

# VORAGO TECHNOLOGIES STANDARD TERMS AND CONDITIONS OF SALE

**1. PRODUCT AND SALE TERMS.** Buyer (who may be referred to as “you”) agrees to purchase products (“Products”) of Silicon Space Technology Corporation d/b/a Vorago Technologies (which may be referred to as “Supplier,” “we,” or “us”) from us or our distributor under the terms and conditions contained in this document. Buyer accepts these terms and conditions by accepting delivery of the Products whether or not these terms and conditions are provided with each sales transaction. Buyer acknowledges to have read and understood the terms and conditions herein which shall prevail over and apply to the exclusion of any terms and conditions contained or referred to in Buyer’s order or in correspondence or elsewhere or implied by trade custom, practice or course of dealing. Buyer further acknowledges that these terms and conditions supersede all representations, communications and proposals, oral or written, relating to the subject matter hereof. The UN Convention on Contracts for the International Sale of Goods (Vienna, 1980) shall not apply to any purchases made hereunder.

**2. LIMITED WARRANTY.** Supplier warrants that its Products will, at the time of shipment and for a period of one (1) year thereafter, be free from defects in material and workmanship, be free of all liens and encumbrances, and will conform to Supplier’s then-current specifications. Buyer must promptly advise Supplier in writing of any claims within the warranty period and obtain Supplier’s return authorization, and return the Products to a facility or location specified by Supplier. If we agree that the Products are not as warranted, Supplier shall, at Supplier’s option, repair the Product, replace the Product with the same or equivalent replacement Product, or issue a credit. If we repair or replace the Product, we shall reimburse Buyer for any commercially reasonable cost of transporting the conforming Products. If we replace the Product, the units you return become our property, and the replacements become yours. This shall be your exclusive remedy for our breach of warranty. This warranty does not cover, and Supplier shall not bear any responsibility for, Products we find to be non-conforming or defective due to improper handling during or after shipment, improper storage, abnormal physical stress, misuse, neglect, improper installation or operation, repair, alteration, accident, use in other than our specified operating environment, or for any other cause not attributable to defective workmanship or failure to meet specifications on the part of Supplier. This warranty is not transferable. This warranty shall not be expanded, and no obligation or liability will arise, due to technical advice or assistance, computerized data, facilities or services Supplier may provide in connection with Buyer’s purchase. Supplier provides no warranty for Supplier products purchased through unauthorized sales channels. Supplier warrants replacement Products for the remaining term of the warranty on the originally delivered Product. **THE ABOVE WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED,** including any warranty of non-infringement, fitness or use for a particular purpose, merchantability, or satisfactory quality.

DEVELOPMENT PRODUCTS, PROTOTYPES OR OTHER NON-PRODUCTION PRODUCTS, AND SAMPLES OF PRODUCTION PRODUCTS ARE NOT WARRANTED AND ARE PROVIDED ON AN “AS IS” BASIS ONLY. THIS WARRANTY EXTENDS TO BUYER ONLY AND MAY BE INVOKED ONLY BY BUYER FOR ITS CUSTOMERS. SUPPLIER WILL NOT ACCEPT WARRANTY RETURNS FROM BUYER’S CUSTOMERS OR USERS OF BUYER’S PRODUCTS. THIS WARRANTY DOES NOT APPLY TO DEFECTS ARISING AS A RESULT OF BUYER’S DESIGN OR FORMULA. THE REMEDIES SET FORTH ABOVE ARE SUPPLIER’S EXCLUSIVE LIABILITY AND BUYER’S EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY OR NON-CONFORMITY OF THE PRODUCTS. THE WARRANTY SET FORTH ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

### **3. PRODUCT USE.**

(a) Except as otherwise expressly set forth herein, we will not be liable to you or any third party for any losses, damages, liabilities, costs or expenses incurred or arising in any connection with or resulting from use of Product(s), including, but not limited to, applications or systems where, whether it is reasonably foreseeable or not, such use or failure of the Product(s) does or would lead to death, bodily injury or catastrophic property damage.

(b) You will indemnify, hold harmless and defend us, our officers, directors, employees, and subcontractors from and against (i) any claim, suit, demand, action, or proceeding (collectively, “Claim”) which arises out of, involves or relates to use of a Product, (ii) any breach by you of this Section 3, and (iii) all costs and expenses (including reasonable attorneys’ fees) and all losses, liabilities, damages, awards, and attorneys’ fees finally awarded, or that are included in any settlement that is approved by Buyer in advance, (collectively, “Losses”) arising from any such Claim, whether or not such Claim, or Losses, result directly or indirectly from the use, failure of or defect in any Product. This indemnity shall survive the expiration or termination of the supply and purchase relationship between the parties.

(c) If you sell or resell any Product in any form to anyone (a “Sub-Buyer”), you will ensure that such sale is on terms that (A) require the use of the Products to be subject to the restrictions and limitations set out in this Section 3, and (C) the Sub-Buyer will, and will also require that its customers, agree to terms substantially similar to this Section 3.

**4. CONFIDENTIAL INFORMATION.** Certain materials and Products furnished by Supplier may contain “Confidential Information.” Confidential Information includes information (A) that Supplier identifies as confidential or proprietary; (B) is obtained by examination, testing or analysis of any of Supplier’s hardware, software or any component part thereof; or (C) that reasonably appears to be confidential or proprietary because of legends or other markings, the circumstances of disclosure, or the nature of the information itself. All Confidential Information must be held in confidence by the recipient using at least the degree of care the recipient uses for its own confidential information, but no less than reasonable care, and will not be used by the recipient for any purposes other than to use the Product in accordance with these terms and conditions. Except as required by law, the recipient may not disclose such materials or Confidential Information except to its own employees who require use of the materials in the performance of their duties and then only to the extent that such employees have a need to know and are subject to written confidentiality agreements or other confidentiality policies. Confidential Information does not include information that is or becomes a matter of public knowledge through no fault of the recipient, information known to the recipient prior to any disclosure hereunder, information developed independently of any disclosure hereunder, information later communicated to the recipient by another without obligation of confidence, or information communicated by the owner to a third party free of any obligation of confidence. All Confidential Information shall be held in confidence by the recipient for ten (10) years after receipt.

### **5. INTELLECTUAL PROPERTY AND INDEMNIFICATION.**

(a) The design, development or manufacture by Supplier of Products shall not be deemed to produce a work made for hire. Except as expressly set forth herein, all intellectual property rights arising out of Products or services sold to Buyer shall belong to Supplier. Except for Buyer’s implied license to use and sell a Product incident to its purchase and the implied license of Buyer to sell or otherwise dispose of possession of a copy of a copyrighted work from Supplier, the sale of Products does not convey any license by implication, estoppel, or otherwise in respect of a Product alone or in combination with other products. Supplier retains all rights in mask works to any circuit designed by Supplier. Any goodwill derived from the use by you of Supplier’s Confidential Information or intellectual property inures to the benefit of Supplier. Except as expressly granted, Supplier grants no other right or license to you, by implication, estoppel or otherwise, to the Products or any intellectual property or proprietary rights of Supplier.

(b) Supplier agrees to defend any Claim asserted against Buyer based upon a claim by a third party that any Product purchased hereunder, excluding software, directly infringes any patent, mask work right, or copyright, effective in the United States of America and to pay all Losses arising from any such Claim, provided that Supplier (A) is promptly notified in writing of the claim, (B) is given, at Supplier’s request and expense, sole control of the defense or response to such claim, and (C) is given all requested reasonable information, assistance and authority, at Buyer’s expense, necessary for Supplier to defend such claim, suit, or proceeding. If such a Claim has occurred or in Supplier’s sole and reasonable judgment is likely to occur, Buyer agrees to allow Supplier to (i) obtain for Buyer the right to use and sell the Product, (ii) replace or modify the Product with a non-infringing product, or (iii) accept the return of the Product and refund the purchase price less reasonable wear and tear.

(c) This indemnity does not extend to any Claims based upon any infringement or alleged infringement of any patent, mask work right, or copyright arising from: (A) the combination of any Product with other elements if such infringement would be avoided by the use of the Product alone, (B) the use of the Product in a manner or for an application other than that for which such Product was designed or intended, regardless of whether Supplier was aware of such use, (C) any addition to or modification of the Product, (D) the use of the Product in connection with manufacturing or other process, (E) any product not in Supplier's catalogue or any Product made compliant to Buyer's design, instruction or specification, or (F) any intellectual property, information, material or item provided or specified by Buyer (such Claims, i.e. those set forth in (A) through (F) above, are referred to herein as "Other Claims").

(d) THE FOREGOING STATES SUPPLIER'S ENTIRE LIABILITY FOR PATENT, MASK WORK RIGHT, OR COPYRIGHT INFRINGEMENT AND IS IN LIEU OF ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS EXPRESSED OR IMPLIED, IN REGARD THERETO.

(e) Buyer agrees to defend any claim, suit, or proceeding asserted against Supplier based upon Other Claims and to pay all Losses incurred by Supplier arising from any such Other Claim, provided that Buyer (A) is promptly notified in writing of the Other Claim, (B) is given, at Buyer's request and expense, sole control of the defense or response to such Other Claim, and (C) is given all requested reasonable information, assistance and authority, at Supplier's expense, necessary for Buyer to defend such Other Claim.

(f) Supplier does not warrant that Products are free of infringement of any patents, copyrights, or other proprietary rights of third parties. IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS.

(g) Buyer, without the express prior written consent of Supplier, has no right to use Supplier's trademarks, trade names, corporate slogans, corporate logos, or corporate designations in the sale, lease or advertising of any products, or any product containers, component parts, business forms, sales, advertising or promotional materials, or other business supplies or materials, whether in writing, orally or otherwise.

(h) Buyer, without the express prior written consent of Supplier, shall not destructively or non-destructively evaluate any component or hardware provided by Supplier to Buyer for composition of matter investigations or analyses.

(i) The sale of the Products furnished hereunder does not convey any license by implication, estoppel, or otherwise, under any proprietary or patent rights of Supplier covering modifications of Products furnished hereunder, or combinations of Products furnished hereunder with other elements.

(j) Products are offered for sale and are sold by Supplier or its distributors subject in every case to the condition that such sales do not convey any license, expressly or by implication, to manufacture duplicate or otherwise copy or reproduce any of Products.

**6. EXPORT CONDITIONS.** If, at the time or times of sale of the Products, an export license is required for Supplier's distributor to lawfully export Products or technical data, then the issuance of the appropriate license to such distributor shall constitute a condition precedent to such sale. Buyer agrees to comply with all applicable export laws, regulations and orders, including, but not limited to, all such laws, regulations and orders of the United States of America. Specifically, but without limitation, Buyer agrees that it will not resell, re-export or ship, directly or indirectly, any Products or technical data in any form without obtaining appropriate export or re-export licenses. Buyer acknowledges that the applicable export laws, regulations and orders may differ from item to item and/or time to time.

**7. RESALE PROHIBITED.** Unless expressly authorized in writing by Supplier, Buyer shall not resell Products. If Buyer breaches the terms of this paragraph, Buyer agrees to fully indemnify Supplier, its officers, employees and distributors from any and all resulting liability, including attorneys' fees and costs.

**8. LIMITATION OF LIABILITY.** IN NO EVENT SHALL SUPPLIER'S AGGREGATE LIABILITY FOR ANY BREACH, WARRANTY, INDEMNITY OR OTHER OBLIGATION OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SALE OF PRODUCTS OR THE USE OF ANY SUPPLIER PRODUCT EXCEED FIFTY PERCENT (50%) OF THE TOTAL (IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF CLAIM) NET PURCHASE PRICE OF THE SPECIFIC PRODUCT (PART NUMBER) WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT SHALL SUPPLIER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE AND LOSS OF GOODWILL), REGARDLESS OF WHETHER SUPPLIER HAS BEEN GIVEN NOTICE OF ANY SUCH ALLEGED DAMAGES, AND REGARDLESS OF WHETHER SUCH ALLEGED DAMAGES ARE SOUGHT UNDER CONTRACT, TORT OR OTHER THEORIES OF LAW.

**9. EXCUSABLE DELAY.** Supplier shall not be liable for any delay or failure to perform due to any cause beyond its control such as, for example, strikes, acts of God, acts of Buyer, interruption of transportation or inability to obtain the necessary labor, materials or facilities.

**10. GOVERNING LAW AND DISPUTE RESOLUTION.** These terms and conditions shall be interpreted, construed, and governed by the substantive laws of the State of Texas, without regard to or application of provisions relating to conflicts of law. Buyer expressly submits to the exclusive jurisdiction and venue of the state and federal courts situated in Travis County, Texas, U.S.A., with regard to any disputes or controversies relating to the Products, and waive any inconvenient forum or similar claim to which it may be entitled. However, Supplier and Buyer will attempt to settle all such disputes or controversies (other than requests for immediate injunctive relief in disputes or controversies relating to intellectual property issues or breaches of obligations with respect to Confidential Information), including the determination of the scope or applicability of these terms and conditions, through negotiation or non-binding mediation prior to commencement of court proceedings.

#### **11. OTHER MISCELLANEOUS TERMS**

(a) **ENTIRE AGREEMENT.** This document constitutes the entire and final agreement between Supplier and Buyer with regard to the subject matter herein and supersedes all other communications.

(b) **WAIVER.** Failure by Supplier to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

(c) **NOTICES.** Any notice hereunder shall be deemed to have been duly given if sent by pre-paid first class post to the party concerned at its last known address.

(d) **AMENDMENTS.** No modifications to this document shall be binding unless expressly agreed to in writing by Supplier.

(e) **SEVERABILITY.** If any provision of this document is held invalid all other provisions shall remain valid.

(f) **NO ASSIGNMENT.** Neither party may assign its rights and obligations hereunder without the prior written consent of the other though Supplier is permitted to subcontract all or part of its obligations hereunder as it deems necessary.

(g) **DATA PROTECTION.** Buyer accepts that Supplier retains data relating to Buyer and agrees that Supplier may process and/or circulate such data within the Supplier group of companies in compliance with all legal requirements.

(h) **GOVERNMENT CONTRACT PROVISIONS.** If Buyer sells Products to the U.S. Government, Supplier makes no representations, warranties or certifications whatsoever about compliance with acquisition statutes or regulations (including, without limitation, those related to pricing, quality, origin or content). If Buyer sells Products to any public entity, state, or local or international, or to a prime contractor or subcontractor of such entities, Buyer remains solely liable for compliance with all acquisition statutes and regulations.

(i) **SURVIVAL.** All terms that by their nature should extend so long as the use of the Products remain in effect until they have been fulfilled and apply to respective successors and permitted assigns.