

MICRON AUTHORIZED RETAILER PURCHASE TERMS AND CONDITIONS

Micron Consumer Products Group, a division of Micron Semiconductor Products, Inc., (“Micron”) and maker of Crucial®- and Ballistix®-brand products, has implemented these Micron Authorized Retailer Purchase Terms and Conditions (the “Terms”), which apply to retailers of Micron products (the “Products”) in the United States of America. By purchasing Products from Micron or Crucial.com for retail sale, you (hereinafter “Retailer,” “you,” or “your”) agree to adhere to the following terms. Please read these terms carefully. Unless and until such status is otherwise revoked by Micron in Micron’s sole and absolute discretion, Retailer shall be considered an “Authorized Retailer” hereunder.

1. **Purchase Orders and Products.** Orders for Products (“Purchase Orders”) made by Retailer shall be handled pursuant to Micron’s then-current product order, shipment, and return procedures, which may be amended by Micron at any time in its sole and absolute discretion. Micron reserves the right to reject any Purchase Order, in whole or in part, for any reason. Micron reserves the right, at any time in its sole and absolute discretion and without any obligation, liability or advance notice to Retailer, to discontinue the sale of or limit the production of any Product, to terminate or limit deliveries of any Product, to alter the design or composition of any Product, and to add new and additional products to or delete existing Products from its product lines.

2. **Manner of Sale.** Retailer shall sell the Products only as set forth herein. Otherwise, the Products may not be eligible for certain services and benefits, including, wherever permitted by law, coverage under Micron’s Product warranties.

(a) **Authorized Customers.** Retailer shall sell Products solely to end-users of the Products. Retailer shall not sell to anyone a quantity of the Products greater than that generally purchased by an individual for personal use. Retailer shall not sell or transfer any of the Products to any person or entity for resale without the prior written consent of Micron. This includes sales to B2B accounts, wholesalers, freight forwarders/drop shippers for other retailers, or any other person Retailer knows or has reason to know intends to re-sell the Products.

(b) **Geographic Location of Sales.** Retailer shall not sell, ship or invoice Products to customers outside of the United States of America or to anyone Retailer knows or has reason to know intends to ship the Products outside of the United States of America without the prior written consent of Micron.

(c) **Online Sales.** Retailer is permitted to market for sale or sell the Products on the Internet through Permissible Websites. A “Permissible Website” is a website that (i) is operated by Retailer in Retailer’s legal name, (ii) conspicuously states Retailer’s full legal name, mailing address, telephone number, and email address, (iii) does not give the appearance that it is operated by Micron or any third party, and (iv) does not include in its domain name (including any top-level domain or subdomain) any trademark owned by or licensed to Micron or Micron product name nor a misspelling of any trademark owned by or licensed to Micron or Micron product name. Retailer shall be responsible for all fulfillment to its customers, and shall not ship any Products to customers outside the United States of America. Retailer shall only use pictures and images of Products either supplied by Micron or approved in writing by Micron, and present the Products and any description of the Products in a manner required by any guidelines provided by Micron to Retailer from time to time. Retailer’s use of Micron IP (as hereinafter defined) shall be in conformance with any guidelines that may be provided by Micron and must be commercially reasonable as to the size, placement, and other manners of use. The following copyright attribution must appear on any page of Retailer’s Permissible Website where Micron graphic material appears and Retailer must update it yearly or as directed by Micron from time to time: *Micron’s logo, text, graphics, and photo images are the property of Micron Technology, Inc. and are used with permission. Copyright © 2017.* Micron reserves the right to terminate, at any time and in its sole discretion, its approval for Retailer to market and sell Products on the Permissible Websites, and Retailer

must cease all such marketing and sales on the Permissible Websites immediately upon notice of such termination. Other than sales on Permissible Websites, Retailer shall not market or offer for sale the Products on or through any publicly accessible website, including, without limitation, any third-party marketplace website such as Amazon, eBay, Jet, Rakuten, Walmart Marketplace, or Sears Marketplace, without the prior written consent of Micron, which is granted solely through execution by Micron of the Third-Party Marketplace Authorized Online Seller Agreement. Execution by Micron of the Third-Party Marketplace Authorized Online Seller Agreement constitutes the only means of providing consent to sell the Products online on publicly accessible websites. No Micron employee or agent can authorize online sales through oral statements, other written agreement, or by any other means.

(d) **Sales Practices and Inventory.** Retailer shall support Micron's sales programs and use best efforts to advertise, promote, market and sell the Products to its authorized customers and, as applicable, meet or exceed minimum sales commitments. Retailer shall conduct its business in a reasonable and ethical manner at all times, whether engaged in the sale of Micron Products or other products, and will not engage in any deceptive, misleading or unethical practices or advertising at any time and will not make any warranties or representations concerning Products except as expressed or authorized by Micron. Retailer shall comply with any and all applicable laws, rules, regulations, and policies related to the advertising, sale and marketing of the Products. Further, Retailer shall carry an inventory of the Products adequate to meet the needs of, and to furnish prompt and efficient delivery of Products to, its customers.

(e) **Product and Packaging Alterations Prohibited.** Retailer shall sell Products in their original anti-static packaging. Relabeling, repackaging (including the separation of bundled products or the bundling of products), and other alterations are not permitted. Tampering with, defacing, or otherwise altering any serial number, UPC code, or other identifying information on Products or their packaging is prohibited. Retailer shall not remove, translate, or modify the contents of any label or literature on or accompanying the Products. Retailer shall not advertise, market, display, or demonstrate non-Micron products together with the Products in a manner that would create the impression that the non-Micron products are made by, endorsed by, or associated with Micron.

(f) **Customer Service.** Retailer and Retailer's sales personnel shall familiarize themselves with the special features of all Products marketed for sale and must obtain sufficient Product knowledge to advise end-user customers on the selection and safe use of the Products, as well as any applicable warranty or return policy. Retailer must make itself available to respond to customer questions and concerns both before and after sale of the Products and should endeavor to respond to customer inquiries promptly. Retailer and Retailer's agents must represent the Products in a professional manner and refrain from any conduct that is or could be detrimental to the reputation of Micron. Retailer agrees to cooperate fully with Micron in any investigation or evaluation of such matters.

3. **Product Care and Quality Controls.** Retailer shall care for the Products as set forth herein.

(a) **Product Storage and Handling.** Retailer shall exercise due care in storing and handling the Products, store the Products in a cool, dry place, away from direct sunlight, extreme heat, and dampness, and in accordance with any additional storage guidelines specified by Micron from time to time.

(b) **Product Inspection.** Promptly upon receipt of the Products, Retailer shall inspect the Products for damage, defect, or other nonconformance (collectively, "Defects"). If any Defects are identified, Retailer must not offer the Product for sale, and must promptly report the Defect to Micron at RMAUS@MICRON.COM, specifying the shipment, the purchase order number, and the exact nature of the Defect.

(c) **Recalls and Consumer Safety.** To ensure the safety and well-being of the end-users of the Products, Retailer shall cooperate with Micron with respect to any Product recall or other consumer safety information dissemination effort.

Commented [LZ(1)]: Confirm accuracy

4. **Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THE WARRANTY SECTION OF THE DOCUMENTS ACCOMPANYING THE PRODUCTS OR IN PRODUCT LITERATURE FURNISHED BY MICRON CONTAINING PRODUCT WARRANTIES, INCLUDING ON MICRON'S OWN WEBSITE, AS IN EFFECT FROM TIME TO TIME (THE "STATEMENT OF WARRANTY"), ALL MICRON PRODUCTS ARE SOLD ON AN "AS IS" BASIS AND MICRON MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE OR KIND REGARDING THE PRODUCTS. MICRON DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARISING BY OPERATION OF LAW, COURSE OF DEALING, CUSTOM OF TRADE OR OTHERWISE. MICRON'S SOLE OBLIGATION AND LIABILITY IN RESPECT OF ITS WARRANTY AS SET FORTH IN THE STATEMENT OF WARRANTY SHALL BE, AT ITS OPTION, TO REPAIR OR REPLACE THE RELEVANT PRODUCT AT ITS COST OR PROVIDE A CREDIT OR REFUND OF THE PURCHASE PRICE OF THE RELEVANT PRODUCT.

5. **Critical Components and Critical Applications.** RETAILER ACCEPTS ALL LIABILITY FOR USE OF THE PRODUCTS IN LIFE SUPPORT DEVICES OR SYSTEMS OR IN ANY OTHER CRITICAL APPLICATIONS. THE PRODUCTS ARE NOT AUTHORIZED FOR (A) USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS OR (B) FOR USE IN OTHER CRITICAL APPLICATIONS WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE CHIEF EXECUTIVE OFFICER OF MICRON TECHNOLOGY, INC. LIFE SUPPORT DEVICES OR SYSTEMS ARE THOSE WHICH ARE INTENDED TO SUPPORT OR SUSTAIN LIFE AND WHOSE FAILURE TO PERFORM CAN REASONABLY BE EXPECTED TO RESULT IN AN INJURY TO THE USER. CRITICAL COMPONENTS ARE THOSE COMPONENTS WHOSE FAILURE TO PERFORM CAN REASONABLY BE EXPECTED TO CAUSE FAILURE OF A LIFE SUPPORT DEVICE OR SYSTEM OR AFFECT ITS SAFETY OR EFFECTIVENESS. CRITICAL APPLICATIONS ARE THOSE APPLICATIONS IN WHICH FAILURE OF THE MICRON COMPONENT COULD RESULT, DIRECTLY OR INDIRECTLY IN DEATH, PERSONAL INJURY OR SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE. RETAILER ACKNOWLEDGES THAT ALL SEMICONDUCTOR PRODUCTS EXPERIENCE FAILURE RATES, WHICH MAY VARY ACCORDING TO USE, CONDITIONS AND OTHER CIRCUMSTANCES. SHOULD RETAILER OR ITS CUSTOMERS PURCHASE, USE, OR SELL ANY MICRON COMPONENT FOR ANY SUCH CRITICAL APPLICATION OR AS CRITICAL COMPONENTS IN ANY LIFE SUPPORT DEVICES OR SYSTEMS, RETAILER SHALL INDEMNIFY AND HOLD HARMLESS MICRON AND ITS SUBSIDIARIES, SUBCONTRACTORS, AND AFFILIATES AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF EACH AGAINST ALL CLAIMS, COSTS, DAMAGES, AND EXPENSES AND REASONABLE ATTORNEYS' FEES ARISING OUT OF, DIRECTLY OR INDIRECTLY, ANY CLAIM OF PRODUCT LIABILITY, PERSONAL INJURY, OR DEATH ARISING IN ANY WAY OUT OF SUCH CRITICAL APPLICATION, WHETHER OR NOT MICRON OR ITS SUBSIDIARIES, SUBCONTRACTORS, OR AFFILIATES WERE NEGLIGENT IN THE DESIGN, MANUFACTURE, OR WARNING OF THE MICRON PRODUCT.

6. **Intellectual Property.** Retailer is granted a limited, non-exclusive, non-transferable, revocable license to use the Micron, Crucial, and Ballistix brands, names, logos, trademarks, service marks, trade dress, copyrights, and other intellectual property related to the Products (the "Micron IP") solely for purposes of marketing and selling the Products as set forth herein. This license will cease upon termination of Retailer's status as an Authorized Retailer. Micron reserves the right to review and approve, in its sole discretion, Retailer's use or intended use of the Micron IP at any time, without limitation.

7. **Termination.** If Retailer breaches any of the Terms, Micron reserves the right to terminate the Terms immediately in addition to all other available remedies. Upon termination, Retailer will immediately lose its status as an Authorized Retailer and shall immediately cease (i) selling the Products; (ii) acting in any manner that may reasonably give the impression that Retailer is an Authorized Retailer of Micron Products or has any affiliation whatsoever with Micron; and (iii) using all Micron IP.

8. **Indemnification.** Except as otherwise provided herein, Retailer shall, and hereby does, indemnify, defend, save and hold harmless, Micron, and its directors, officers, employees, shareholders, partners, counsel, auditors, accountants, agents, advisors and all other representatives and each of the heirs, executors, successors and assigns of any of the foregoing, from and against any and all losses, liabilities, obligations, actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law, admiralty, or equity, known or unknown of any kind to the extent they are caused by, arise from, or are incurred in connection with (a) any breach of, or failure to perform, any term, covenant or condition in the Terms by the Retailer, or (b) the negligence or willful misconduct of the Retailer or its officers, employees, agents or contractors.

9. **Limitation of Liability.** MICRON SHALL NOT BE LIABLE TO RETAILER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, LOSS OF SALES, OR LOSS OF PROFITS. MICRON'S AGGREGATE LIABILITY FOR ANY DAMAGE OR THAT OF ANY THIRD PARTY CAUSED BY ITS PRODUCTS OR OTHERWISE BY IT ACTS OR OMISSIONS, SHALL NOT EXCEED, IN RESPECT OF ANY CLAIM ARISING OUT OF A SINGLE EVENT OR A SERIES OF CONNECTED EVENTS, THE AGGREGATE AMOUNT PAYABLE BY RETAILER TO MICRON DURING THE SIX (6)-MONTH PERIOD IMMEDIATELY PRECEDING THE CAUSATION OF ANY DAMAGES. THE LIMITATIONS OF LIABILITY IN THIS SECTION SHALL APPLY HOWEVER THE LOSS OR DAMAGE IS CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, BREACH OF CONTRACT, DELAY OF PERFORMANCE, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, WHETHER OR NOT SUCH LOSS WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

10. **Availability of Injunctive Relief.** Notwithstanding anything to the contrary herein, including any binding arbitration provision, if there is a breach or threatened breach of Sections 2 (Manner of Sale), 3 (Product Care and Quality Controls), 6 (Intellectual Property), or 7 (Termination) of the Terms, it is agreed and understood that Micron will have no adequate remedy in money or other damages at law. Accordingly, Micron shall be entitled to injunctive relief and other equitable remedies; provided, however, no specification in the Terms of any particular remedy shall be construed as a waiver or prohibition of any other remedies in the event of a breach or threatened breach of the Terms. No failure, refusal, neglect, delay, waiver, forbearance, or omission by Micron to exercise any right(s) herein or to insist upon full compliance by Retailer with Retailer's obligations herein shall constitute a waiver of any provision herein or otherwise limit Micron's right to fully enforce any or all provisions and parts thereof.

11. **Audit.** Micron reserves the right to audit and/or monitor Retailer's activities for compliance with the Terms, including, but not limited to, inspection of Retailer's facilities and records concerning the Products.

12. **Miscellaneous.**

(a) **Modifications.** Micron reserves the right to update, amend, or modify the Terms upon written or electronic notice to Retailer, which notice may include posting such updates, amendments or modifications on Micron's website. Unless otherwise provided, such amendments will take effect immediately and Retailer's continued use, advertising, offering for sale, or sale of the Products, use of the Micron IP, or use of any other information or materials provided by Micron to Retailer under the Terms following notice will be deemed Retailer's acceptance of the amendments.

(b) **Waiver.** No waiver of any breach of any provision of the Terms shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, nor shall it constitute a course of dealing and no waiver shall be effective unless made in writing.

(c) **Retailer Contact Information.** Retailer agrees to maintain accurate and up-to-date company information and to promptly notify Micron of any change to its telephone number, mailing address, or email address.

(d) **Force Majeure.** Micron shall not be deemed to be in breach hereof or liable to Retailer in any manner on account of any delay in delivery or other performance caused in whole or in part by, or otherwise materially related to, the occurrence of any contingency beyond Micron's control, including without limitation, fire, flood, terrorist threats or acts, riot or other civil unrest, war, invasion, hostilities, strikes or other labor disputes, embargoes or transportation delays, shortage of labor, inability to secure fuel, energy, materials, supplies or power at reasonable prices from regular sources or on account of shortages thereof, delays or failures of any of Micron's suppliers to deliver, acts of God or of a public enemy, the effect of any existing or future laws, acts or regulation of any applicable federal, state or local government, or any other commercial impracticability.

(e) **Severability.** If any provision of the Terms is held contrary to law, the remaining provisions shall remain valid.

(f) **Survival.** The following provisions shall survive the termination of the Terms: Section 6 (Intellectual Property); Section 8 (Indemnification); Section 12(f) (Survival); Section 12(g) (Governing Law; Section 12(h) (Waiver of Jury Trial).

(g) **Governing Law and Venue.** The terms of this Agreement and any dispute arising under it shall be governed by, construed, and enforced in accordance with the laws of the State of Idaho, without regard to its choice of law rules. In the event of a dispute over the terms or performance under this Agreement, Retailer expressly submits to personal jurisdiction and venue in the federal or state courts in Ada County, Idaho.

(h) **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES EACH HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE PARTIES ACTIONS IN THE NEGOTIATIONS, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF. THE PARTIES ACKNOWLEDGE THAT SUCH WAIVER IS MADE WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE NATURE OF THE RIGHTS AND BENEFITS WAIVED HEREBY, AND WITH THE BENEFIT OF ADVICE OF COUNSEL OF ITS CHOOSING.