1. Acknowledgement of Order
1.1 Supplier shall either reject or confirm in writing (“Acknowledgement of Order”) a purchase order or any other formal communication (“Order”) by Infineon Technologies Romania SCS, Blvd. Dimitrie Pompeu Nr. 6, Sector 2, 20337 Bucharest, Romania within 5 (five) days upon receipt of such purchase order. If Infineon receives from Supplier neither a confirmation nor a rejection within the time agreed by the parties, the purchase order shall be deemed to have been accepted and shall be effective upon the agreed delivery date or within the time period agreed in the Order for Infineon. In the event that the Order together with the Acknowledgement of Order or Deemed Acknowledgement of Order shall contradict the terms and conditions of this contract, then the terms and conditions set forth or referenced herein and on attachments thereto (“Agreement”).

2. Licenses
2.1 Infineon Deliverables consist of and/or comprise software, documentation and/or specifications, Supplier grants to Infineon and its affiliated companies a non-exclusive, transferable, worldwide and timely unlimited right and licence to use, reproduce, distribute, make, use and sell the Deliverables for the purpose of delivering the Deliverables to its distributors and/or customers (both direct and indirect), provided the intended use of the Deliverables is not a competition or infringement of 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 in the Order, without determining the timeliness of supplies which include installation or erection and for the performance of the services the relevant point in time shall be the date of acceptance by Infineon.

3.2 Supplier shall not extend the delivery or performance of the Deliverables before the agreed delivery or performance date, unless Infineon expressly agreed to such delivery or performance in writing. Invoices shall not be payable until this information is complete. Copies of invoices shall be submitted together with the Acknowledgement of Order or Deemed Acknowledgement of Order.

3.3 Late delivery or performance of the Deliverables pursuant to Section 9.2 is expected to occur, Supplier shall immediately inform Infineon and Infineon may make a new delivery date or invoke the termination of the Agreement.

3.4 If Supplier fails to meet the agreed delivery or performance date for reasons for which Supplier is responsible, Infineon shall be entitled to charge a statutory penalty amounting to 0.3 % (three hundredths 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 Any consolidation of goods or partial deliveries shall be at the expense of Supplier. Invoices shall be payable until this information is complete. Copies of invoices shall be submitted together with the Acknowledgement of Order or Deemed Acknowledgement of Order (“Inco terms”) unless otherwise agreed.

4.2 The risk of loss or damage which include installation or erection and to services shall pass onto Infineon upon completion of inspection 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 Inco terms are agreed, all shipping costs, freight, insurance costs and other costs incurred in the delivery of the Deliverables shall be charged to Supplier and shall be specified in the invoice. If Inco terms are agreed, the freight and insurance costs (if applicable) shall be prepaid by Supplier.

4.4 Delivery of Defective Deliverables shall be at Supplier’s cost and risk. Supplier shall assume the risk of loss or damage of the Deliverables in the event of an external cause prior to the agreed delivery or performance date or from receipt of the duly issued invoice, whichever date is later. Supplier shall be liable for any defects which shall be tested or inspected at the place of delivery or performance and not resulted from Supplier’s negligence or intrinsic defect.

5. Exports
5.1 Supplier shall inform Infineon before or upon delivery about export control classification and conditions set forth or referenced herein and on attachments thereto, including the place of performance. 

5.2 Supplier shall inform Infineon before or upon delivery about export control classification and conditions set forth or referenced herein and on attachments thereto, including the place of performance.

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 submitted together with the Acknowledgement of Order or Deemed Acknowledgement of Order.

6.2 In the event that Infineon is using an electronic invoicing system, Supplier shall be obliged to use this invoicing system for all future accounts. In such a case, Infineon will inform Supplier about all requirements of electronic invoicing.

7. Payment
7.1 Unless agreed otherwise, payment shall be within 21 (twenty-one) days less 3 % (three percent) discount from the agreed delivery or performance date. Supplier accepts that Infineon may perform audits of the agreed delivery or performance date or from receipt of the duly issued invoice, whichever date is later. 

7.2 The term of payment shall start with the date the Deliverables have been fully effected and a duly issued invoice is issued. Supplier agrees, as a condition to the grant of credit, to provide Infineon with material tests, test certificates, quality related or other documents, the term of payment shall only start with receipt of all such documents by Infineon. 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. Infineon shall also have the rights to reclaim the value added tax or other tax withheld on the payments of a reasonable amount due to a defect in Deliverables; the payment term shall start with the complete removal of the defect. Infineon shall also be entitled to withhold and set-off payments against any payment due for the sake of any claim.

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, 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.

7.5 Once Infineon is in arrears, Supplier shall be entitled to demand payment on sums 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, Infineon shall without undue delay inspect all incoming Deliverables and check whether they correspond to the quality and type ordered and whether there are any externally visible transport damage or other externally visible defects.

8.2 If Infineon discovers a defect, Infineon has the right to require Supplier to correct the defect in a timely manner. Supplier shall in any event comply with Supplier’s claims without prejudice to its legal rights and shall notify Supplier thereof. This shall also apply if Infineon discovers a defect at a later date.

8.3 Defective Deliverables shall be returned at Supplier’s expense and risk. If a defect is not noticed during working or processing or first use, within 1 (one) month after they were first detected, Infineon shall not be under any obligation to Supplier to make any inspection or 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 delivery date pursuant to Section 4.1.

9.2 Supplier shall be the detector 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”).

9.3 If the Supplementary Performance fails within a reasonable period of time to be set by Infineon, Infineon shall be entitled to withdraw from all or part of the Agreement without considering Supplier’s claim for damages or return of the price paid and/or have performed repairs or replacements and claim damages instead of performance of the Agreement. There is no warranty claim if the defect results from Supplier’s own fault. If the Supplementary Performance in a serious and definite manner or in case of special circumstances that justify the immediate assertion of the aforementioned rights taking into account the interests of Infineon and Supplier, Infineon may demand the transfer of the rights to the corresponding property to Infineon.

9.4 Infineon 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. Supplier shall be liable to Infineon in the amount of damages that result from Supplier’s delay or Infineon’s interest in losing the warranty period.

9.5 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.

9.6 Supplier shall compensate Infineon for the related costs of transportation, dismantlement, gauges, etc. provided by Infineon to Supplier, as well as items made together with or for Infineon, shall not be passed on to third parties nor used for purposes other than those specified in the Agreement. If Supplier carries out Supplementary Performance pursuant to Section 9.2, the supplementary performance shall be regarded as performed free of defects. Supplier shall assume the risk of loss or damage of the Deliverables in the event of an external cause.

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

9.8 The warranty shall not be affected by Infineon’s requirements as to delivery or performance. In the case of delivery or performance being inconsistent with Infineon’s requirements, Supplier shall bear the cost of any supplementary performance and or replacement.

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 undertaking to Supplier shall not be permissible 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 Supplier is obliged to use material provided by Infineon to Infineon’s 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 pass on the material to Infineon who shall become the direct owner of the new or transformed item. If it is prohibited by law, Infineon and Supplier agree, that Supplier shall at all times account to Infineon for the material and shall deliver the material to Infineon. Supplier shall apply due and proper care in keeping the new item at no cost to Infineon.

13. Tools, Patterns, Samples, Secrecy, etc.
13.1 Tools, patterns, samples, models, sections, drawings, standards, forms, documents and gauges, etc. provided by Infineon to Supplier, as well as items made together with or for Infineon, shall not be passed on to third parties nor used for purposes other than those specified in the Agreement.

14. Liability
14.1 Insurance
14.2 Supplier is obliged to ensure transit insurance according to the agreed risk transfer.

15. Special Right of Termination
15.1 In the event that Supplier is in violation of any provision in insolvency is appointed or insolvency proceedings are initiated, Infineon 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 Infineon 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 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 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 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. Radiotoxic 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 Romania 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 the competent Romanian courts of law in Bucharest. 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.