

Dear M[r][s]. :

This letter agreement (the "Agreement") confirms and memorializes Micron Technology, Inc.'s ("Micron's") agreement to sell and \_\_\_\_\_ ("Buyer's") agreement to purchase the \_\_\_\_\_, (the "Equipment") for the sum of \_\_\_\_\_ Dollars (\$ XXXX.00), in accordance with the terms and conditions of this Agreement.

1. Payment. Buyer shall make payment in full prior to release of the Equipment or fifteen (15) days from the date this Agreement is signed by Buyer, whichever is sooner. Micron may terminate this Agreement at any time until full payment is received for any or no reason with no liability whatsoever to Buyer. Payment shall be made in U.S. Dollars by wire transfer. If applicable, Buyer shall include the invoice number in the comments on the wire transfer and pay all wire transfer fees.

2. Delivery and Risk of Loss. The sale of the Equipment shall be EXW (Incoterms 2000) Micron's fabrication facility in Boise, Idaho ("Site"). Micron's liability for the Equipment shall cease and title and all risk of loss or damage shall pass to Buyer upon Micron making the Equipment available to Buyer on the specified date, regardless of any provision for payment of freight, insurance or the form of shipping documents. Equipment held by Micron past the specified date for Buyer shall be at Buyer's risk and expense. Buyer is responsible for shipment and for clearing the Equipment for export and shall pay all transportation, export, customs and insurance costs. Buyer is to contact Gina Hanover at least two (2) weeks prior to the specified Equipment pickup date to coordinate loading and shipment. Buyer acknowledges and agrees that the date that Micron will make the Equipment available to Buyer for pickup is an estimated date and that the actual date may be materially later depending upon the completion of deinstallation or other contingencies. If the actual pickup date is more than ninety (90) days after the original scheduled date due to no fault of Buyer, Buyer may terminate this Agreement, with no liability to Micron, and Buyer's payment made hereunder, if any, will be reimbursed in full. This is Buyer's sole remedy for late delivery and in no event shall Micron be liable to Buyer for any costs, expenses or damages relating to such late delivery. Where Buyer has made payment to Micron and Buyer has picked up the Equipment, any Equipment or related material that remains at the Site after the pickup date shall be subject to a storage fee to be paid by Buyer, in the amount of \$10 per square foot per day until removed from the Site. Equipment remaining at the Site for more than 90 days after the agreed pickup date may be disposed of by Micron, including by resale to other parties, without recourse by Buyer. All payments made by Buyer shall likewise be forfeited in favor of Micron.

3. Deinstallation, Decontamination, Rigging, Packaging, Crating and Loading of Equipment. Micron will deinstall and decontaminate the Equipment and move it to a loading area where it will be made available to Buyer. Buyer acknowledges that Micron recommends and hereby requests Buyer or a Buyer representative knowledgeable with the proper procedures to deinstall, decontaminate and rig the Equipment to supervise such deinstallation, decontamination and rigging. To the extent that Buyer elects not to provide such supervision, Buyer hereby expressly waives any claims it may have arising out of the deinstallation, decontamination or rigging of the Equipment. Buyer will schedule and coordinate such supervision with Micron. Buyer agrees that it will reimburse Micron for all costs Micron incurs in connection with the deinstallation, decontamination and rigging of the Equipment.

Buyer will at its cost package, crate and load the Equipment. All agents or employees of Buyer who participate in the packaging, crating, labeling, loading or shipping of the Equipment shall have all required USDOT certifications. Notwithstanding any of the foregoing, if Micron in its reasonable judgment believes that Buyer's packaging, crating, labeling, loading or shipping of the Equipment will in any way fail to comply with applicable laws, rules or regulations, Micron may without giving notice assume control of packaging, crating, labeling, loading and/o shipping the Equipment, all costs of which will be borne by Buyer.

Micron will decontaminate the Equipment for shipment in accordance with USDOT regulations. Notwithstanding the foregoing, Buyer acknowledges and agrees that it will verify the decontamination and until such time as it does so, it will treat the Equipment as contaminated and take appropriate steps to notify and protect the people who will come in contact with the Equipment.

4. Inspection. Buyer has full opportunity to physically inspect the Equipment prior to entering into this Agreement. Buyer acknowledges and agrees that to the extent it elects not to physically inspect the Equipment that Buyer hereby expressly waives any rights it may have, if any, to seek any recourse for any claim that such inspection would have revealed.

5. **NO WARRANTY. THE EQUIPMENT IS USED AND IS SOLD "AS IS", WITH ALL FAULTS, DEFECTS AND WITHOUT ANY WARRANTY OF ANY KIND. MICRON EXPRESSLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.**

**ALL SOFTWARE, IF ANY, IS SOLD "AS IS" AND WITHOUT WARRANTY OF ANY KIND. MICRON EXPRESSLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED ON SOFTWARE, INCLUDING BUT NOT LIMITED TO, NONINFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MICRON DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET BUYER'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.**

**NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MICRON OR AN AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. BUYER ACCEPTS THE RISKS OF USE AND EXCEPT AS OTHERWISE STATED HEREIN SUCH RISKS FALL SOLELY ON BUYER.**

**BUYER EXPRESSLY UNDERSTANDS AND AGREES THAT MICRON DOES NOT WARRANT THAT THE EQUIPMENT OR SOFTWARE IS FREE OF CLAIMS OF**

**INTELLECTUAL PROPERTY INFRINGEMENT BY ANY THIRD PARTY. MICRON HEREBY DISCLAIMS ANY SUCH WARRANTY OR INDEMNIFICATION AGAINST INTELLECTUAL PROPERTY INFRINGEMENT, INCLUDING BUT NOT LIMITED TO PATENT, TRADEMARK, COPYRIGHT OR TRADE SECRET INFRINGEMENT.**

**6. LIMITATION OF LIABILITY. IN NO EVENT SHALL MICRON BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF DATA, LOSS OF USE OR INTERRUPTION OF BUSINESS, RESULTING FROM MICRON'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS SALE, OR THE FURNISHING, PERFORMANCE OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD PURSUANT HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, THE NEGLIGENCE OF MICRON, OR OTHERWISE.**

**IN NO EVENT SHALL MICRON'S TOTAL CUMULATIVE LIABILITY TO BUYER UNDER ANY CLAIM HEREUNDER OR RELATING HERETO, WHETHER IN CONTRACT OR IN TORT, EXCEED THE SUM PAID TO MICRON BY THE BUYER FOR THE EQUIPMENT WHICH IS THE SUBJECT OF SUCH CLAIM.**

7. Indemnification. Buyer, on behalf of itself and its employees and agents, shall indemnify, defend and hold harmless Micron, its subsidiaries and affiliates and their directors, officers, agents and employees from and against any and all liabilities, claims, demands, damages, causes of action, losses, expenses and attorney's fees, whether known or unknown, arising out of the Buyer's purchase or use of the Equipment.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, without reference to such State's conflict of laws principles or the 1980 United Nations Convention on Contracts for the International Sale of Goods. The parties agree that Idaho courts have jurisdiction over them and this Agreement, that Idaho is an appropriate venue for any litigation arising hereunder, and that all litigation related to this Agreement shall, to the extent possible, be conducted in Idaho.

9. Acceptance and Performance. Time is of the essence in the execution and performance of this Agreement. Buyer shall have this Agreement executed by a duly authorized representative of Buyer and return it to Micron within ten (10) days of the date first set forth above. Buyer shall take delivery of the Equipment within fifteen (15) days of the date first set forth above or as otherwise specified by Micron.

10. Taxes. Unless otherwise stated on the face hereof, stated prices do not include any customs duties, sales, use, value added, excise, goods and services, federal, state, local or other taxes. Buyer will be liable for all applicable taxes in accordance with the laws of the state and country where the purchased Equipment is located. Buyer will be charged applicable taxes by Micron if Buyer did not

provide to Micron the valid tax exemption certificates that Buyer will rely upon to establish a tax exemption for any Equipment purchased hereunder. Such certificates must be approved by Micron's internal tax advisors before the Equipment will be released. Similarly, if in Micron's reasonable judgment, any certificates provided by Buyer are not valid or applicable, Buyer shall be charged applicable taxes and the Equipment will not be released to Buyer until the Buyer has paid the final purchase price and all taxes as shown on the invoice from Buyer. Buyer agrees to defend, indemnify and hold Micron harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorneys' fees and costs) that Micron may incur due to Buyer failing to pay any applicable taxes.

**REGARDLESS OF WHETHER BUYER PROVIDES VALID TAX EXEMPTION CERTIFICATES AS REQUIRED HEREIN, ANY EQUIPMENT PURCHASED BY BUYER FROM ONE OF MICRON'S U.S. LOCATIONS WILL BE SUBJECT TO TAX UNLESS BUYER UTILIZES A CERTIFIED COMMON CARRIER TO PICK UP THE EQUIPMENT. IF BUYER HAS NOT BEEN INVOICED OTHERWISE APPLICABLE TAXES AND ELECTS NOT TO UTILIZE A CERTIFIED COMMON CARRIER, THE EQUIPMENT WILL NOT BE RELEASED TO BUYER UNTIL THE APPLICABLE TAXES ARE PAID.**

11. Force Majeure. Micron shall not be liable for any delay in performance directly or indirectly caused by or resulting from acts of God, fire, flood, accident, riot, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late delivery by suppliers or any other difficulties which are beyond the reasonable control of Micron.

12. Compliance with Laws. Buyer shall comply with all national, state and local laws, rules and regulations, including but not limited to laws and regulations governing manufacturing, processing, distribution, transportation, labeling, handling, discharge, treatment, disposal, recycling, reclamation, use, import, export or other activity utilizing or relating to the Equipment. Buyer agrees to indemnify and hold Micron harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorneys' fees) that Micron may incur due to Buyer's non-compliance with applicable laws, rules and regulations, including any of the laws, rules and regulations mentioned in Section 13 of this Agreement.

13. Restricted Technology. Certain items of Equipment may constitute "Restricted Technology." Under federal law, such items may not be shipped outside of the United States. Micron makes no representation or warranty concerning, and has conducted no investigation to ascertain the Equipment, if any, that constitutes Restricted Technology. Buyer acknowledges and agrees and further represents and warrants that: (i) it is solely responsible for determining all licensing/legal requirements and obtaining all licenses and legal authorizations required to purchase, import or export any Equipment; (ii) it will not request or make any regulatory certifications or applications in the name of or on behalf of Micron; (iii) it will not, unless specifically authorized by appropriate government license or regulation, transfer, export or re-export, directly or indirectly, any Equipment, including without limitation any technology, software, or components purchased hereunder or its direct product to any

countries or to their assimilated entities (i.e. Embassies, Consulates, Controlled In Fact Entities) or to the nationals of any country which are subject to the United States or other countries' export control laws and regulations, as applicable, including the Export Administration Regulations. Such restricted countries include, but may not be limited to, Afghanistan, Cuba, Iran, Iraq, North Korea, Libya, Sudan or Syria, as well as any other country subject to restriction under applicable laws and regulations; (iv) it is not located in, under control of, or a national or resident of any such country; (v) it and any party it represents are not legally barred from buying, exporting or importing Equipment and that it and any party it represents are not identified on any end-user list maintained by the United States government, including but not limited to the following lists: Debarred Parties List (U.S. Dept. of Commerce); Denied Persons List (U.S. Dept. of Commerce); Entity List (U.S. Dept. of Commerce); Unverified Users List (U.S. Dept. of Commerce); Specially Designated Nations List (U.S. Dept. of Treasury, Office of Foreign Asset Control); and/or Parties of Non-Proliferation Concern List (U.S. Departments of State and Commerce); (vi) it will not use the Equipment in any activity related to the development, production, use or maintenance of "Weapons of Mass Destruction" including without limitation, uses related to nuclear, missile, and/or chemical/biological development; and (vii) it will not transfer, export or re-export, directly or indirectly, the Equipment to any third party engaged in any such activity.

14. Hazardous Materials. Micron has diligently and with reasonable efforts flushed, drained, and cleaned Equipment containing chemicals. However, such Equipment may contain chemical residue despite such efforts. Buyer acknowledges this fact and agrees to indemnify Micron against any and all claims or actions for damage or other relief that may arise due to the property containing such chemical residue. Buyer agrees to meet all applicable government safety standards and environmental regulations and laws for the removal, transportation, labeling, use and disposal of the Equipment. Material Safety Data Sheets will be made available to Buyer upon request.

15. Terms and Conditions. This sale is subject to, and Micron's acceptance is conditioned upon, Buyer's assent to the terms and conditions stated herein and on the face hereof, which are in lieu of and replace any and all terms and conditions set forth in any documents issued by Buyer, including, without limitation, purchase orders and specifications. **ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS AND CONDITIONS ON ANY SUCH DOCUMENT ISSUED BY BUYER AT ANY TIME ARE HEREBY OBJECTED TO BY MICRON, AND ANY SUCH DOCUMENT SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE HEREUNDER AND SHALL NOT BE BINDING IN ANY WAY ON MICRON.** No remedy set forth herein shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. The prevailing party or parties to any litigation or other proceedings arising out of this Agreement shall be entitled to recover its reasonable costs and attorneys' fees from the other party or parties. If it is determined by a court of competent jurisdiction as part of a final nonappealable ruling, government action or binding arbitration that any provision of this Agreement (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement shall remain in full force and effect and bind the parties according to its terms. All section headings herein are for convenience only and are in no way to be construed as part of this Agreement or as a limitation or

expansion of the scope of the particular sections to which they refer. No modification of, or amendment to, this Agreement (including any implied waiver) shall be effective unless in writing signed by all parties hereto. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and merges all prior or contemporaneous agreements and understandings (whether written, verbal or implied) of the parties with respect thereto. All obligations and duties which by their nature survive the expiration or termination of this Agreement shall remain in effect beyond any expiration or termination. No actions, regardless of form, arising out of this Agreement, may be brought by either party more than two years after the cause of action has arisen, or, in the case of nonpayment, more than two years from the date payment was due. The waiver by either party of any instance of the other party's noncompliance with any obligation or responsibility herein shall not be deemed a waiver of subsequent instances or of either party's remedies for such noncompliance.

Please have a duly authorized Buyer representative sign below and fax the signed Agreement to Jeff Anderson at 208- 363-3426, if you have any questions please contact Jeff Anderson at 208-368-3750 and send the original to the attention of the undersigned at Mail Stop 902, 8000 South Federal Way, Boise, Idaho 83716-9632, within ten (10) days of the date first set forth above.

Sincerely,

Debra A. Smith  
Corporate Capital Purchasing Manager  
Micron Technology, Inc.

ACKNOWLEDGED AND AGREED:  
XXXXX ("Buyer")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Visit us on our Web Site: <http://www.micron.com>  
Click on "Purchase"

January 19, 2007  
Page 7

Click on "Surplus Equipment Sales"  
Click on the location you want