

## Terms and Conditions

THESE TERMS AND CONDITIONS will govern all orders for products provided by KYMA TECHNOLOGIES, INC. ("Company"), a DELAWARE CORPORATION to CUSTOMER ("Buyer").

### 1. ACCEPTANCE

Buyer may not transfer the Products to a third party unless Buyer gives the third party written notice of these General Terms and Conditions of Sale. The restrictions contained herein shall bind any and all subsequent transferee(s) of the Product.

### 2. PRICE AND PAYMENT TERMS

Company's prices do not include sales, use, excise, or other taxes, duties, fees, or assessments imposed by any jurisdiction, all of which shall be paid by Buyer unless appropriate exemption certificates are provided. Company reserves the right to change the amount of or withdraw any credit extended to the Buyer. Standard payment terms are Net 30 (payment is due thirty (30) days from the invoice date). Buyers may request Net 60 or Net 90 payment terms, however Net 60 payment terms require payment of the quoted price plus 10% and Net 90 payment terms require payment of the quoted price plus 25%. Overdue amounts shall be subject to interest at the rate of 2% per month of the overdue amount.

### 3. DELIVERY

Products shall be shipped F.O.B. Kyma's place of manufacture to any location designated by Buyer (subject to Export Control Section below) and Buyer assumes all responsibilities for risk of loss of, or damage to, the Products furnished hereunder upon delivery to the common carrier. Unless otherwise agreed to in writing by Kyma, all transportation charges and expenses shall be paid by Buyer, including the cost of any insurance against loss or damage in transit which Kyma may obtain.

### 4. CANCELLATION

Orders will not be subject to cancellation or modification either in whole or in part, without Kyma's written consent, and then only under terms that will reimburse Kyma for all applicable costs incurred by it, including costs of purchased goods and equipment, engineering and design costs, and a reasonable amount for profit as liquidated damages, provided that in no event shall the cancellation charge be less than ten percent (10%) of the purchase price. Kyma reserves the right to cancel or delay any order to comply with export control regulations.

### 5. CONDITION OF USE

As a condition of sale, Buyer and subsequent transferee(s) warrant that:

- a) Buyer and subsequent transferee(s) will not use any of the Products in the bulk growth of Group III-nitride based materials or in the development of processes for bulk growth of such materials. Growth of one or more Group III-nitride epitaxial layers on a single substrate having an aggregate epitaxial thickness of less than 100 microns will not be considered bulk growth for purposes of this Agreement;
- b) Buyer and subsequent transferee(s) will not use AlGaIn templates for optical emitter applications;
- c) Buyer and subsequent transferee(s) will not sell, share, or physically loan/transfer the sold products to any competitor or potential competitor of the Company;
- d) Furthermore, Buyer and subsequent transferee(s) warrants that any proprietary or confidential information shared by the Company regarding the products supplied will not be sold, shared, or transferred to any competitor or potential competitor of the Company.

### 6. EXPORT CONTROL

This Agreement is subject to the export administration and control laws and regulations of the U.S. Government. Products are intended for civilian, nonmilitary purposes only. Buyer agrees not to resell, re-export, transfer or ship, directly or indirectly, any Products or information provided hereunder, in any form, without obtaining appropriate export or re-export licenses. Some Kyma products require additional export paperwork prior to international shipment. We will contact you with this information if required.

### 7. CONFIDENTIALITY

Buyer shall consider all information gave by Company to be strictly confidential. This confidentiality obligation shall remain after the present Agreement has expired.

### 8. CUSTOM SERVICES

Unless otherwise specified, all custom services and wafer reclaim services are on a "Best Efforts" basis. Kyma is not responsible for any material lost or damaged during processing.

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