



GENERAL TERMS AND CONDITIONS OF PURCHASE OF Philips Semiconductors Dresden AG

1. AGREEMENT. These general terms and conditions of purchase ("Terms and Conditions") shall govern and form an integral part of all agreements entered into and for all purchase orders placed by Philips Semiconductors Dresden AG ("Philips") for the supply of goods and/or services by your company (hereafter referred to as "Supplier"). Each such agreement or purchase order shall be referred to herein as the "Agreement". As used herein, the term "goods" shall include both tangible and intangible goods, including software, service requirements, spare parts and any related software and/or documentation that may accompany the goods. Reference to "goods" shall where appropriate be deemed to include services. The term "Affiliate" shall mean any entity, which, directly or indirectly, controls, is controlled by or is under common control with Supplier or Philips.

These Terms and Conditions shall constitute all of the terms and conditions of any Agreement between Philips and Supplier relating to the purchase by Philips and sale by Supplier of goods unless specifically agreed otherwise in writing by Philips. Any terms and conditions set forth on any document or documents issued by Supplier either before or after issuance of any document by Philips setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by Philips, and any such terms and conditions shall be wholly inapplicable to any purchase made by Philips and shall not be binding in any way on Philips. No Agreement constitutes an acceptance by Philips of any other terms and conditions and Philips does not intend to enter into an agreement other than under these Terms and Conditions. Any changes in these terms and/or the Agreement must be specifically agreed to by Philips in writing.

Any purchase order of Philips is expressly made conditional on Supplier's assent to all of the terms contained in the purchase order without deviation. Acceptance by Supplier of a purchase order may be evidenced by (i) Supplier's written or verbal assent or the written or verbal assent of any representative of Supplier, (ii) Supplier's delivery of the goods, or (iii) other conduct by Supplier or any representative of Supplier consistent with acceptance of the purchase order.

2. TIMING, CHARGES, REPORTING, AND RIGHT TO AUDIT. Time is of the essence for the purposes of Supplier's obligations under the Agreement. In the event Supplier for any reason anticipates any difficulty in complying with any agreed delivery date or otherwise in accordance with any requirement of the Agreement, Supplier shall promptly notify Philips in writing. Supplier shall use its best efforts to accommodate any reasonable request by Philips to reschedule confirmed delivery dates, or to change other parts of any Agreement. Upon Philips' request Supplier shall without delay provide information in writing concerning the status of any order, shipments due and payments and such other items relating to the business flow between Supplier and Philips as Philips may request. Supplier undertakes to inform Philips immediately when it anticipates constraints on its capacity to supply goods as ordered by Philips, in which case Supplier will provide suitable assurances to Philips that its requirements will be adequately serviced.

Supplier and its subcontractors shall keep accurate records and books of accounting showing all charges and related expenses incurred in the services hereunder. Said records shall be maintained in conformance with generally accepted accounting principles and procedures. Philips shall have the right to inspect such records and perform audits for three (3) years from the date of delivery, on Supplier's or its subcontractors' premises during business hours, or to assign said audits to outside parties.

3. DELIVERY. All goods shall be delivered Delivery Duty Paid ("DDP", latest version of Incoterms as issued by ICC, Paris, France) and risk and title to the goods (free and clear of any encumbrances) shall pass to Philips on delivery, unless expressly otherwise agreed in writing by Philips. Supplier shall make no deliveries before the agreed delivery date(s) and Philips shall not be liable for any costs caused by or related to production, installation, assembly, commissioning or any other work related to such goods prior to delivery, except as explicitly agreed to by Philips. Where the Agreement provides for installation, commissioning or any other work to be carried out by Supplier such work shall be executed with good workmanship and using proper materials. As a minimum requirement, such goods shall comply with all applicable quality and certification standards. Supplier shall pack, mark and ship the goods in such manner as to prevent damage during transport and which facilitates unloading, handling and storage. For all software, including without limitation device drivers, firmware and any

necessary software for the proper operation and support of the goods (collectively “Software”) Philips and its Affiliates are granted a perpetual, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide right and license to use, reproduce, prepare derivative works of and distribute the Software in connection with Philips' distribution and support of the goods including without limitation distribution in electronic form (e.g. via Philips' website). Supplier agrees to provide all updates and modifications to the Software to Philips during the term of the Agreement without additional charges. Any license fees for Software shall be included in the purchase price or any other amounts payable under the Agreement.

4. **WARRANTIES.** Without prejudice to any warranty extended, express or implied, by law, Supplier expressly warrants and represents to Philips that all goods to be supplied to Philips shall be new, of good quality, design, materials, construction and workmanship, and that all goods conform strictly to the specifications, approved samples, industry standards and all other requirements of the Agreement, and are suitable for the intended purpose. In the case of non-compliance with this warranty, Philips may, at its discretion and without prejudice to any other right or remedy available under the Agreement or at law, reject the goods which do not comply with the provisions of the first sentence of this section 4 (hereinafter referred to as goods having a “defect” or “defective goods”) by written notice to Supplier. In the event of such rejection or if Philips detects any goods having a defect after acceptance thereof, Philips, at its option, shall be entitled to a full refund of the purchase price of the defective goods, or may require Supplier to remedy promptly the non-conformance or to replace the defective goods. In such event Supplier shall be responsible for and indemnify Philips against and shall hold Philips harmless from any and all cost of repair, replacement and transportation of the defective goods, as well as for all costs and expenses (including, without limitation, recall, inspection, handling and storage costs) and damage incurred by Philips in connection with such defective goods. Risk to the goods shall pass to Supplier as from the notice of rejection. Supplier will provide out of warranty service to Philips and its Affiliates at commercially reasonable prices for a period of five (5) years after the last date of manufacture of the goods.

5. **EPIDEMIC DEFECT.** Supplier warrants that the goods will be free from epidemic defects. An “epidemic defect” is a defect which appears in more than half a percent (0.5%), or any lower percentage as specified in the specifications, of the goods of the same or substantially the same type delivered by Supplier to Philips or its Affiliates within the epidemic defect period as stated in the relevant specifications, or if no such period is stated, within any consecutive period of three (3) months, and which defect is either similar or substantially similar or has similar or substantially similar cause. In the event of an epidemic defect, Supplier shall urgently and at its costs and expense repair or replace goods delivered to Philips which show such epidemic defect within the reasonably expected life time of such goods and Supplier shall further indemnify Philips for all losses and damages incurred by Philips, including without limitation all costs and damages in relation to recall of any goods or products in which the goods are used from the market (whether defective or not) in relation to the epidemic defect.

6. **PAYMENT.** Subject to acceptance of the goods by Philips, payment shall be made upon a properly submitted invoice at the end of the second month following the date on which the goods are delivered or (if applicable) installed and commissioned or ninety (90) days from the date on which the goods were delivered, or installed and commissioned, whichever is later. Supplier shall accept payment for the goods regardless whether payment is made by Philips or any of its Affiliates. Philips shall, at all times, have the right to set-off any amounts owed by Supplier or any of its Affiliates to Philips or any of its Affiliates against amounts owed by Philips or any of its Affiliates to Supplier or any of its Affiliates. Supplier acknowledges and agrees that any debt of Philips to Supplier may be paid on behalf of Philips by any of its Affiliates and/or any third party designated by Philips. Supplier will treat such payment as if it were made by Philips itself and Philips' debt to Supplier will automatically be satisfied and discharged for the amount paid by such Affiliate or third party.

7. **PRICES.** All prices are inclusive of all taxes and duties except to the extent the same are to be borne by Philips pursuant to the applicable Incoterms. All such taxes and duties deemed included in the price shall be borne by Supplier, and Supplier shall pay such taxes and duties itself or, where these have been paid by Philips, reimburse Philips for such taxes and duties. Supplier warrants that the prices for goods will not be less favorable than prices applicable to sales by Supplier to any other customer purchasing like quantities of substantially comparable products.

8. **INSPECTION.** Philips shall have the right to inspect or test the goods at all times and places. Payment, inspection, testing or acceptance of any goods by Philips shall not relieve Supplier of any of its obligations under the Agreement, nor shall it constitute acceptance or approval of any goods or constitute or operate as a waiver of any defect, nonconformity or any rights or remedies available under the Agreement or at law.

9. **DRAWINGS, TOOLS AND MATERIALS.** Any specifications, drawings, information, tools, moulds, masks, jigs, dies and other materials furnished to Supplier or funded or paid for by Philips (whether separate or as a part of the unit price), in whole or in part, shall (i) remain or become as of the moment of completion thereof, Philips' property, provided the risk therefor (including risks of loss or damage) remains with Supplier until delivery to Philips, (ii) if use thereof by Supplier is allowed by Philips, be used exclusively for the purposes of the Agreement, be properly used, maintained and kept in good working condition at Supplier's expense, (iii) be clearly marked as Philips' property and be kept in separate storage when not in use, and (iv) be delivered to Philips promptly on Philips' demand. Supplier shall inform any third parties who might seek recourse thereon of Philips' proprietary right; Supplier shall immediately inform Philips of any such event. Supplier shall take out adequate insurance, mentioning Philips as beneficiary, for all property of Philips in the possession of Supplier.

10. **INDEMNIFICATION.** Without prejudice to any other right or remedy available to Philips under the Agreement or at law, Supplier shall indemnify and hold Philips and its Affiliates and their successors and assigns, harmless from and against all liabilities, claims, suits, losses, damages, costs and expenses (including reasonable attorney's fees), whether direct or indirect, arising from or relating to a third party's claim arguing that the goods constitute(d) infringement, violation or misappropriation of any intellectual property right or other proprietary right of a third party. Without prejudice to any other right or remedy available to Philips under the Agreement or at law, Supplier (1) shall procure the right for Philips to continue to use the goods at no extra costs to Philips, and (2) agrees that it will indemnify and hold Philips, its Affiliates and their successors and assigns harmless from and against all liabilities, including without limitation product liability, claims, losses, damages, costs and expenses (including reasonable attorney's fees), whether direct or indirect (including, without limitation, loss of profits), arising from or relating to Supplier's (or its officers', employees', agents' or subcontractors') failure to comply with any of its obligations under the Agreement.

Supplier represents and warrants that, to the best of its knowledge after proper due diligence and inquiry, software or other goods to be provided to Philips for use or distribution by Philips (including in Philips' product packages or through a download from Philips' website, or otherwise) does not include any portion of any Open Source Software. Supplier agrees that it will defend, indemnify and hold harmless Philips and its customers against any and all losses, damages, costs and expenses arising from a breach by Supplier of any of its obligations or representations hereunder, including, without limitation, any third party claims in connection with any such breach.

For the purpose of this representation and warranty, the term Open Source Software means:

- (i) any software that requires as a condition of use, modification and/or distribution of such software, that such software:
 - (a) be disclosed or distributed in source code form;
 - (b) be licensed for the purpose of making derivative works; and/or
 - (c) can be redistributed only free of enforceable intellectual property rights (e.g., patents); and/or
- (ii) any software that contains, is derived in any manner (in whole or in part) from, or statically or dynamically links against any software specified under (i).

For the purpose of this representation and warranty, by means of example and without limitation, any software modules or packages licensed or distributed under any of the following licenses or distribution models shall qualify as Open Source Software:

- GNU's General Public License (GPL) or Lesser/Library GPL (LGPL),
- the Artistic License,
- the Mozilla Public License,
- the Common Public License,
- the Sun Community Source License (SCSL), and

- the Sun Industry Standards Source License (SISSL).

11. CONFIDENTIAL INFORMATION. Supplier agrees to treat as confidential and to use only for the purposes of the Agreement all information, including but not limited to technical and commercial information, which is provided “as is” in whatever form or medium by or on behalf of Philips and of its Affiliates and to give access to such information only on a need to know basis to its employees and not to transfer, publish, disclose or otherwise make available such information or any portion thereof to any third party without Philips' prior written consent. All information shall remain Philips' property and no licenses or rights are granted in any such information and Supplier shall, upon Philips' demand, promptly return to Philips or destroy all such materials and information, not retaining any copies thereof, upon Philips' demand. Supplier shall not use the name, logo, trademark, or any other reference to Philips, either direct or indirect, in press releases, advertisements, sales literature or other publications and shall not disclose the existence or the terms and conditions of the Agreement, without the prior written consent of Philips.

12. INTELLECTUAL PROPERTY RIGHTS. Supplier agrees that any information, drawings, know-how, specifications, designs, concepts, techniques, developments, inventions, technologies and other work products generated or developed in the course of work performed under the Agreement by Supplier and any intellectual property and other proprietary rights therein or thereto shall vest in Philips. Supplier assigns or shall cause to be assigned to Philips all right, title and interest to any and all such items and rights and to do everything necessary to perfect such rights and to protect Philips' interest therein. Supplier shall inform any third parties who might seek recourse thereon of Philips' proprietary rights; Supplier shall immediately inform Philips of such an event.

13. TERMINATION. Philips may terminate all or any part of its obligations under any Agreement to purchase or accept goods at any time for its convenience upon written notice to Supplier. If Philips provides the written notice to Supplier at least thirty (30) days prior to the specified shipping date of the relevant goods, Philips shall have no liability for the termination. If Philips terminates the Agreement on less than thirty (30) days notice, Philips and Supplier will negotiate a reasonable termination charge, if any, based on all appropriate factors, including, without limitation, the percentage of work performed by Supplier prior to termination, Supplier's ability to resell or reuse the goods or services, and market conditions prevailing at the time of termination. Supplier has a duty to use its best efforts to mitigate any damages or losses resulting from a termination by Philips. Philips shall have the right to audit all elements of the termination charge and Supplier shall make available to Philips on request, all books, records and papers relating thereto.

If Supplier fails to comply with any obligations of the Agreement, Supplier shall be in default without further notice being required. In the event of default, insolvency or bankruptcy proceedings are instituted against Supplier (including voluntary insolvency or bankruptcy proceedings), Supplier is liquidated or dissolved, any attachment is made over the assets of Supplier or on its behalf, Supplier makes an unauthorised assignment for the benefit of creditors, or any other person or entity than the person or entity having control over Supplier at the date of the Agreement acquires control over Supplier, Philips shall be entitled to rescind or terminate the Agreement, in whole or in part, without prejudice to any other rights or remedies available to Philips under the Agreement or at law (including, without limitation, the right to seek damages). If Philips for any reason anticipates any difficulty for Supplier in complying with any obligations of the Agreement, Philips shall be entitled to require Supplier to remedy such non-compliance within a period to be set by Philips in its discretion.

All provisions of the Agreement destined to survive the dissolution, termination or expiration thereof shall survive such dissolution, termination or expiration.

14. CONTINUITY OF SUPPLY. In the event that Supplier is in default under any Agreement, Philips may notify Supplier of its intent to have the goods manufactured (or services performed) directly by Supplier's designated manufacturer or subcontractor (hereafter “Subcontractor”) or by any third party designated by Philips as stipulated below if such default is not remedied within fourteen (14) days of Philips' notice or if within same period no precautions are taken by Supplier to Philips' reasonable satisfaction to prevent future defaults with the same or substantially similar cause. If Supplier does not remedy such default within such fourteen (14) day period, Philips will have the right to have the affected goods manufactured or services performed directly for Philips by the Subcontractor. At the

same time Philips provides notice to Supplier, Philips will have the right to contact the Subcontractor and work with the Subcontractor to ensure that the Subcontractor will be ready to ship goods or perform the services to Philips immediately if Supplier does not cure the default or does not take precautions to Philips' reasonable satisfaction to prevent future defaults with the same or substantially similar cause within the aforesaid period of fourteen (14) days. In the event that Supplier does not use a Subcontractor for production of the goods or performance of the services or the Subcontractor is unable or unwilling to manufacture and sell the goods or perform the services directly to Philips, Supplier will immediately provide to Philips all materials, specifications and other items necessary to enable Philips, or a third party designated by Philips, to manufacture, support, distribute, license and sell the goods or perform the services ("Materials"). In addition, Supplier grants to Philips a worldwide, royalty free, irrevocable, non-exclusive right, under all necessary intellectual property rights, to: (i) use, execute, reproduce and prepare derivative works of the Materials for the purposes of making, manufacturing and supporting the goods and performing the services, (ii) distribute and sell such goods, and (iii) authorize third parties to do any of the foregoing on Philips' behalf. The Materials will be provided to Philips' third party manufacturer or service provider under a non-disclosure agreement and such third party manufacturer will only be permitted to use the Materials to manufacture the goods or perform the services for Philips. Supplier agrees to extend its warranty and indemnity obligations as set forth under sections 4 and 10 of these Terms and Conditions, to any goods manufactured or services performed by Subcontractor or a third party pursuant to the provisions of this section 14.

15. **COMPLIANCE WITH LAW.** Supplier represents and warrants to Philips that the goods will and have been designed, manufactured and delivered and/or the services will have been performed in compliance with all applicable laws and regulations (including, without limitation, environmental, health and safety laws and regulations and any Philips policies or guidelines on the environment and banned substances from time to time informed to Supplier). In the event of dangerous or hazardous goods, Supplier shall provide to Philips written and detailed specifications of the composition of such goods and of all laws, regulations and other requirements relating to such goods in order to enable Philips to properly transport, store, process and use such goods.

16. **USE OF TRADEMARKS, TRADENAMES.** Supplier shall use any trademark, tradename or other indication in relation to the goods, whether owned by Philips and/or its Affiliates, Supplier or any third party, only in accordance with Philips' instructions or prior written approval and solely for the purposes expressly specified by Philips in writing. Supplier shall not have nor obtain any right, title or interest in or to any Philips' or its Affiliates' owned trademarks, tradenames or other indications. All rights related to or resulting from the use by Supplier shall inure to the benefit of Philips and its Affiliates. Supplier herewith acknowledges all rights, title and interest of Philips and/or its Affiliates in respect of and to the Philips' and/or its Affiliates' owned trademarks, tradenames and other indications.

17. **SUBCONTRACTING AND ASSIGNMENT.** Supplier shall not subcontract, transfer or assign any of its rights or obligations under the Agreement to any third party or any of its affiliates without the prior written consent of Philips. In Supplier is permitted to subcontract any of its obligations hereunder, it shall remain fully responsible and liable for the proper performance of its obligations under any Agreement. Philips may assign any Agreement to any of its Affiliates upon written notice to Supplier.

18. **NO WAIVER.** No waiver by Philips of any breach of any condition, covenant or term of the Agreement shall be effective unless it is in writing and no failure or delay by Philips in enforcing any provision of the Agreement or in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

19. **EXPORT CONTROLS.** Supplier agrees that it will not export or re-export, directly or indirectly, any of Buyer's items, (goods, software, incl. source codes, technology or technical services), without complying with all applicable international and national export control laws, including but not limited to the US Export Administration Regulation and the US International Traffic in Arms Regulations, for which at the time of export or re-export, an export license or other governmental approval is required, without first obtaining such license or approval. Supplier also agrees to inform Buyer whether or not the Deliverable is US controlled and/or controlled under the export control laws of its own country, and if so, provide NXP with the export control classification number (ECCN).

20. **SUPPLY CHAIN SECURITY.** Buyer operates according to a uniform and company-wide framework on Supply Chain Security in which all applicable requirements of governmental security programs like the U.S. Customs and Border Protection program C-TPAT (Customs Trade Partnership Against Terrorism) and Authorized Economic Operator programs (AEO)) are incorporated. Such programs require security standards from its Supplier as well. It is preferred that NXP's goods related suppliers shall therefore be actively involved in the governmental Supply Chain Security Programs, like CTPAT, AEO, Air Security and or similar governmental programs and or shall have measures in place (internal Supply Chain Security Policy and Program) in order to ensure goods are produced, stored, prepared, packed, loaded in and transported from safe business premises, to ensure goods are protected against unauthorized intervention during production, storage, preparation, packing loading and transport, and to ensure goods are forwarded and shipped by authorized third parties.

21. **CONSEQUENTIAL DAMAGES.** IN NO EVENT SHALL SUPPLIER BE ENTITLED TO LOSS OF PROFITS, REVENUE, GOODWILL OR PRODUCTION DOWNTIME, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES EVEN IF PHILIPS IS ADVISED OF THE SAME.

22. **GOVERNING LAW AND DISPUTE RESOLUTION.** The Agreement shall be governed by the laws of Germany. The UN Convention on Contracts for the International Sale of Goods shall not apply to the Agreement. All disputes arising out of or in connection with the Agreement shall first be attempted by Supplier and Philips to be settled through consultation and negotiation in good faith and a spirit of mutual cooperation. All disputes that are not so settled within a period of thirty (30) days from the date the relevant dispute first arose may be submitted to the courts of Hamburg, provided that Philips shall always be permitted to bring any action or proceedings against Supplier in any other court of competent jurisdiction.

23. **SEVERABILITY.** In the event that any provision(s) of the Agreement or these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions hereof.

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