General Conditions for Procurement of Goods

1. Acknowledgement of Order

1.1 Supplier shall either reject or confirm in writing ("Acknowledgement of Order") a purchase order of MOTEON GmbH, Ehrenbergstraße 11, 98693 Ilmenau, Germany ("MOTEON") within 5 (five) working days upon receipt of such purchase order. If MOTEON receives from Supplier neither a confirmation nor a rejection within the time period set forth above, the purchase order shall be deemed to be confirmed by Supplier ("Deemed Acknowledgment of Order"). MOTEON shall be entitled to cancel the purchase order within 5 (five) working days upon receipt of the purchase order by Supplier if Supplier fails to confirm or reject the purchase order within said time period. The purchase order together with the Acknowledgement of Order or Deemed Acknowledgement of Order shall constitute a final agreement by both parties to be bound by and comply with all terms and conditions set forth or referenced herein and on attachments hereto ("Agreement").

1.2 If the Acknowledgement of Order differs from the purchase order, it shall be binding on MOTEON only if and to the extent he has accepted such Acknowledgement of Order in writing. Any general conditions of Supplier shall be binding on MOTEON only insofar as they are consistent with MOTEON's conditions or have been accepted by MOTEON in writing. The acceptance of supplies or services of any nature ("Deliverables") or the making of payments shall not imply acceptance of any conditions.

2. Licenses

2.1 Insofar as Deliverables consist of and/or comprise software, documentation and/or specifications, Supplier grants to MOTEON and its affiliated companies pursuant to § 15 AktG a non-exclusive, transferable, worldwide and timely unlimited right and licence

i) to modify (including the creation of derivative works) such Deliverables (for software provided the software was delivered in source code);
ii) to use and/or reproduce such (modified or unmodified) Deliverables;
iii) to distribute (including lease) and/or make available to the public such (modified or unmodified) Deliverables, provided the intended use of such Deliverables is the use integrated in and/or in connection with MOTEON hardware;
iv) to have the rights granted under Sections 2.1 i) to iii) exercised by persons providing services related to (modified or unmodified) Deliverables and/or MOTEON hardware to persons licensed under Section 2.1; and
v) to sublicense the rights granted under Sections 2.1 i) to iv) to their respective affiliates, distributors and/or customers (both direct and indirect), provided the intended use of such Deliverables is the use on and/or in connection with MOTEON hardware.

2.2 All sublicenses granted pursuant to Section 2.1v) shall provide appropriate protection for Supplier's intellectual property rights to such Deliverables by using equivalent provisions for the sublicense as MOTEON uses to protect its own intellectual property.

3. Time of Performance; Late Performance

3.1 For the purpose of determining the timeliness of supplies or of Supplementary Performance pursuant to Section 9.2, the relevant point in time shall be the date of receipt at the point of destination specified by MOTEON. For the purpose of determining the timeliness of supplies which include installation or erection and for the performance of services the relevant point in time shall be the date of acceptance by MOTEON.

3.2 Supplier shall not be entitled to deliver or perform the Deliverables before the agreed delivery or performance date, unless MOTEON expressly agreed to such delivery or performance in writing in advance.

3.3 If a delay in the Deliverables or a Supplementary Performance pursuant to Section 9.2 is expected to occur, Supplier shall immediately inform MOTEON and ask MOTEON to make a decision on the matter.

3.4 If Supplier fails to meet the agreed delivery or performance date for reasons for which Supplier is responsible, MOTEON shall be entitled, without prejudice to its statutory rights, to charge a contractual penalty amounting to 0.3 % (three tenths percent) of the total amount of the Agreement per each working day of said delay and not exceeding a maximum of 10 % (ten percent) of this amount. If no reservation is declared at the time of acceptance of the Deliverables or Supplementary Performance pursuant to Section 9.2, MOTEON shall nevertheless be entitled to claim the contractual penalty until the final payment.

4. Delivery; Transfer of Risk; Shipment; Place of Performance

4.1 Any deliveries shall be made DAP pursuant to the purchase order according to Incoterms ("Incoterms") unless agreed otherwise.

4.2 The risk of loss or damage to supplies which include installation or erection and to services shall pass onto MOTEON upon time of acceptance by MOTEON and to other supplies at the time of receipt by MOTEON at the point of destination specified by MOTEON, unless MOTEON and Supplier agreed otherwise.

4.3 Unless agreed otherwise, shipping costs shall be charged to Supplier. In case Incoterms are agreed that oblige MOTEON to bear the total or part of the freight costs, shipment shall be effected in the cheapest manner unless otherwise specified by MOTEON. Extra costs incurred due to failure to conform to a shipping specification shall be borne by Supplier. In case Incoterms are agreed that oblige Supplier to bear all freight costs, MOTEON shall be entitled to determine the mode of shipment. Any extra costs incurred for expediting shipment to meet delivery shall be borne by Supplier.

4.4 Shipments of Deliverables for use in a clean room shall be effected in a clean room packaging labelled with the part number and part name.

4.5 Each shipment shall contain packing slips and dispatch notes indicating contents, purchase order number and quantity.

4.6 Over-shipments are subject to prior written confirmation of MOTEON.

5. Export Control; Customs

5.1 Supplier shall inform MOTEON before or upon delivery about export control classification numbers applicable to all goods and services supplied by Supplier, and provide necessary documentation and data together with the goods or services. This includes, e.g., without limitation, identification of applicable export control classification numbers as well as customs declaration information, such as Incoterms, clear product descriptions, harmonized system codes, country of origin, and itemized values, on each invoice, especially in case of consigned materials, equipment or the like. Supplier shall further comply with agreed Incoterms, and also provide preferential treatment declarations conforming to pertinent preferential or free trade agreements, where applicable. Supplier shall further implement effective measures to comply with applicable anti-terrorism and trade regulations.

5.2 MOTEON has the right to audit Supplier's export control and customs procedures and measures at Supplier's expense. Should MOTEON identify deficiencies, MOTEON has the right to, in its sole discretion, either (i) terminate the agreement, cancel all pending orders, and demand return of delivered products; or (ii) require implementation of additional measures at Supplier's expense. Supplier shall indemnify and reimburse MOTEON for all audit costs and all damages caused by identified deficiencies.

5.3 Unless the Incoterm DDP is agreed, MOTEON is responsible for the performance of the import customs clearance. In such case, MOTEON will not refund Supplier or Supplier's service provider any customs duties or service fees when importing or exporting goods. In case the Incoterm DDP is agreed, Supplier is responsible for export and import customs clearance and shall bear all related costs.
In case the purchase order refers to the delivery of goods and services, the customs invoice of Supplier shall show the value of goods separately from the value of the services performed or to be performed. In the customs invoice, the services and goods shall be described in detail, including the place of performance.
In case Supplier cannot show the value of goods and services separately in the customs invoice, Supplier shall supply the goods according to the Incoterm DDP.

6. Invoices

6.1 Invoices shall indicate the purchase order reference and the numbers of every single item. Invoices shall not be payable until this information is complete. Copies of invoices shall be marked as such.

6.2 In the event that MOTEON is using an electronic invoicing system. Supplier is obliged to use this invoicing system for the invoices on its own costs. In such a case, MOTEON will inform Supplier about all requirements of electronic invoicing.

7. Payment

7.1 Unless agreed otherwise, payment shall be effected within 21 (twenty-one) days less 3 % (three percent) discount or within 30 (thirty) days net from receipt of a written invoice.

7.2 The term of payment shall start with the date the Deliverables have been fully effected and a duly issued invoice has been received by MOTEON. Insofar as Supplier is obliged to provide material tests, test certificates, quality related or other documents, the term of payment shall only start with receipt of all such documents by MOTEON. In case of any delivery or performance before the agreed delivery or performance date, the payment term shall start with the agreed delivery or performance date or from receipt of the duly issued invoice, whichever date is later. Discounts shall also be deductible if MOTEON offsets payments against receivables or withholds payments of a reasonable amount due to a defect in Deliverables; the payment term shall start with the complete removal of the defect.

7.3 Payment of Deliverables shall not be construed as an implied admission that the Deliverables comply with contractual terms.

7.4 If Supplier is a merchant, MOTEON shall only be in arrears if it does not make payment upon receipt of a reminder of Supplier which is issued after the payment becomes due.

7.5 Once MOTEON is in arrears, Supplier shall be entitled to demand interest on arrears of 5 % (five percent). Any further claims or rights of Supplier due to delay of payment shall be excluded.

8. Inspection of Incoming Deliverables

8.1 Upon receipt of the Deliverables, MOTEON shall without undue delay inspect all incoming Deliverables and check whether they correspond to the quantity and type ordered and whether there are any externally visible transport damage or other externally visible defects.

8.2 If MOTEON discovers a defect during the abovementioned inspections it shall notify Supplier thereof. This shall also apply if MOTEON discovers a defect at a later date.

8.3 Notifications of defects may be lodged within 1 (one) month after delivery or performance of the supplies or, where the defects are first noticed during working or processing or first use, within 1 (one) month after they were first detected.

8.4 MOTEON shall not be under any commitment to Supplier to make any more inspections and notifications than those specified above.

9. Warranty

9.1 The warranty period shall be 3 (three) years, unless the relevant laws and regulations provide for a longer warranty period. The warranty period shall commence with the transfer of risk pursuant to Section 4.1.

9.2 If defects are detected prior to or upon the transfer of risk or during the warranty period, Supplier shall, at MOTEON's sole option and discretion, either correct such defects at his own expense, or provide new Deliverables free of defects ("Supplementary Performance"). MOTEON's choice shall be made at reasonable discretion.

9.3 If the Supplementary Performance fails within a reasonable period of time to be set by MOTEON, MOTEON shall be entitled to withdraw from all or part of the Agreement without paying compensation or demand a reduction of price or, at Supplier's expense, perform himself or have performed repairs or replacements and claim damages instead of performance of the Agreement. Sections 281 II and 323 II BGB (German Civil Code) shall remain unaffected.

9.4 MOTEON shall be entitled to carry out repairs or have them carried out at Supplier's expense without setting a deadline if Supplier is in delay with the delivery of the Deliverables.

9.5 The same applies in the event that immediate repairs are in MOTEON's interest to avoid delays by MOTEON or because of any other urgency.

9.6 Claims under the above warranty provisions shall lapse 1 (one) year from the time Supplier is notified of a defect, however in no event before the expiration of the warranty period as set forth in Section 9.1.

9.7 The foregoing shall not limit any further or other rights or claims of MOTEON provided by applicable law.

9.8 In case Supplier carries out Supplementary Performance pursuant to Section 9.2, for these Deliverables the full warranty period set forth in Section 9.1 shall start anew.

9.9 Defective Deliverables shall be returned at Supplier's expense and risk.

10. Liability for the Infringement of Intellectual Property Rights

Supplier guarantees that no intellectual property rights conflict with the use of the Deliverables provided in the Agreement.

11. Subcontracting to Third Parties

Subcontracting to third parties shall not be permissible without MOTEON's prior written consent. In case of subcontracting without MOTEON's prior written consent, MOTEON shall be entitled to withdraw from all or part of the Agreement and to claim damages.

12. Material provided by MOTEON

12.1 Material provided by MOTEON to Supplier shall remain the property of MOTEON and shall be clearly marked and stored separately at no cost for MOTEON. The material shall only be used for MOTEON's purchase orders. Supplier shall compensate MOTEON for depreciation in value or loss. This shall also apply to material provided for and on Supplier's account for a specific purchase order.

12.2 Supplier shall process or transform the material for MOTEON who shall become the direct owner of the new or transformed item. If this is prohibited by law, MOTEON and Supplier agree, that MOTEON shall at all times during processing or transformation become the owner of the new item. Supplier shall apply due and proper care in keeping the new item at no cost to MOTEON.

13. Tools, Patterns, Samples, Secrecy, etc.

Tools, patterns, samples, models, sections, drawings, standards, forms, documents and gauges, etc. provided by MOTEON to Supplier, as well as items made together with or for MOTEON, shall not be passed on to third parties nor used for purposes other than those specified in the Agreement without MOTEON's prior written consent. They shall be safeguarded against unauthorized inspection or use. Subject to any further rights, MOTEON shall be entitled to demand their return to MOTEON, if Supplier violates this clause.
Supplier is not entitled to disclose information to third parties received from MOTEON, unless such information is of a general nature or was otherwise lawfully in his possession. Where MOTEON has agreed to purchase orders being passed on to third parties, corresponding confidentiality obligations shall be imposed on such third parties in writing by Supplier.

14. Insurance

Supplier is obliged to ensure transit insurance according to the agreed risk transfer.

15. Special Right of Termination

15.1 If Supplier ceases payment, a provisional administrator in insolvency is appointed or insolvency proceedings are initiated, MOTEON shall be entitled to give notice to terminate the Agreement in full or in part or to withdraw from the Agreement. In such a case MOTEON shall be entitled to use available equipment or Deliverables which have already been provided by Supplier in order to continue the work, in return for appropriate payment.

16. Compliance with Laws; Corporate Social Responsibility; Environmental Protection, Safety and Health (ESH); Audit

16.1 Supplier shall comply with all laws, rules and regulations applicable (including in the country of origin, country of receipt, country of shipment, and in the Infineon-identified country of destination, if provided) to the manufacture, sale and supply of the Deliverables or otherwise in performance of the Agreement, including without limitation laws, rules, and regulations regarding labor standards, safety and health, and protection of the environment. In addition, Supplier shall ensure that third parties according to Section 11 comply with these laws, rules, and regulations.

16.2 Furthermore, Supplier shall comply with the currently applicable version of the Supplier Code of Conduct of MOTEON available through the following link: www.infineon.com/contact-us/procurement, which might be amended from time to time based on applicable legal requirements. Supplier shall respect the principles of the UN Global Compact.

16.3 Supplier shall comply with the applicable ESH requirements and requirements regarding the employment of foreign personnel during the performance and fulfilment of the Agreement and at its cost be responsible for providing and securing any relevant permits or licenses required by applicable law.

16.4 In case that the Deliverables are classified as hazardous according to the latest version of the CLP regulation (EC) 1272/2008, Supplier shall be obliged to put the applicable labelling in place. Prior to the first delivery Supplier shall provide MOTEON with a Material Safety Data Sheet (MSDS) according to the latest version of the REACH regulation (EC) 1907/2006. In case of any changes, an updated MSDS that highlights the changes shall be provided to the relevant procurement department of MOTEON by Supplier. On request, Supplier shall provide MOTEON with any additional information necessary to guarantee appropriate ESH measures. Radioactive substances shall be declared in advance. Supplier shall comply with any legal requirements related to dangerous goods including the European Dangerous Goods Transport Requirements (ADR). In this respect, Supplier shall pay attention to the fact that labelling according to ADR can deviate from the hazardous substances labelling according to the latest version of the CLP regulation (EC) 1272/2008 and that the respective labels for dangerous goods are in place.

16.5 MOTEON and/or any third party authorized by MOTEON shall be entitled to conduct audits at Supplier's premises and production sites in order to verify Supplier's compliance with the requirements according to this Section 16.

16.6 In addition to Section 16.5 Supplier shall support any review, audit or investigation duly requested by the European Commission, European Court of Auditors and/or the European Anti-Fraud Office.

17. Declaration of Conformity (CE) and Radiation Safety

In case that the point of destination is located in a country within the European Union, Supplier shall ensure and warrants that the Deliverables, if they consist of or comprise units, machines or equipment (or parts thereof) pursuant to the applicable laws and regulations, comply with the applicable CE requirements and are, if required, CE certified. Supplier shall provide a corresponding declaration of conformity to MOTEON. In case that any laws or regulations regarding to radiation safety requirements apply to the Deliverables, Supplier shall provide MOTEON with the whole set of information necessary to obtain the respective radiation safety permits immediately after conclusion of the Agreement.

18. Applicable Law, Venue

18.1 The Agreement shall be governed by and construed in accordance with the law in force in Germany without reference to its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.

18.2 The exclusive place of jurisdiction for all legal disputes arising out of or in connection with the Agreement shall be Munich (Landgericht München I), Germany. However, nothing in the Agreement shall preclude either Party from seeking interim measures of protection in any court of competent jurisdiction.

19. Miscellaneous

19.1 Supplier may not assign the Agreement, transfer its obligations or assign its rights hereunder without the prior written consent of MOTEON.

19.2 Supplier understands that Infineon relies on the uninterrupted availability of the Deliverables. Therefore, Supplier may only exercise any right of retention, if and to the extent:

i) its counterclaims are not disputed by Infineon or are finally awarded by a court of competent jurisdiction, and

ii) Supplier has notified such retention in writing at least 10 (ten) days in advance.

Additionally, Supplier may exercise any rights or remedies it may have in connection with or as a result of any dispute with Infineon only in relation to such Deliverables which gives cause to any such dispute.

19.3 None of the rights and remedies granted to MOTEON under the Agreement shall be exclusive and prevent MOTEON from rights and remedies granted under the Agreement or governing law.

19.4 Supplier shall not make any public announcement, press release, industry trade magazines announcement or other form of communication to the press regarding the collaboration between MOTEON and Supplier without MOTEON'S prior written consent.

19.5 The provisions of the Agreement may not be modified, amended, nor waived, except by a written instrument duly executed by the parties. The requirement of written form itself can only be waived by mutual written agreement.

19.6 The effectiveness of the Agreement shall not be impaired if any provision of the Agreement should be completely or partially invalid or unenforceable. In this case, the parties shall agree on a provision that meets the economical intention of the invalid or unenforceable provision.

19.7 The Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all previous communications, discussions, understandings, agreements and negotiations between the parties with respect to such subject matter hereof.