEVER IS LESS. Any applicable processing fees, taxes or government charges may, at Seller's option, be added to Seller's price in effect at the time of shipment. Unauthorized payment deductions are not allowed for any reason and may interrupt goods delivery.
- 3. FREIGHT TERMS AND TRANSFER OF TITLE.** Unless otherwise agreed to by Seller in a written order acknowledgement, the goods will be shipped (Incoterms 2020) Ex-Works Seller Site for all orders. Title to the goods transfers to Purchaser upon Seller's delivery of the goods to the carrier for shipment to Purchaser.
- 4. LIMITED WARRANTY.** Seller provides only that the products sold to Purchaser will meet the express warranty, if any, set forth in the Certificate of Analysis ("**CofA**") (or Customer Material Certification ("**CMC**"), if one is issued to Purchaser) for the product being purchased by Purchaser. Notwithstanding the foregoing, unless otherwise noted in a separate agreement, any PRO or Prototype materials will not come with any certification or warranty. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND PATENT INFRINGEMENT. Purchaser is solely responsible for determining the suitability of the goods purchased for Purchaser's contemplated use. Purchaser assumes all risk and liability for loss, damage or injury to property resulting from the use or possession of the goods furnished under these Terms.
- 5. CANCELLATION.** Due consideration will be given to any request of Purchaser for modification, cancellation or release against an order, but orders cannot subsequently be canceled except by mutual agreement. If, at the request of Purchaser, Seller and Purchaser agree in writing to cancel any purchase order prior to the completion of the order, then Seller may elect to require Purchaser to pay to Seller cancellation charges equal to the sum of (a) the cost of finished products on hand at the full unit price, (b) work in process prorated based on percentage of work completed, (c) committed raw materials purchases, and (d) all cancellation charges imposed by Seller's vendors by reason of Purchaser's cancellation. Upon request of Purchaser, all finished goods, work in process, and raw materials covered by these charges shall be shipped to Purchaser at the cost and expense of Purchaser.
- 6. LIMITATION OF REMEDIES AND DAMAGES.** Purchaser's exclusive remedy and Seller's sole responsibility for any claim or cause of action arising under this Agreement is expressly limited to either (1) replacement of all goods shown to be other than as warranted or (2) refund of the purchase price of all goods shown to be other than as warranted, or (3) replacement or refund for product damaged upon receipt. Any refund or replacement is conditioned on Purchaser giving Seller, within 30 days of receipt of damaged product, within 30 days of the expiration of the warranty period, written notice that the goods are damaged or other than as warranted. Any refund or replacement is further conditioned on Seller's confirmation that the goods are other than as warranted according to Seller's standard RMA protocol. In no event may Purchaser commence any action against Seller with respect to the products after the expiration of eighteen (18) months following the date on which Seller delivers the products to the carrier for shipment to Purchaser. Seller shall not be liable for costs or delays occasioned by any event or circumstances beyond the reasonable control of Seller, including but not limited to fires, floods, epidemics, famines, earthquakes, hurricanes and other natural disasters or acts of God; regulation or acts of any civilian or military authority or act of any self-regulatory authority; wars, terrorism, riots, civil unrest, sabotage, or theft or other criminal acts of third parties. IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER, WHETHER IN CONTRACT OR TORT OR FOR BREACH OF STATUTORY DUTY, FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION CLAIMS FOR INDEMNIFICATION, LOST REVENUES AND PROFITS.
- 7. ENTIRE AGREEMENT AND APPLICABILITY OF TERMS.** These Terms, the product specifications set forth in the CofA (or CMC, if one is issued to Purchaser) for the product, or the quality agreement (if any) or supply agreement (if any) with Purchaser, represent the entire agreement between Seller and Purchaser with respect to the sale of the goods. IF THERE IS A CONFLICT BETWEEN THESE TERMS AND ANY PRODUCT SPECIFICATION, SUPPLY AGREEMENT, OR QUALITY AGREEMENT IN EFFECT BETWEEN SELLER AND PURCHASER AT THE TIME OF SHIPMENT, THEN THE RELEVANT PROVISIONS OF THE PRODUCT SPECIFICATION, SUPPLY AGREEMENT OR QUALITY AGREEMENT, AS APPLICABLE, SHALL CONTROL.
- 8. MISCELLANEOUS.** The rights and duties of Seller and Purchaser hereunder and under any contract resulting from acceptance of the order described on the front of this document shall be governed by and construed in accordance with the laws of the State of California. Each party hereby consents to the jurisdiction of the Courts of the State of California for all actions arising under or in connection with such order and contract. Each party further acknowledges that the agreement between the parties has been entered into and shall be performed by Seller in Santa Barbara County, California, and agrees that the exclusive venue for all actions arising under or in connection with these Terms and the order accepted hereby shall be the Superior Court in and for Santa Barbara County, California. Either party's waiver of a breach by the other party of any provision of THESE TERMS shall not constitute a waiver of any other breach. If any action is commenced to construe or enforce any such order or contract, then the prevailing party in that action shall be entitled to recover its attorneys' fees and costs in that action and any action to enforce a judgment entered therein.
- 9. CHANGE MANAGEMENT –** Change notifications conducted by Seller are performed in sole accordance with the Seller's Change Notification Policy. This Policy exclusively applies to Purchasers with a mutually approved product-specific specification for product(s) undergoing change(s).
- 10. PROTOTYPE MATERIALS –** Unless otherwise noted in a separate agreement, Prototype materials (PRO) are to be used for Customer's feasibility testing only and not for commercial use or use in clinical trial.