



Axcelis Technologies, Inc.  
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## PRODUCT SALES TERMS AND CONDITIONS

***Axcelis' acceptance of Buyer's order creates an obligation on behalf of each of Buyer to purchase, and Axcelis to sell, the Systems at the Purchase Price and on the Delivery Date as described in the accepted order. Such commitments shall be further subject to the terms set forth herein.***

### 1. Product Specification and Delivery Date

#### 1.1 Performance Specification

The System(s) being purchased by the Buyer from Axcelis (the "Systems") shall be supplied according to the Performance Specifications, as defined herein. "Performance Specifications" shall mean the most current published performance and process specification for a particular System, subject only to such modifications agreed to by the Buyer and Axcelis in writing.

#### 1.2 Changes

Buyer may request changes to an order, previously accepted by Axcelis, up to 10 months from planned System delivery date (as defined in 1.3 below). Changes must be submitted in writing and include: (a) requests to specifically manufacture items in accordance with Buyer's drawings, designs or specifications; (b) request to use a method of shipment or packaging; and (c) a change in the place of delivery. No such change shall be binding upon Axcelis unless and until agreed to in writing by Axcelis. If any such alteration causes an increase in the cost of or in the time required for the performance of any part of the work under the order, Axcelis' agreement to such changes will be conditioned upon an equitable adjustment in the contract price or delivery date, or both, and the Purchase Order shall be modified in writing accordingly.

#### 1.3 Delivery Date; Rescheduling of Delivery

For the purposes of these terms, "Delivery Date" shall mean the date of delivery of the System in question (per INCO Terms 2020), agreed to by the Buyer and Axcelis in writing. In the event the Buyer requests a Delivery Date which is more than 11 months from the date of receipt of the purchase order, the purchase price for such System(s) may be increased by up to ten percent (10%) to reflect the long-term commitment. The Buyer may, by written notice to Axcelis, request a delay in the scheduled Delivery Date. If such notice is received by Axcelis on or later than the date 10 months prior to scheduled Delivery Date, the Buyer will pay Axcelis an incremental charge equal to 10% multiplied by the purchase price of the delayed System(s) payable on the original scheduled shipment date.

#### 1.4 Purchase Cancellation

Buyer may cancel the delivery of a System by sending written notice of cancellation to Axcelis and by paying Axcelis a cancellation charge. The cancellation charge shall be payable on a date not later than the original scheduled Delivery Date, and shall be an amount equal to (1) the cost incurred by Axcelis for any customer work in process or custom parts (as reasonably determined by Axcelis in accordance with Axcelis' normal accounting practices), plus (2) a penalty in accordance with the following rules:

Days between cancellation notice and original scheduled shipment date	Cancellation Charge
More than 300 days	0%
240-300 days	10% of the Price
150-239 days	20% of the Price
90-149 days	50% of the Price
Less than 90 days	90% of the Price

## **2. Delivery and Installation**

### **2.1 Shipment Terms**

All System sales are made FCA Axcelis' plant. Delivery shall occur and title and risk of loss shall pass to the Buyer upon delivery of the product to the carrier at the Axcelis' plant. Transportation shall be at Buyer's sole risk and expense, and any claim for loss or damage in transit shall be against the carrier only. Axcelis may exercise the right, at its own discretion, to withhold loading goods onto a carrier that is deemed by Axcelis to not meet specified safe transport criteria. Axcelis cannot be held liable for penalties or shipment delays due to the Buyer's freight forwarder's non-compliance with Axcelis' transport specifications. In the event that a non-conforming carrier causes a delay in Axcelis' ability to recognize a system sale in the month of agreed Delivery Date, Axcelis reserves the right to charge the Buyer a fee equal to \$5,000 per day of delay. Unless Axcelis agrees otherwise in writing, (i) USA & Canada shipments (from Axcelis Beverly, MA Facility) and domestic Korean shipments (from Axcelis Asia Operations Center) shall be shipped via air ride padded vans in original (factory) packaging; and (ii) all other shipments shall be shipped via air freight shipment to ensure proper handling. International sales are conditional upon grant of any required export licenses by the U.S. or Korean government (as applicable) and appropriate import permitting, if any. AXCELIS ASSUMES NO LIABILITY FOR LOSS, DAMAGE OR CONSEQUENTIAL DAMAGES DUE TO SHIPMENT DELAYS.

### **2.2 Installation and Final Acceptance Testing**

#### **2.2.1. Bolt-Up and Installation**

Axcelis representatives will be at Buyer's site on the day the System arrives and will be responsible for the installation, beginning with the "bolt-up" of the System, provided that Buyer will provide a licensed forklift operator and a professional rigging crew (4-6 people) to move the modules to the installation site, assist with module placement and alignment, and assist with trusses and the outer enclosure assembly. Axcelis may use new or refurbished parts during installation. In connection with the bolt-up, the Buyer is responsible for the connection of all facilities and remote equipment to the System (PDs, Chillers, Compressors, etc.). This includes power, water, exhaust, CDA, vacuum, nitrogen, external source gases, and all sub-fab connections to remote equipment (harnessing, plumbing, wiring, Helium lines, etc.). Buyer is responsible for all connections associated with drop ship pump installation. Buyer will provide all additional equipment not purchased from Axcelis but necessary for installation and bolt-up, as set forth in the Customer Site Preparation Guide provided to the Buyer. The Buyer is responsible for the safe handling, storage, and installation of all toxic chemicals and/or gases associated with the tool.

#### **2.2.2 Final Test Completion**

Axcelis' obligation to complete the installation of the System will end when the System achieves "Final Test" completion. Final Test completion will occur on the earlier of the following: (a) a completed Final Test document is provided by Axcelis to the Buyer; or (b) the Buyer commences usage of the System in production. Axcelis' obligation to complete the installation and perform Final Test will also terminate if the System has not been installed by the date (90) days after shipment of the System due to no fault of Axcelis and without agreement from Axcelis, as described below. "Final Test" means the series of tests of the System conducted per Axcelis' normal procedures that demonstrate the System meets or exceeds the Performance Specification. The Buyer acknowledges that Axcelis' ability to deliver, install, and achieve Final Test completion of the System depends upon the condition of the Buyer's site, and the overall cooperation of the Buyer.

#### **2.2.3 Scheduling of Installation and Testing**

The schedule for bolt-up, installation and Final Test must be mutually agreed by the Buyer and Axcelis. Axcelis' obligations regarding bolt-up, installation and Final Test completion shall end ninety (90) days after shipment of the System, unless Axcelis agrees to a delayed installation schedule, or such delay is caused by Axcelis. If Buyer requests a change to the agreed schedule for bolt-up, installation, or Final Test less than 21 days prior to the agreed event, Axcelis may, in its discretion, condition its acceptance to such schedule change on Buyer's payment of a rescheduling fee of \$25,000 and payment of any incremental travel costs, or a daily or hourly charge for Axcelis personnel delayed by the Buyer.

## **3. Price and Payment Terms/Taxes**

### **3.1 Purchase Price**

Unless otherwise agreed to by Axcelis in writing, the "Purchase Price" for each System shall be the price stated on the face of Axcelis' quotation, provided the Buyer submits and Axcelis accepts a purchase order incorporating such price within the quote validity period as stated on the front side of the quotation. Notwithstanding the foregoing, Axcelis reserves the right to decline to accept the quoted price at any time and without notification.

### **3.2 Payment Terms**

Payment for each System purchased by the Buyer is due as follows, unless specifically quoted and agreed otherwise: (1) 90% of the Purchase Price is due on delivery of the System and (2) the remaining 10% of the Purchase Price is due on the earlier of Final Test completion or the date 60 days after the delivery of the System.

### **3.3 Overdue Payments**

Late payments are subject to accrual of daily interest at the prevailing U.S. prime rate plus one percent (1%), after the expiration of a fourteen (14) day grace period. Any default by Buyer in any payment due hereunder or any other breach hereof, or any other agreements related to the purchase of a System, may, at Axcelis' option, render Axcelis' warranty null and void.

### **3.4 Taxes**

All present or future tax obligations, including but not limited to use, sales, value added, ad valorem or similar taxes, import duties, or other charges applicable to or levied upon the manufacture or sale of the product or service ordered hereunder, are the Buyer's responsibility.

### **3.5 Security Interest**

Upon request, Buyer agrees to execute all documents and do all other acts necessary to enable Axcelis to perfect a purchase money security interest in the Systems delivered hereunder.

## **4. Warranties and Indemnifications**

### **4.1 System Warranty**

Subject to the conditions set forth in this Section 4, Axcelis warrants to Buyer that the System(s) will, when delivered to Buyer and during the term of the Warranty Period, be free from defects in material and workmanship and will conform to the Performance Specifications, as defined in Section 1. Minor deviations from Performance Specifications which do not affect the performance of the System shall not be deemed to constitute a failure to conform to the Performance Specifications or a defect in material or workmanship. All parts included in the sale of the System shall remain under warranty only for the remainder of the Warranty Period on the original System. Axcelis' System warranty covers all parts originally incorporated into the System or shipped with the System, other than Pumps and consumable parts as defined in Axcelis document 8800455. To the extent permitted by Axcelis' agreements with the manufacturer of any Pumps included in a System, Axcelis will assign to Buyer any remaining warranty rights against such manufacturer.

#### **4.2 Warranty Period**

Unless otherwise agreed to by Axcelis in writing, the Warranty Period for each System shall be the period stated on the face of Axcelis' quotation, provided the Buyer submits and Axcelis accepts a purchase order according to the quote validity period as stated on the front side of the quotation. A new Warranty Period shall not be established from a repaired or replaced System or part thereof.

#### **4.3 Hours of Standard Warranty Labor Coverage**

Axcelis' standard warranty labor coverage is from 8:00 a.m. to 5:00 p.m., Monday through Friday local time, excluding local holidays. Additional warranty and support packages are available and will be quoted upon request.

#### **4.4 Warranty Obligations**

If any defect in material and workmanship or any failure to conform to Performance Specifications appears within the Warranty Period, Axcelis will, at its option (i) repair the defective product at a location of its choice, (ii) replace the defective product or (iii) agree to an appropriate price adjustment not to exceed the original selling price of the product; provided, however, that (1) Axcelis must be promptly notified in writing by Buyer upon discovery of the alleged defect, (2) if requested, Buyer will return the allegedly defective product to Axcelis with the transportation charges prepaid by Buyer, and (3) Axcelis' examination of said product must disclose to its satisfaction that none of the warranty exceptions in Section 4.6 are applicable, and that said product was defective when originally delivered to Buyer. Buyer agrees to give Axcelis reasonable access to Buyer's premises and to the Systems in the event that Axcelis elects to repair the product on Buyer's premises. Replacement parts may be new or refurbished, as determined by Axcelis in its discretion.

#### **4.5 Warranty Exceptions**

Axcelis' warranty hereunder does not extend to any Axcelis products, including software, that have been subjected to: (a) improper installation or maintenance as described in the Axcelis Performance Specifications and installation drawings (including without limitation maintenance or repairs performed by Buyer's personnel who have not completed Axcelis' recommended training and certification); (b) accident, damage, negligence, abuse or misuse; (c) abnormal operating conditions; (d) use of the product for a purpose or application, including without limitation operation of any part, subsystem, or software, in any way different or inconsistent from that for which it was designed; or (e) shipment by any method other than that provided in Section 2.1 hereof. The use of any replacement parts (including consumables) other than those approved by Axcelis shall void all warranties hereunder. Relocation of the System from the original site of delivery of the System shall void all warranties hereunder except as expressly agreed in writing by duly authorized representatives of Axcelis.

#### **4.6 Returned Parts**

No parts may be returned to Axcelis without Axcelis' prior written approval. Buyer must obtain a Returned Goods Authorization and shipping instructions from Axcelis prior to the return of any parts. Parts returned to Axcelis for warranty replacement under the warranty provided hereunder shall become the property of Axcelis. Buyer shall be responsible for any transportation charges arising from warranty repair or replacement. Returned material may be subject to a 20% restocking fee.

#### **4.7 Patent Infringement Indemnification**

Axcelis agrees that it will, at its own expense, defend all suits or proceedings instituted against Buyer and pay any award of damages assessed against Buyer in such suits or proceedings, insofar as the same are based on any claim that an Axcelis product or any part thereof infringes any patent, provided the Buyer gives Axcelis immediate notice in writing of the institution of the suit or proceedings and permits Axcelis, through its counsel, to defend the same and gives Axcelis all needed information, assistance, and authority to enable Axcelis to do so. It is expressly understood and agreed, however, that Axcelis shall not be held responsible for infringements of patents or process patents resulting from the use of an Axcelis product in combination with other products or other materials not furnished by Axcelis. In case the product furnished by Axcelis is held in and of itself to constitute infringement and its use enjoined, Axcelis will, within a reasonable period of time, at its option, either secure for the Buyer the right to continue using said product by suspension of the injunction, by procuring for the Buyer a license or otherwise, or Axcelis will, at its own expense, replace such product with a non-infringing product, or will remove the enjoined product and refund the sum paid therefor. The provisions of this Section 4.7, however, shall not apply to any third-party manufactured product, device, or part provided by Axcelis at the specific request of the Buyer.

#### **4.8 Hazardous Materials**

##### **4.8.1 Gases and/or Toxic Chemicals**

Buyer will be responsible for the safe handling and storage of all toxic chemicals and/or gases associated with the System. Axcelis disclaims all liability whatsoever for any claim or action of any kind arising out of, in connection with or resulting from any damage arising out of the use of such gases or toxic chemicals in the System as furnished or as a result of any modification, misuse, abuse, improper maintenance or similar action or omission by Buyer or a third person.

##### **4.8.2 Radiation**

Buyer shall be responsible for maintaining and using the System in compliance with all applicable federal, state or local laws, rules, regulations or ordinances, including any recommendations and/or standards established by the National Council on Radiation Protection and Measurements, American National Standards Institute, Occupational Safety and Health Administration or other such agency or organization. Axcelis disclaims all liability whatsoever for any claim or action of any kind arising out of, in connection with or resulting from damages from high voltage or radiation from the System as furnished or as a result of any modification, misuse, abuse, maintenance or similar action or omission by Buyer or a third person.

#### **4.9 Disclaimer of Other Warranties**

THERE ARE NO OTHER WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH HEREIN, AND AXCELIS' OBLIGATIONS AND LIABILITIES HEREUNDER ARE IN LIEU OF, AND AXCELIS DISCLAIMS ALL OTHER WARRANTIES AND GUARANTEES AND ALL OTHER LIABILITIES, EXPRESS OR IMPLIED ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **4.10 Limitation of Liability**

Notwithstanding anything contrary herein, Axcelis' liability to Buyer for any breach of its obligations hereunder, whether by non-performance, partial performance, defective performance, or otherwise, is limited to Axcelis' obligations (i) to deliver the Systems on the Delivery Date or, at Axcelis' option, to refund any monies received for any such System(s) not so delivered and (ii) to perform the limited warranties and indemnification set forth in Section 4. IN NO EVENT WILL AXCELIS BE LIABLE FOR ANY OTHER DAMAGES, EITHER DIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE. In no event shall Axcelis be liable for special, incidental, consequential, exemplary, or other indirect or economic damages for any breach of the Agreement, including but not limited to property damage or loss of profits arising out of such breach, even if Axcelis has been advised of the possibility of such damages or losses. Buyer shall indemnify and hold Axcelis harmless against any and all liabilities, penalties, fines, demands, claims, causes of action, suits and costs and expenses incidental thereto, or arising out of the use, possession or maintenance of the System which, while under the Buyer's control, has been subject to: (a) improper maintenance or storage; (b) accident, damage, abuse or misuse; (c) abnormal operating conditions or applications; or (d) operating conditions or applications other than as specified by Axcelis.

#### **4.11 Technical Assistance**

Except for the warranty provisions of this Section 4 or in a separate written service agreement, Axcelis is under no obligation to provide Buyer with technical advice or assistance with respect to the use of the System(s).

### **5. Training**

#### **5.1 Training**

During the Warranty Period, Axcelis will provide (without additional charge) a remote training course, with unlimited attendance for the Buyer's personnel, entitled "Level 1 Training: Implanter Overview" which is part of Axcelis' On Tool Training for Safety, Operations, and Basic Preventative Maintenance. The remote classes are scheduled quarterly. The Buyer may purchase from Axcelis remote training programs (including the Level 1 Training after the Warranty Period) and in person training. Buyer is responsible for travel, accommodations, and other miscellaneous expenses for Buyer's personnel attending any in person Axcelis training. Training courses purchased by the Buyer are non-transferable and cannot be substituted for different courses. Training Credits cannot be deducted from the System price. Unused Training courses will expire 12 months after System delivery, unless Axcelis is unable to schedule a course during that time frame.

#### **5.2 Enrollment in In Person Courses**

All in person courses purchased by the Buyer will be taught at Axcelis' facility unless otherwise agreed. Student enrollment is guaranteed once the Buyer receives a confirmation notice from the Axcelis training registrar. Students will not be permitted to attend upper-level courses without proof of attending prerequisite classes or passing a "test out" exam. "Test out" exams can be obtained by contacting the Axcelis training registrar. Students may take only two "test out" exams per course. In the event that an Axcelis instructor deems a registered student unqualified to take the intended course, Axcelis shall either re-assign the student to another course (if classroom space is available) or remove the student from the enrolled course. In either case, Axcelis will charge the full price of course attendance or apply the full credit. In the event that a student cancels attendance within four (4) weeks of the scheduled course date, the Buyer shall not receive a refund of the cost of the purchased training.

### **6. Confidentiality and Ownership of Intellectual Property**

#### **6.1 Confidential Information**

All information furnished or made available by Axcelis to Buyer in connection with the purchase of a System(s), including without limitation, all user manuals, training manuals, safety manuals, schematics, product support bulletins, engineering procedures, designs, drawings, processes, compositions of material, specifications, technical information, mask works and computer software user interfaces and formats, shall be treated as confidential and proprietary business information and trade secrets belonging to Axcelis, and Buyer agrees to keep all such information confidential, to use such information only to operate and maintain the Systems, other products and services purchased from Axcelis, and to take all necessary steps to protect all such information against any disclosure to or use by any third party without Axcelis' prior written consent. The obligation of Buyer under this paragraph extends to all information provided by Axcelis, whether written or oral, and whether in paper or electronic format. Axcelis will endeavor to mark written information furnished to Buyer "AXCELIS CONFIDENTIAL", however, the failure by Axcelis to so mark written information shall not affect Buyer's obligations to protect such information against disclosure to or use by any third party without Axcelis' prior written consent. The obligations set forth in this paragraph shall survive termination of the Agreement.

#### **6.2 Ownership of Intellectual Property**

Buyer agrees that the intellectual property rights (including without limitation patent, trademark and copyrights) to all designs, drawings, processes, compositions of material, specifications, computer user interfaces and formats, mask works, other technical information and any patented, trademarked or copyrighted items made and/or furnished by Axcelis to Buyer in connection with the System(s), other products, or services purchased by Buyer, including all rights thereto, shall be the sole and exclusive property of Axcelis, free from any restriction or license, except to the extent of any license expressly provided in these terms. In furtherance of the foregoing, all right, title and interest in and to any software subject to Axcelis' copyright, and any improvements, upgrades, or later-released versions of such software ("Axcelis' Software"), shall at all times belong to Axcelis. All right, title and interest in any software which is subject to a third party's copyright ("Third-party Software") belongs to the third party.

### **7. Software License Terms**

#### **7.1 Grant**

Effective with the sale of any System or other product incorporating Axcelis Software or Third-party Software, Axcelis grants to Buyer (i) a non-exclusive, non-transferable license to use the Axcelis Software provided therein, subject to the limitations stated herein (the "Base License") and (ii) a non-exclusive, non-transferable sublicense of Axcelis' license to any Third-party Software provided therein, subject to the limitations stated herein (the "Sublicense").

#### **7.2 Limited Use**

Buyer shall take every reasonable precaution to prevent theft, disclosure, and/or unauthorized copying, reproduction, or distribution, by electronic means or otherwise, of the Axcelis Software and the Third-party Software. Specifically, and without limitation, Buyer shall not provide, disclose, transfer, or otherwise make available Axcelis Software or Third-party Software, or any copies thereof, in any form, to any person other than Buyer's Licensed Employees (as defined below). Buyer's Base License and Sublicense extend only to:

**7.2.1** the originally purchased or designated product which necessitated the provision of the Axcelis Software or Third-party Software (the "Licensed Product") and such elements of the Axcelis Software as Axcelis authorizes Buyer to utilize (the "Licensed Functions");

**7.2.2** the originally designated location of such Licensed Product, or such other Buyer location to which Buyer moves the Licensed Product, but only if Buyer provides advance written notice to Axcelis of the move (the "Licensed Location"); and

**7.2.3** the employees or agents of the Buyer who have agreed to abide by the terms of the Base License, including the confidentiality provisions set forth herein (the "Licensed Employees").

Buyer agrees not to edit, revise, delete, reverse engineer, decompile, disassemble, or otherwise alter the Axcelis Software for any purpose, including without limitation either of the following purposes:

**7.2.4** to enable remote accessibility of the Axcelis Software by a network or remote host ("Additional Locations"); or

**7.2.5** to access, bypass, or disable software management keys to enable optional software ("Optional Functions") that is not included within the Licensed Functions.

Buyer understands that licenses for use of Axcelis Software at locations other than the Licensed Location and licenses for use of Optional Functions are not included in the Base License, and such licenses must be separately negotiated with Axcelis. Buyer's use of the Third-party Software is subject to all limitations imposed by the third party in Axcelis' license of the Third-party Software.

### **7.3 No Copying**

The Base License grants Buyer the right to access the Axcelis Software on the Licensed Product corresponding to that Axcelis Software only, for purposes of execution of the Licensed Functions only. Buyer agrees not to copy the Axcelis Software for use on any equipment other than the Licensed Product corresponding to that Axcelis Software, by electronic means or otherwise, and Buyer further agrees not to copy for, transfer to, or otherwise use the Axcelis Software on any system of networked equipment or on the Internet. The Base License does not permit the use of the Axcelis Software with any equipment other than the Licensed Product corresponding to that Axcelis Software.

### **7.4 License Termination**

Axcelis shall retain the right to terminate the Base License and the Sublicense if Axcelis reasonably believes that Buyer has breached the terms of the Base License, and upon written notice from Axcelis to Buyer of such termination, Buyer agrees to immediately stop using the Axcelis Software and the Third-party Software and to return to Axcelis the Axcelis Software and the Third-party Software and to return, destroy or permanently delete all copies of the Axcelis Software and the Third-party Software.

### **7.5 Non-Transferability of Base License and the Sublicense**

Buyer understands that the Base License and the Sublicense are not transferable by the Buyer, whether or not in conjunction with a transfer of the System or other product in which such software was purchased by the Buyer. Any transferee of the System will need to acquire licenses from Axcelis in order to access and use the Axcelis Software and the Third-party Software.

## **8. Miscellaneous**

### **8.1 Force Majeure**

The date on which the obligations set forth herein are to be fulfilled shall be extended for a period equal to the time lost by reason of any delay arising directly or indirectly from, (i) acts of God, unforeseeable circumstances, acts (including delay or failure to act) of any government authority, war, civil unrest, terrorism, riot, fires, strikes or labor disputes; (ii) inability due to causes beyond a party's reasonable control to timely obtain instructions or information from the other party, necessary and proper labor, materials, components, facilities and transportation; or (iii) any other cause beyond such party's reasonable control. If any delay resulting from any of the foregoing causes extends for more than ninety (90) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the price, then either party may terminate its affected obligations to the other upon thirty (30) days written notice to the other, with appropriate refunds, if applicable.

### **8.2 Export Controls**

Buyer understands that Axcelis and its products are subject to laws regarding export controls, national security and any and all other laws and regulations of the United States of America, South Korea and other countries and regions (collectively the "Regulations") which Regulations are enforced, inter alia, by governmental agencies. The Regulations, in part, presently prohibit export, diversion, or support, directly or indirectly, of Axcelis products to certain countries and certain end users without the express prior written approval of the applicable government. Buyer agrees to abide by all Regulations, including those concerning the resale, disposition, and support of Axcelis' products. Buyer will not sell, transfer, or support or assist in any sale, transfer, or support of any Axcelis products to any parties or countries not approved under applicable Regulations. Buyer shall defend, hold harmless and indemnify Axcelis for any damages resulting to Axcelis from a breach of this paragraph by Buyer.

### **8.3 Compliance with Law**

Without limiting the foregoing, each of Axcelis and Buyer hereby represents that in its performance of its obligations hereunder, it will not violate any applicable laws, including without limitation, any laws or regulations of the United States of America, or any other country or countries, including (a) any export controls laws or regulations, (b) any currency laws or regulations, (c) the United States Foreign Corrupt Practices Act, (d) any tax laws or regulations, (e) any customs laws and regulations, and (f) any other laws or regulations of the United States of America or any other country or countries. Each of Axcelis and Buyer hereby agrees to do all acts, make all applications, or do any other review, function, or thing necessary to assure that its performance complies with all laws and regulations of the United States of America, and the country or countries in which such performance occurs. Each party further agrees to defend and indemnify the other from and against any loss, claim, penalty, or liability that may arise from any violation of any such applicable laws or regulations by the indemnifying party.

### **8.4 Assignment**

Neither Axcelis' obligations to the Buyer nor any interest therein, including but not limited to the warranty obligations, indemnifications or licenses set forth herein may be assigned or transferred by Buyer except with the prior written consent of Axcelis. Specifically, and without limitation, Buyer may not transfer such legal obligations to a third party to which the corresponding System is sold or transferred by the Buyer. Buyer may request Axcelis' consent to such a transfer by providing Axcelis with the identity and location of any such third-party buyer or transferee of a System. Axcelis will consider, on a case-by-case basis in compliance with Export Controls, and in Axcelis' sole discretion, may grant permission for the transfer of such legal obligations to that third-party buyer or transferee. Any such approved transferee will need to acquire software licenses from Axcelis as described above.

### **8.5 Severability**

Each term or condition herein is intended to be severable. If any term or condition is determined to be illegal, invalid, or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the validity, legality or enforceability of any other term or condition.

### **8.6 Complete Agreement**

These terms and conditions and any other terms included in a written agreement signed by a duly authorized representative of the party to be bound (or in the case of Axcelis, terms in a System quotation that has been duly incorporated in the Buyer's purchase order) constitute the sole and entire agreement between the parties hereto with respect to the subject matter hereof. There are no other promises, conditions, representations, or warranties. No modification or amendment to these terms shall be binding upon the parties except to the extent set forth in writing and signed by a duly authorized representative of the party to be bound.

### **8.7 Waiver**

Waiver by either party of a breach of any of the terms and conditions set forth herein, shall not constitute a waiver of any other breach hereof.

### **8.8 Choice of Law**

These terms shall be governed, construed, interpreted, and enforced according to the laws of the Commonwealth of Massachusetts, U.S.A., without application of Massachusetts conflicts of laws principles and without application of the United Nations Convention on the International Sale of Goods.