



## **TERMS AND CONDITIONS FOR WAFER PROCESSING SERVICES**

**Novati TECHNOLOGIES, LLC**

**2706 Montopolis Drive**

**Austin, TX 78741**

**[REV 12092016]**

**1. SCOPE:** These terms and conditions shall apply to orders placed by Novati Customer for the wafers described below. Novati may alter these terms and conditions at any time provided that any order accepted by Novati shall be subject to the terms and conditions in effect on the date the order is accepted by Novati. These terms and conditions shall apply only to the wafers described below; any other services including but not limited to licensing, engineering or consultation, shall require other written agreements. Customer agrees to promptly execute a Master Services Agreement with Novati prior to Novati providing any other services except wafer processing. These terms and conditions supersede all previous communications, representations, or agreements, either verbal or written, between the parties, related to the subject matter. The Parties also agree that the provisions of this document supersede and override additional, inconsistent or conflicting terms, whether printed or otherwise set forth in any purchase order or other documents provided by Customer to Novati. Note that if a Master Services Agreement is in place between Novati and Customer, this document may not be unnecessary.

**2. WAFERS:** Customer shall indicate in its order the wafers it requires including the quantity, processing instructions and shipping particulars. "Standard Wafers" are wafers supplied by Novati that will be processed in accordance with steps and specifications as stated in Novati's catalogs, website, or other literature. "Nonstandard Wafers" are those that will be processed with different steps and specifications, as requested in Customer's written order and agreed to in writing by Novati. Non-standard Wafers include Standard Wafers whose steps and specifications are modified at Customer's request from those stated in Novati's catalogs, website, or other literature as well as all wafers that are supplied by Customer or a third party to be processed by Novati. Laboratory analytical services are also available at Customer's request for wafers supplied by Novati, subject to additional fees.

**3. PERFORMANCE:** Novati warrants that processed Standard Wafers shall materially comply with published specifications. Since Non-standard Wafers are experimental and utilize processes and steps that are not part of Novati's normal offerings, Non-standard Wafers shall be provided "AS IS" with no warranty whatsoever, except that they shall be processed in a commercially reasonable manner consistent with industry standards. Expressly excluded is any warranty that Wafers shall meet any of the specifications, goals or requirements of Customer. **NOVATI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.**

**4. CUSTOMER FURNISHED PROPERTY:** Customer may provide materials, such as photomasks or raw silicon wafers, defined as "Customer Furnished Property." Novati shall not be responsible for any delays in delivery or defects caused by any Customer Furnished Property. Novati will return to customer any Customer Furnished Property not used in processing Customer's Order. Transportation costs and risk of loss and damage for all Customer Furnished Property are Customer's responsibility.

**5. EXTRAORDINARY EXPENSES:** If Customer Furnished Property increases Novati's costs to perform services, or to the extent that the intended work uses raw materials that are different or more expensive than those normally used by Novati, or require Novati to take any other action that will increase expenses above those in the normal course (any expense so incurred, an "Extraordinary Expense"), Novati will invoice Customer. Extraordinary Expenses normally will not be incurred without the prior written approval of Customer, and no activities that might result in such Extraordinary Expenses will be conducted by Novati absent Customer's agreement to bear such Extraordinary Expenses.

**6. SHIPMENT:** Title to wafers provided by Novati passes to Customer upon receipt by Customer or its carrier at Novati's shipping dock. At Customer's request, Novati will arrange for transportation at Customer's expense in accordance with standard semiconductor industry practices. Novati shall have no responsibility or liability for the actions of any carrier or for delivery problems to or from Novati. Novati will package wafers for shipment and storage in accordance with standard semiconductor industry commercial practices at no additional cost to Customer, however, Customer may specify additional packaging instructions subject to acceptance by Novati, with Customer



paying for such additional packaging. Non-wafer deliverables shall be shipped in a format deemed most appropriate by Novati.

**7. STANDARD WAFER INSPECTION RIGHTS:** Customer will be deemed to have waived its rejection rights for any nonconformity unless Customer notifies Novati in writing of such nonconformity within fifteen (15) days after receipt ("Inspection Period"). During the Inspection Period, Customer may reject and return to Novati any Standard Wafers that do not conform to Novati specifications. Customer's written notification must specifically identify how the nonconforming wafers vary from Novati specifications. Customer must utilize transportation arrangements consistent with standard semiconductor industry practices, and Novati will reimburse Customer for reasonable shipping expenses unless Novati in good faith contests the validity of Customer's rejection. Customer's sole and exclusive remedies for Standard Wafers that fail to conform to specifications, unless Novati in good faith contests the validity of Customer's rejection, shall be: (1) Novati will retain the non-conforming wafers and will refund to Customer any amounts that Customer paid to Novati for such nonconforming wafers; (2) Novati will rework the nonconforming wafers once and will submit such reworked wafers to Customer per the delivery dates agreed upon by the parties; or (3) Customer accepts the wafers notwithstanding their nonconformity and pays Novati a mutually agreed upon percentage of the amount that Customer would have paid the Novati according to the Order had such wafers conformed to the specifications. If the parties elect option two as a remedy and the wafers do not meet specifications the second time they are delivered, Customer may reject and return them to Novati unless Novati in good faith contests the validity of Customer's rejection. If not contested, upon receipt Novati will retain the wafers and Novati will refund any money Customer has paid for the nonconforming wafers.

**8. NON-STANDARD WAFER INSPECTION RIGHTS:** Customer acknowledges and understands that Non-standard Wafers are to be produced through the application of processes that might not result in a wafer that meets Customer's specifications or requirements. Customer may only reject Non-standard Wafers if Novati failed to perform a material processing step or steps. Customer will be deemed to have accepted Non-standard Wafers unless it has rejected them within the fifteen (15) day Inspection Period. Notice of a rejection must be in writing and requires specifying the basis for the rejection. If Customer timely rejects Non-standard Wafers, then within fifteen (15) days of the date on the notice of rejection, unless Novati in good faith contests the validity of Customer's rejection, Customer and Novati shall agree upon one of the following remedies: (1) Novati will rework the nonconforming wafers once and will submit such reworked wafers to Customer per the delivery dates agreed upon by the parties; or (2) Customer accepts the wafers notwithstanding their nonconformity and pays Novati a mutually agreed upon percentage of the amount that Customer would have paid the Novati according to the Order had such wafers conformed. The foregoing shall be Customer's sole and exclusive remedies for rejected Non-standard Wafers.

**9. LIABILITY: IN NO EVENT SHALL NOVATI BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY CLAIMING THROUGH OR UNDER CUSTOMER, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. IN THE EVENT THAT ANY LIABILITY IS IMPOSED ON NOVATI HEREUNDER, AWARDED DAMAGES SHALL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO NOVATI FOR THE WAFERS TO WHICH SUCH LIABILITY RELATES. The foregoing limitations are an essential element of the contemplated transactions and that in the absence of such limitations, the pricing and other terms offered to Customer would be substantially different.**

**10. PAYMENT:** All payments required of Customer for Novati services and goods shall be invoiced and shall be due within thirty (30) days of the date of the invoice, provided, however, that Novati reserves the right to require pre-payment. Except as may be agreed otherwise in writing, all payments due to Novati shall be made by bank wire transfer to an Novati designated bank account. All payments shall be made in U.S. dollars unless otherwise agreed by the parties. If any payments are more than thirty (30) days late, Customer will pay Novati, in addition to any other remedies that may be available to Novati, a late payment of the lower of one and a half percent (1.5%) per month or the highest rate allowed by law for all past due amounts until paid. Any amounts invoiced that are disputed shall be paid on time subject to subsequent adjustment or refund when the disputed amounts are resolved. All required payments are exclusive of taxes. Customer shall be responsible for and shall pay any applicable sales, use, excise, withholding or similar taxes, including value added taxes (VAT) and customs duties, that may be due for the purchase of wafers or other materials, excluding, however, any taxes based solely on Novati's net income. Customer shall make all payments hereunder free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of the fees to Novati will be Customer's sole responsibility. Customer will provide Novati with official receipts issued by the appropriate taxing authority, or such other evidence as Novati may reasonably request, to establish that such taxes have been paid. No tax shall be billed to Customer if Customer provides Novati with either (i) an exemption certificate provided in good faith and in accordance with applicable law, or (ii) a direct pay



permit number provided in accordance with applicable law. Customer consents that in the event of any new (i) laws or regulations, (ii) infrastructure costs, or (iii) other force majeure events, that occur subsequent to the initial finalization of the pricing hereunder, whose effect raises Novati operating costs, that Novati may add to the amounts otherwise due, a non-discriminatory prorated surcharge.

**11. CONFIDENTIALITY:** Confidential Information shall mean information that is disclosed between the parties that is conspicuously marked or confirmed in writing if oral, that the disclosure is confidential, including the disclosure of any intellectual property or other documentation or any product plans, business, financial or personnel information. "Confidential Information" shall not include information which: (i) is publicly available or publically disclosed by the receiving party with the prior written approval of the disclosing party; (ii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (iii) is intentionally disclosed by the disclosing party to a third party without restriction on disclosure; (iv) is rightfully received by the receiving party from a third party without a duty of confidentiality; or (v) is disclosed pursuant to any judicial or governmental order, provided that the receiving party gives the disclosing party sufficient prior written notice to contest such order. All Confidential Information exchanged between the parties shall not be disclosed by the recipient to anyone except its own employees, contractors, consultants or subcontractors or those of its Affiliates, who have a need to know such Confidential Information consistent with the purposes of the transactions covered by this document, and who have been contractually obligated to observe the terms and conditions comparable to those herein. Confidential Information shall not be used by the receiving party for any purpose other than exercising its rights or fulfilling its obligations under this document. Parties shall not disclose confidential information of third parties without the owner's prior consent. Parties shall at all times and notwithstanding any termination or expiration hold received Confidential Information in strict confidence with at least the degree of care it uses for its own confidential information and with not less than a legally reasonable degree of care. Recipient's obligations to maintain confidentiality shall survive termination and shall be binding upon the Recipient's heirs, successors and assigns. Upon request of the disclosing party, copies and embodiments of the disclosing party's Confidential Information shall be promptly returned to the disclosing party by the receiving party, unless such copies are required to fulfill the terms of Customer's order. Upon termination for any reason, each party shall promptly return to the other party all Confidential Information provided by the other party, including all copies, except that a receiving party may keep one copy solely for archival purposes. If either party becomes aware of an unauthorized disclosure, even if not confirmed, it shall promptly notify the original disclosing party and promptly take reasonable actions to mitigate the effects of the unauthorized disclosure.

**12. Novati is a government contractor and is subject to the requirements of Executive Order 11246, Section 503 of the Rehabilitation Assistance Act and VEVRAA. Pursuant to these requirements, the Equal Opportunity Clauses found at 41 Code of Federal Regulations, Novati Technologies Inc. shall abide by the requirements of sections 60-1.4(a) (1-7), sections 60-250.5, sections 60-300.5 (1-11) and sections 60-741.5 (a) (1-6). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, gender identification, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran or disability status.**

**13. MISCELLANEOUS:** Customer shall comply with all applicable laws and regulations related to hazardous or toxic materials and safety requirements including full disclosure to Novati. These terms and conditions shall be interpreted in the English language, under the laws of the State of Texas, except for that portion known as conflict of laws. All disputes arising hereunder shall be adjudicated in the state and federal courts having jurisdiction over disputes arising in Travis County, Texas, and Company hereby agrees to consent to the personal jurisdiction of such courts. The invalidity or unenforceability, in whole or in part of any provision shall not affect the validity or enforceability of the remainder of the document. Waiver by Novati of any provision or of any breach by or obligation of the Customer shall not constitute a waiver of such provision on any other occasion or a waiver of any other breach by or obligation of the Customer. Nothing herein shall be construed as granting any property rights, by license or otherwise. Upon written notice to Customer, Novati may assign this agreement to a successor in interest that is not a competitor of Customer upon a merger, acquisition, reorganization, change of control, or sale of all or virtually all of the assets of Novati, and any such assignment shall not require Customer's consent. Except as otherwise provided herein, this agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not unreasonably be withheld, conditioned or delayed. Any unauthorized assignment shall be void and invalid from the start and may not be enforced against Novati. Modifications to these terms and conditions must be in writing and approved by authorities of the Parties. Novati shall not be liable in the event that any force majeure event adversely affects performance.