General Conditions for Procurement of Goods

1. Acknowledgement of Order

1.1 Supplier shall confirm in writing (“Acknowledgement of Order”) a purchase order of Infineon Technologies Austria AG, Siemensstraße 2, 9500 Villach, Austria (“Infineon”) within 5 (five) working days upon receipt of such purchase order. If Infineon receives no acknowledgment within the time limit stated above, Supplier shall be deemed to be confirmed by Supplier (“Deemed Acknowledgement of Order”). Supplier shall confirm any purchase orders in writing and the date of 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 constitutes a final and binding offer, to be performed in full, and comply with all terms and conditions set forth herein and on attachments.

1.2 If the Acknowledgement of Order differs from the purchase order, it shall be binding on Infineon only if and to the extent he has accepted such Acknowledgement of Order in writing. Any general conditions of Supplier shall be binding only if and to the extent Supplier agreed otherwise.

2. Licenses

2.1 Infineon as Deliverables consist of and/or comprise software, documentation and/or services related to (modified or unmodified) Deliverables and/or infineon hardware. §§ 189a Z 6-8 UGB a non-exclusive, transferable, worldwide and timely unlimited right and license:

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 (for software provided software was provided in object code);
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 of such Deliverables in connection with connection with Infineon 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 Infineon hardware to persons licensed under Section 2.1 (i) and (ii) and
v) to sublicense the rights granted under Sections 2.1 (i) to (iii) to their respective affiliates, licensees and sublicensees, provided the intended use of such Deliverables is the use on and/or in connection with Infineon hardware.

2.2 All sublicenses granted pursuant to Section 2.1 shall be in accordance with the intellectual property rights to such Deliverables by using equivalent provisions for Supplier's intellectual property rights to such Deliverables by using equivalent provisions for the sublicense as Infineon 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 Infineon. 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 acceptance by Infineon.

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

3.3 If the agreement is for Deliverables or a Supplementary Performance pursuant to Section 9.2 is expected to occur, Supplier shall immediately inform Infineon and Infineon shall make a note of the expected delivery date.

3.4 If Supplier fails to meet the agreed delivery or performance date for reasons for which Supplier is responsible, Infineon shall be entitled, without prejudice to its statutory rights, to charge a contractual penalty amounting to 1.3 % (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, Infineon shall nevertheless be entitled to claim the contractual penalty until the final payment.

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

4.1 All deliveries shall be made DAP pursuant to the purchase order according to Incoterms 2020. Unless otherwise specified by Infineon, the delivery terms shall be in accordance with Article 2.1; and

4.2 The prices quoted in the purchase order include, in case of consumer goods, all taxes, which include installation or erection and to services shall pass onto Infineon upon time of acceptance by Infineon and to other supplies at the time of receipt by Infineon at the point of destination specified by Infineon, unless Infineon and Supplier agree otherwise.

4.3 Unless agreed otherwise, shipping costs shall be charged to Supplier. In case Incoterms are agreed to under Articles 2.1 to 2.4, the transportation costs shall be charged to Supplier in case Incoterms are agreed to under Articles 2.1 to 2.4, the transportation costs shall be charged to Supplier. In case Incoterms are agreed to under Articles 2.1 to 2.4, the transportation costs shall be charged to Supplier. In case Incoterms are agreed to under Articles 2.1 to 2.4, the transportation costs shall be charged to Supplier.

4.4 Shipments of Deliverables for use in a clean room shall be effected in a clean room packaging and shall pass onto Infineon upon time of acceptance by Infineon and to other supplies at the time of acceptance by Infineon.

4.5 Each shipment shall contain packing slips and dispatch notes indicating contents, 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 constitutes a final and binding offer, to be performed in full, and comply with all terms and conditions set forth herein and on attachments.

5.1 Supplier shall inform Infineon before or upon delivery about export control classification

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 Supplier shall ensure Infineon 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, Infineon 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 least 3 % (three percent) discount or within 60 (sixty) days from receipt of a written invoice.

7.2 If the agreed delay or performance date, the payment term shall start with the agreed delivery or performance date, the payment term shall start with the agreed delivery or performance date. If no performance date is specified, the payment term shall start with the date of the last delivery. Discounts shall also be deductible if Infineon offsets payments against receivables or withholds payment of a reasonable amount due to a defective in Deliverables, the payment term shall start with the date of the completed repairs or replacements.

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

7.4 If Supplier is a merchant, Infineon 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.

8. Inspection of Incoming Deliverables

8.1 Upon receipt of the Deliverables, Infineon shall undertake a visual inspection of 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 no defect is detected prior to or upon the transfer of risk or during the warranty period, the defects shall be considered as non-existent.

9. Warranty

9.1 The warranty period shall be three years, unless the relevant laws and regulations provide 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 Infineon’s sole option and discretion, either correct such defects at his own expense, or provide new Deliverables free of defects (“Supplementary Performance”). Infineon’s choice of remedy will be made in writing.

9.3 If the Supplementary Performance fails within a reasonable period of time to be set by Infineon, Supplier shall be responsible for any damages and losses which are not caused by Supplier's fault. Such damage and losses include, but are not limited to, replacement of damaged material; compensation or demand a reduction of price or, at Supplier's expense, performance himself or have performed repairs or replacements and claim damages instead of performance of the Agreement. The Agreement shall be supplemented by the warranty provisions corresponding to the warranty period agreed by the parties. Supplier shall pay back to Infineon in full all the expenses and costs incurred in connection with the warranty and be liable for any damages and losses, and be required to perform additional work at Infineon’s request.

9.4 Infineon shall not be entitled to claim costs for repairs or replacements and claim damages instead of performance of the Agreement. The Agreement shall be supplemented by the warranty provisions corresponding to the warranty period agreed by the parties. Supplier shall pay back to Infineon in full all the expenses and costs incurred in connection with the warranty and be liable for any damages and losses, and be required to perform additional work at Infineon’s request.

9.5 The same applies in the event that immediate repairs are in Infineon’s interest to avoid delays or to prevent further damage.

9.6 Claims under the 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 Infineon provided by 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 supplied by Supplier shall be subject to Infineon’s rights and risk.

10. Liability for the Infringement of Intellectual Property Rights

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

11. Subcontracting to Third Parties

11.1 Supplier shall not be permitted to subcontract without Infineon’s prior written consent. In case of subcontracting without Infineon’s prior written consent, Infineon shall be entitled to withdraw from all or part of the Agreement and to claim damages.

12. Material provided by Infineon

12.1 Material provided by Infineon to Supplier shall remain the property of Infineon and shall be clearly marked and stored separately at no cost to Infineon. The material shall only be used for Infineon’s purchase orders. Supplier shall compensate Infineon 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 Infineon who shall become the direct owner of the new or transformed item if it is prohibited by law. Infineon and Supplier agree, that Infineon shall at all times have exclusive ownership of the new or transformed item. Supplier shall apply due and proper care in keeping the new item at no cost to Infineon. Infineon shall at all times during processing or transformation become the owner of the new or transformed item.

12.3 In case of subcontracting without Infineon’s prior written consent, Infineon shall be entitled to withdraw from all or part of the Agreement and to claim damages.

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

13.1 Tools, patterns, samples, models, sections, drawings, standards, forms and general technical information provided by Supplier to Infineon, as well as items kept together with or for Infineon, shall not be passed on to third parties nor used for purposes other than those specified in the Agreement without Infineon’s prior written consent. They shall be subject to the same restrictions as a contract in connection with Infineon technology, including confidentiality obligations shall be imposed on such third parties in writing by Supplier.

14. Insurance

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

15. Special Right of Termination

15.1 In case of a breach of these general conditions, the preliminary administrator in insolvency or insolvency proceedings are initiated, Infineon is entitled to give notice to terminate the Agreement in full or in part or to withdraw from the Agreement. In such a case, Infineon is entitled to use available equipment or the items already been provided by Supplier in order to continue the work, in return for appropriate payment.

Version: Aug. 22
Infineon Technologies Austria AG
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 Infineon available through the following link: www.infineon.com/procurement. Infineon will notify Supplier in written or electronic form (e.g. through a web tool) of any updated applicable version of the Supplier Code of Conduct. Such update shall be deemed to have been agreed by Supplier unless Supplier sends the objection to such update (including an explanation of such objection) in written or electronic form to Infineon within 15 (fifteen) working days upon its receipt. 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 Infineon 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 Infineon by Supplier. On request, Supplier shall provide Infineon 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 Infineon and/or any third party authorized by Infineon 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 Infineon. In case that any laws or regulations regarding to radiation safety requirements apply to the Deliverables, Supplier shall provide Infineon 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 Austria 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 in the courts competent for 9020 Klagenfurt, Austria. 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 Infineon.

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 Infineon under the Agreement shall be exclusive and prevent Infineon 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 Infineon and Supplier without Infineon'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.