

**EVERSPIN TECHNOLOGIES, INC.**  
**TERMS AND CONDITIONS OF SALE**

These terms and conditions of sale are deemed incorporated into the Everspin product sales order confirmation (the "Contract") to which they are attached or with which they are provided (including, without limitation, through incorporation by reference through Everspin's website at <https://www.everspin.com/termsandconditions>). References herein to "Seller" means Everspin Technologies, Inc. or its applicable affiliate, to "Purchaser" means the purchaser or buyer named in the Contract, and to "product" or "products" means the product(s) specified in such Contract.

1. **ACCEPTANCE** - Unless otherwise expressly provided in the Contract, all quotations, order acknowledgements, deliveries, and purchase agreements entered into by Seller and Purchaser are made in accordance with and subject to these terms and conditions. Terms and conditions set forth in any document or order provided by Purchaser which differ from, conflict with or are not included in the Contract (including these terms and conditions) shall not become a part of the Contract or any other agreement between Seller and Purchaser unless such terms and conditions are specifically accepted by Seller in a written instrument that specifically references this Section 1 as being overridden. To the extent that Seller's delivery of the Contract may constitute an acceptance by Seller of any purchase order or other document submitted by Purchaser, such acceptance is expressly conditioned on Purchaser's assent to any terms and conditions set forth herein that are inconsistent with or in addition to the terms of such purchase order or other document. Seller objects to any additional or inconsistent terms proposed or introduced by Purchaser in any other instrument or communication, including (without limitation) in any purchase order of Purchaser with respect to the products. Seller's failure to subsequently object to any such terms contained in any instrument or communication from Purchaser shall not be deemed a waiver of any of these terms and conditions.

2. **PRICES** - All prices shall be as specified by Seller in the Contract or, if not specified in the Contract, shall be Seller's price in effect at the time of order acceptance by Seller. All prices published or quoted by Seller, including (without limitation) as specified in the Contract, may be changed by Seller at any time and for any reason upon at least 45 days' prior written (including email) notice to Purchaser. Except as otherwise provided herein, no such pricing change or surcharge shall give Purchaser the right to cancel, suspend or modify the Contract. If Purchaser is quoted any product price that includes a quantity or volume discount but Purchaser fails to accept or otherwise take delivery of a quantity of such products that would qualify for such quantity or volume discount price then the price for such products shall be adjusted to reflect the applicable non-discounted price. If such adjustment is made after Purchaser has paid the originally quoted product price, Purchaser shall be back-billed, and shall pay, the additional amount due for such products.

3. **TAXES** - Unless otherwise expressly provided in the Contract, the amount of any sales, revenue, use, excise or other taxes, duties or other fees or charges of any nature, imposed by any governmental authority applicable to the manufacture, sale, purchase, shipment, export or import of products (excluding any taxes on the net income of Seller) shall be added to the invoiced price for the products or in lieu thereof, Purchaser shall provide Seller with a tax exemption certificate and number acceptable to the applicable taxing authority so as to relieve Seller of its obligation to collect such taxes, duties or other fees or charges.

4. **TERMS OF PAYMENT** - Unless otherwise expressly stated in the Contract, terms are net cash 30 days from the date of shipment of products. Seller reserves the right at any time to require full or partial payment in advance or to revoke any credit or other payment terms previously extended if, in Seller's reasonable discretion, Purchaser's financial condition does not warrant proceeding on the payment terms specified or if Purchaser is delinquent in amounts payable to Seller. If products are delivered in installments, Purchaser shall pay for each installment in accordance with the terms of payment hereof. Payment shall be made for products without regard to whether Purchaser has made or may make any inspection of the same. Overdue payments shall be subject to finance charges computed at a periodic rate equal to the lesser of (i) 1.5% per month (18% per year), or (ii) the highest rate of interest permitted by applicable law, calculated daily and compounded monthly. Purchaser shall reimburse Seller for all costs incurred by Seller in collecting any late payments, including (without limitation) attorneys' fees and expenses. Amounts owed by Purchaser with respect to which there is no dispute shall be paid without set-off for any amount that Purchaser may claim is owed by Seller or any of its affiliated companies and regardless of any other controversies which may exist.

5. **DELIVERY** - Unless otherwise specified in the Contract, all product sales are EXW (Ex works, Incoterms 2010), Seller's point of origin (shipping paid by Purchaser), and the time of delivery shall be the time when the products are placed into the possession of the designated carrier for delivery to Purchaser. Shipping dates represent Seller's reasonable estimate and are approximate.

Failure to meet these dates shall not constitute a default by Seller nor shall Seller be liable for loss or expense incurred in the event that any estimated delivery date is not met.

6. **SHIPMENT** - Unless specific instructions to the contrary are supplied by Purchaser, methods and routes of shipment shall be selected by Seller but Seller shall not assume any liability in connection with shipment or constitute any carrier as Seller's agent. Seller may, in its sole discretion, without liability or penalty, make partial shipments of products to Purchaser. Each shipment shall constitute a separate sale, and Purchaser shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the Contract. Purchaser shall be responsible for initiating any proof of delivery request and/or making all claims with carriers, insurers, warehousemen and others for missed delivery, loss, damage, or delay. The quantity of any installment of products as recorded by Seller on dispatch from Seller's delivery point is conclusive evidence of the quantity received by Purchaser on delivery unless Purchaser can provide conclusive evidence proving the contrary. Any liability of Seller for non-delivery of products shall be limited to replacing such products within a reasonable time or adjusting the invoice respecting such products to reflect the actual quantity delivered.

7. **INSPECTION; NON-CONFORMING DELIVERIES**. Purchaser shall have 30 days from the date of its receipt of any product shipment to inspect such products (the "Inspection Period"). Purchaser shall be deemed to have accepted such shipment of products unless Purchaser notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as may be reasonably requested by Seller. "Nonconforming Products" means only the following: (i) products shipped are different than identified in the Contract; or (ii) product labels or packaging incorrectly identify their contents. If requested by Seller, Purchaser shall ship the Nonconforming Products to Seller's origin of shipment, at Seller's cost but with risk of loss passing to Seller only upon delivery to Seller's original point of shipment. If Purchaser timely notifies Seller of any Nonconforming Products, Seller shall, in its sole discretion, (x) replace such Nonconforming Products with conforming products, or (y) credit or refund the applicable portion of the Contract price for such Nonconforming Products, together with any reasonable shipping expenses incurred by Purchaser in connection therewith. If Seller exercises its option to replace Nonconforming Products, Seller shall, after receiving Purchaser's shipment of Nonconforming Products, ship the applicable replacement products to Purchaser, EXW (Ex works, Incoterms 2010 or later update), Seller's point of origin, but with shipping costs paid by Seller. Except as provided in Section 13 hereof, this Section 7 contains Purchaser's sole and exclusive remedy for the delivery of Nonconforming Products. Except as provided under this Section 7 and in Section 13 hereof, all sales of products to Purchaser are made on a one-way basis and Purchaser has no right to return products to Seller.

8. **TITLE AND RISK OF LOSS** - Subject to Seller's right to stop delivery of products in transit in the event of Purchaser's nonpayment therefor, changes in credit terms imposed by Seller, or other Purchase defaults, title to and risk of loss of products shall pass to Purchaser upon shipment (see Section 5 hereof).

9. **SECURITY INTEREST** - Seller reserves and Purchaser grants to Seller a security interest in all products and all proceeds thereof to secure the full payment by Purchaser of the purchase price therefor. Such security interest constitutes a purchase money security interest under the Arizona Uniform Commercial Code. This document may be filed with the appropriate authorities as a financing statement or Seller may file other financing statements in respect of such security interest in any applicable jurisdiction, and Purchaser agrees to execute and deliver such other documents and take such other actions as Seller may reasonably request in order to perfect Seller's security interest in the products.

10. **RESCHEDULING** - Purchaser may reschedule delivery of the products, in whole or in part, to a later delivery date by giving written notice to Seller more than 30 days in advance of the scheduled shipping date; provided, however that (i) delivery may not be rescheduled to more than 90 days past the originally scheduled (or estimated) delivery date, and (ii) Purchaser may not reschedule delivery of products more than once in any 12-month period without Seller's written consent.

11. **CANCELLATION, TERMINATION AND RETURNS** - Purchaser may terminate the order for products under the Contract, in whole or in part, by giving written notice to Seller more than 30 days in advance of the scheduled shipping date; provided, however, that if the Contract specifies that the product order covered thereby is "non-cancellable, non-returnable" (or "NCNR"), then Purchaser may not cancel or otherwise terminate such order, or any part thereof unless Seller has notified Purchaser of a price increase for such order, as contemplated by Section 2 hereof. Purchaser may not otherwise terminate the order for products under the Contract or cancel the Contract. If Purchaser is in default of amounts owing to Seller or, Seller believes in good faith that Purchaser

has suffered a material adverse change in its financial condition, Seller may cancel the Contract, in whole or in part, unless Purchaser immediately pays for all products which have been shipped and pays in advance for all products to be shipped. No products, whether claimed to be defective or nonconforming, shall be returned to Seller, without Seller's express written authorization for such return. Acceptance of said return by Seller shall be based on Seller's evaluation of conformance of products to approved and written part specifications in force at the time of sale. Acceptance of return by Seller shall also be based on return being shipped by Purchaser to Seller in its original shipping container.

12. SPECIFICATIONS – Unless otherwise specified in the Contract, all products are subject to Seller's standard specifications. Seller reserves the right to make substitution and modifications in the specifications of any product without prior notification to or approval from Purchaser provided that such substitutions or modifications do not materially affect the performance of the products or the purposes for which they can be used.

13. WARRANTY AND CLAIMS – Seller warrants for a period of one year from the date of shipment (the "Warranty Period") that the products shall be free of defects in materials or workmanship under normal use and regular service and maintenance and that, subject to Section 12 hereof, the products shall conform in all material respects to Seller's applicable written specifications at the time of shipment. This warranty does not extend to any losses or damages due to misuse, unforeseeable use, unanticipated and unintended use, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Purchaser or its agents has supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the products and the preparation of the Contract, and in the event that actual operating conditions or other conditions differ from those represented by Purchaser, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

Seller shall not be liable for a breach of the foregoing warranty unless: (i) Purchaser gives written notice of the defect or nonconformance, reasonably described, to Seller within 30 days of the date on which Purchaser first discovers or ought reasonably to have discovered the defect or nonconformance, and in any event within the Warranty Period; (ii) Seller is given a reasonable opportunity after receiving such notice to examine such products and Purchaser (if requested to do so by Seller) returns such products to Seller's place of business at Seller's cost for examination by Seller; and (iii) Seller reasonably verifies Purchaser's claim that the products in question are defective or nonconforming. Seller's sole responsibility with respect to any valid and timely delivered warranty claim shall be, at Seller's option, to repair or replace any product, or portion thereof, that Seller determines to be defective or nonconforming. Failure by Purchaser to deliver a written warranty claim within the Warranty Period shall be deemed an absolute and unconditional waiver of Purchaser's claim for any defect or nonconformance covered by Seller's warranty.

EXCEPT AS PROVIDED IN SECTION 7 HEREOF, THE FOREGOING CONSTITUTES SELLER'S SOLE AND EXCLUSIVE WARRANTY AND SOLE LIABILITY, AND PURCHASER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO THE PRODUCTS. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT THE PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR PURCHASER'S USE OR PURPOSE), TITLE OR NON-INFRINGEMENT.

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF TWO TIMES THE AGGREGATE AMOUNT PAID TO SELLER FOR THE PRODUCTS SOLD UNDER THE CONTRACT.

14. INTELLECTUAL PROPERTY - Seller assumes no obligation or liability of any kind with respect to infringement or alleged infringement of patents, copyrights, trademarks, industrial designs or other third party intellectual property rights arising out of Purchaser's purchase, use, possession, sale or delivery of any product. Purchaser shall indemnify and hold Seller harmless from any and all claims, liabilities, damages, costs and expenses (including, without limitation) attorneys' fees and expenses) resulting from any actual or alleged infringement (direct or contributory) by Seller of patents, copyrights, trademarks, industrial designs or other third party intellectual rights arising from compliance by Seller with any designs or specifications provided by Purchaser or from Purchaser's sale or use of any product in any other device or process. No sale of any product shall be construed as granting to Purchaser any license or other right to (a) any apparatus, system or circuit in which such product or any part thereof may be used, (b) any process, machine or other device in connection with which such product may be used, or (c) any process for such product's manufacture, installation or use. Purchaser acknowledges that the copyrights in all documents, designs and plans supplied by Seller with the products belong exclusively to Seller, and Purchaser's possession of any such documents, designs and plans does not convey to Purchaser any license thereof or other right therein.

15. FORCE MAJEURE - Seller shall not be liable for any loss or damage resulting from any delay in the production or delivery of the products to the extent due to any cause beyond Seller's reasonable control, including (without limitation) unavailability of supplies or sources of energy, riots, wars, acts or threats of terrorism, civil disturbances, telecommunications failures, fires, floods, storm or other acts of God, epidemics, lockouts, strikes or slowdowns, delays in delivery by Seller's suppliers, or acts or omissions of Purchaser. In the event of any such delay due to any such event beyond Seller's reasonable control, time for delivery shall be extended for a period of time approximately equal to the duration of the delay and Purchaser shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of such delay. For purposes of this Section 15, the timing of Purchaser's notice for the exercise of its rights under Section 11 hereof shall be with respect to the originally scheduled shipping date for the products, and not any modified shipping date resulting from any delay contemplated by this Section 15.

16. ASSIGNMENT - Purchaser shall not delegate or subcontract any of its duties or obligations or assign any of its rights or claims under the Contract without Seller's prior written consent, and any attempted delegation, subcontracting or assignment without such consent shall be void. The Contract is for the sole benefit of Seller and Purchaser and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Contract.

17. COMPLIANCE WITH LAWS - Purchaser shall carry out the transactions contemplated by this sale and shall otherwise deal with the products sold in conformity with all applicable laws, rules, and regulations of all governmental authorities, and shall obtain all permits and licenses required in connection with the purchase, installation, sale, shipment or use of any product. Without limiting the foregoing, all applicable import and export control laws, regulations, orders and requirements, including (without limitation) those of the United States and the European Union and United Kingdom, and the jurisdictions in which Seller and Purchaser are established, or from which products may be supplied, shall apply to their receipt and use. In no event shall Purchaser use, transfer, release, re-sell, import or export, any products or any technical data related thereto in violation of such applicable laws, regulations, orders or requirements.

18. GENERAL - The Contract is governed by and interpreted, construed and enforced in accordance with the laws of the State of Arizona, without reference to conflicts of law principles that would require the application of any other law. Any suit, action or proceeding arising between Seller and Purchaser in connection with the Contract shall be subject to the exclusive jurisdiction of the state or federal courts of Arizona sitting in Phoenix, Arizona, and each of Seller and Purchaser irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract or the sale of products thereunder. If any term or provision of the Contract (including any of these terms and conditions) is determined to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Contract or invalidate or render unenforceable such term or provision in any other jurisdiction. The Contract (including these terms and conditions) constitutes the entire agreement of Seller and Purchaser with respect to the subject matter thereof and supersedes all prior, agreements, understandings, communications between the parties with respect to such subject matter. The Contract may only be amended by written instrument signed by Seller and Purchaser.