1. Acknowledgement of Order
1.1 Supplier shall either reject or confirm in writing (“Acknowledgement of Order”) a purchase order of Infineon Technologies (Malaysia) Sdn. Bhd., Free Trade Zone, Batu Berendam, 76200 Muar, Johor, Malaysia within 5 (five) working days upon receipt of the purchase order. If Supplier does not confirm in writing the receipt of the purchase order, Supplier is deemed to have accepted the order. If the purchase order is rejected, Supplier shall inform Infineon of its rejection in writing within 5 (five) working days. Supplier shall not make any deliveries of any Goods or Services until such time as the purchase order is confirmed in writing by Supplier. Any conditions and terms 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 Infineon only if Supplier, in accordance with Supplier’s conditions or have been agreed by Infineon in writing. Any conditions and terms set forth and expressly agreed by Supplier and Infineon in writing. In such case, Supplier shall indemnify and reimburse Infineon for all audit costs and all damages caused by Supplier’s non-compliance. Supplier shall ensure that the Goods and Services purchased under any contract is provided to Infineon by the fastest and most efficient means as applicable. Supplier shall further implement effective measures to comply with Incoterm limitations, identification of applicable export control classification numbers as well as customs codes, country of origin, and itemized values, on each invoice, especially in case of consigned duties and/or customers (both direct and indirect), provided that such Consignment is made in accordance with Infineon’s conditions or have been accepted by Infineon in writing. The Consignment shall be subject to the interests of Infineon and Supplier. The Consignment shall not be used nor disposed of in any manner not in accordance with the terms and conditions of the Agreement. Supplier is not entitled to disclose information to third parties received from Infineon, unless such information is of a general nature or was otherwise lawfully in its possession. Where Supplier is not entitled to disclose information to third parties received from Infineon, unless such information is of a general nature or was otherwise lawfully in its possession. Where Supplier is not entitled to disclose information to third parties received from Infineon, unless such information is of a general nature or was otherwise lawfully in its possession. Where Supplier is not entitled to disclose information to third parties received from Infineon, unless such information is of a general nature or was otherwise lawfully in its possession. Where Supplier is not entitled to disclose information to third parties received from Infineon, unless such information is of a general nature or was otherwise lawfully in its possession. Where Supplier is not entitled to disclose information to third parties received from Infineon, unless such information is of a general nature or was otherwise lawfully in its possession. 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the purchase order within such time as specified on the face of the purchase order or, if none is stated, 30 (thirty) days, and if the parties cannot agree within the time frame of the amount of fair compensation to Supplier for such termination:

i) Infineon will pay the price for all items reasonably completed in accordance with the purchase order and not previously paid for unless said item(s) is part of Supplier’s obligations and according to Section

ii) Infineon will pay a fair and proper proportion of the price for items in process and for all materials acquired or contracted for within the time specified on the face of the purchase order for the purpose of fulfilling the purchase order which Supplier is unable to cancel, return or otherwise use in Supplier’s operations.

Should Infineon so desire, cancellation charges shall be subject to Infineon’s audit at Infineon’s expense.

15.3 Infineon’s ability to terminate the purchase order for cause shall be without and prior notice, in the event of any of the following by Supplier:

i) a breach of any covenant, representation or warranty hereunder;

ii) in the event of (a) any change in the active management or ownership of Supplier or (b) the sale, transfer or other disposition of all or substantially all of the assets of Supplier or any affiliate, division or unit of Supplier, either of which Infineon, in its sole discretion, believes may have an adverse effect on Supplier’s ability to fulfill its obligations under the purchase order;

iii) any proceeding in bankruptcy, reorganization or arrangement for the appointment of a receiver or trustee to take possession of Supplier’s assets or any other proceeding under any law for relief from creditors shall be instituted by or against Supplier and (such proceeding is not dismissed within 90 (ninety) days from the filing date) or (b) Supplier shall make an assignment for the benefit of its creditors. In such a case Infineon shall be entitled to use available equipment or Deliverables and services which have already been provided by the 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 disposition, 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 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 an 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 on 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 fulfillment 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 an existing MSDS, 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 Regulation (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, machine 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. Indemnity

18.1 Supplier shall indemnify Infineon against any and all losses, damages, costs, claims, demands, expenses and liabilities whatsoever which Infineon may incur whether directly, or as a result of:

i) personal injury or death of any person or in respect of any loss or destruction or damage to property attributable to any defect in the Deliverables or services or Supplier’s performance of its supply obligations; and/or

ii) any action, claim or demand of any third party by reason of any breach by Supplier of the Agreement or of any terms or obligations of any applicable law or regulation or contractual provision on the part of Supplier relevant to the purchase order or to the goods; and/or

iii) any breach by Supplier of applicable laws in the performance of the purchase order.

In case any performance of the purchase order is required within Infineon’s premises, Supplier shall not use or hire anyone in contravention of any applicable laws and regulations in force and shall comply with all safety and security directives of Infineon at all times.

19. Withholding Tax

19.1 Withholding tax, where applicable under the prevailing tax laws of Malaysia shall be deducted from the payment due to Supplier and the balance of the payment shall be remitted to Supplier.

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 such dispute.

19.3 None of the rights and remedies granted to Infineon under the Agreement shall be exclusive and prevention 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 matters hereof and supersedes all previous communications, discussions, understandings, agreements and negotiations between the parties with respect to such subject matter hereof.

20. Applicable Law, Venue

20.1 The Agreement shall be governed by and construed in accordance with the law in force in Malaysia 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.

20.2 The exclusive place of jurisdiction for all legal disputes arising out of or in connection with the Agreement shall be in the courts of Malaysia. However, nothing in the Agreement shall preclude either Party from seeking interim measures of protection in any court of competent jurisdiction.

21. Miscellaneous

21.1 Supplier may not assign the Agreement, transfer its obligations or assign its rights hereunder.

21.2 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.

21.3 None of the rights and remedies granted to Infineon under the Agreement shall be exclusive and prevention from rights and remedies granted under the Agreement or governing law.

21.4 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.

21.5 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.

21.6 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.

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