

Infineon Technologies North America Corp.
Terms and Conditions of Sale

1. GENERAL

- 1.1 Contract Terms. These Terms and Conditions of Sale (the "Agreement") shall apply to any offer made by Infineon Technologies North America Corp. ("Infineon") to sell goods to buyer ("Buyer") and/or any order from Buyer accepted by Infineon, and shall govern any sale of the goods to Buyer. Infineon's acceptance of Buyer's order is conditioned on Buyer's acceptance of this Agreement, even if it contains different or additional terms from Buyer's order, and regardless of whether Buyer accepts this Agreement in writing, by implication or by acceptance of and payment for goods sold hereunder, and regardless of when Buyer's order is issued or whether it precedes or follows issuance of this Agreement. All orders submitted by Buyer are deemed to incorporate and shall be subject to this Agreement, subject to any existing written agreement between the parties concerning the subject matter hereof. Infineon objects to and rejects any additional or different terms or conditions proposed by Buyer and any such terms and conditions are null and void and without further effect notwithstanding the acceptance of the order by Infineon.
- 1.2 Acceptance. No order by Buyer shall be binding upon Infineon until the order has been accepted by Infineon in writing and signed by its authorized representative. Acknowledgement of receipt shall not be deemed acceptance of the order.

2. PRICES

- 2.1 Quotations. Unless otherwise stated, all prices quoted by Infineon are based on U.S. dollars and are effective for 30 days from the date of quotation.
- 2.2 Transportation. Transportation shall be Ex Works, in accordance with Incoterms 2000 ("EXW"), shipping point, freight collect with Buyer's designated carrier. If carrier is not designated, Infineon shall choose the carrier. Risk of loss or damage and expense shall be borne by Buyer.
- 2.3 Delay in Acceptance of Delivery. If Buyer postpones the delivery date, Infineon shall have the right to a) adjust the price of the undelivered goods to Infineon's price at the time of shipment and b) charge Buyer for any expenses caused by the delay of shipment.
- 2.4 Escalation. Unless otherwise agreed to in writing, except as to goods to be delivered within 30 days of Infineon's acceptance of Buyer's order, Infineon reserves the right to increase its prices to those in effect at the time of shipment.

3. TAXES

- 3.1 Any sales, use, manufacturer's or other tax which may be imposed upon the sale or use of goods, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction, shall be in addition to the quoted prices and paid by Buyer. If Buyer is exempt from any taxes, Buyer shall furnish to Infineon an appropriate tax exemption certificate, in a form acceptable to the taxing authority.

4. TERMS OF PAYMENT

- 4.1 Due Date. Unless otherwise agreed, terms are net 30 days from the date of invoice. All charges are payable in U.S. dollars.
- 4.2 Late Payment. A service charge of 1½% per month, not to exceed the maximum rate allowed by law, shall be made on any portion of the outstanding balance that is not paid within 30 days after invoice date. Proof of delivery shall be obtained by Buyer from the designated carrier(s).
- 4.3 Infineon may change credit or payment terms at any time should Buyer's financial condition or payment record so warrant.

5. DELIVERY, TRANSFER OF TITLE, RISK OF LOSS, AND SHIPMENT

- 5.1 Delivery Date. Delivery and completion schedules are approximate only and are based on conditions at the time of acceptance of Buyer's order.
- 5.2 Title/Risk of Loss. Unless otherwise agreed to in writing, delivery shall be complete upon transfer of possession to common carrier, EXW shipping point, whereupon title to the hardware and all risk of loss, damage or destruction to the goods shall pass to Buyer.
- 5.3 Partial Shipment. Infineon reserves the right to make partial shipments and to submit invoices for partial shipments.
- 5.4 Overshipment. Infineon may, at its option, increase the aggregate quantity specified in the order acknowledgement to meet standard pack requirements, if any.
- 5.5 Due to supply/demand uncertainties, Infineon may not have sufficient supply of one or more products from its intended source(s) of supply to meet the full requirements of all of its customers, contract or otherwise. Infineon may, at its sole discretion, reduce deliveries of such product(s) on any basis it believes equitable, allowing for such priorities to such classes of customers as it deems appropriate. Such reductions need not be made up.
- 5.6 Infineon shall not accept any returns, except as specified under Section 9.5 (Warranty). Any exception to this shall be at Infineon's sole option and must be accompanied by an Infineon Return Material Authorization number ("RMA").

6. SECURITY INTEREST

- 6.1 Infineon reserves a security interest in the goods until final payment is received by Infineon.

7. CHANGES, RESCHEDULING AND CANCELLATIONS

- 7.1 Orders accepted by Infineon cannot be changed, rescheduled or cancelled without Infineon's written consent. Without limiting any other remedies, if Buyer changes, reschedules or cancels an order without prior consent, Infineon reserves the right to charge Buyer for costs incurred for such order, up to the full sales price of the goods.

8. FORCE MAJEURE

- 8.1 Infineon shall not be liable for its failure to perform any of its obligations hereunder during any period in which performance is delayed by fire, flood, war, embargo, riot, labor strike or unrest, the intervention of any government authority, or any cause beyond the control of such party ("Force Majeure"). The time for performance or cure will be extended for a period equal to the duration of the Force Majeure.

9. WARRANTY

- 9.1 Infineon warrants that the hardware shall be manufactured in accordance with good manufacturing practices, shall conform to specifications, and shall be free of defects of workmanship. If the goods contain software, Infineon warrants the software will not fail to execute its programming instruction due to defects in materials and workmanship when properly installed and used on the hardware designated by Infineon. Infineon further warrants that the Infineon-owned standard software will substantially conform to the applicable specifications. Infineon does not warrant that the software will operate in hardware and software combinations selected by Buyer, meet requirements specified by Buyer, or be error-free or without interruption. INFINEON GRANTS NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO A WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.
- 9.2 Infineon shall at its sole discretion re-test and/or replace the reported faulty goods, EXW warehouse or local Infineon office, as specified by Infineon. Buyer shall pay freight for the

reshipment of repaired or replacement goods. If the replacement goods fail within a reasonable period of time, Buyer is entitled to request price reduction or to cancel the relevant purchase contract and request Infineon to take back the goods delivered (under such purchase contract) and to reimburse the purchase price. Buyer will supply all identifying shipping documents and use for return shipment Infineon's original packing in order to avoid any deterioration of the goods. In addition, Buyer will enclose supporting data detailing the nature of the defect.

- 9.3 The warranty period shall be 12 months for hardware and 90 days for software starting on the date the risk of loss or damage has passed onto Buyer according to Section 5.2.
- 9.4 Paragraph 9.2 is Buyer's sole remedy for breach of warranty. No warranty extended by Infineon shall apply to any goods which have been modified or altered by persons other than Infineon's authorized personnel; to goods that are defective due to misuse, neglect, improper installation, soldering or accident; to goods sold as "used" or "refurbished"; or goods received from any source other than Infineon or its authorized resellers.
- 9.5 This warranty is made on condition that immediate written notice of any defect be given to Infineon and Infineon's inspection reveals that the Buyer's claim is valid under the terms of this warranty. No returns will be accepted by Infineon unless accompanied by an RMA.
- 9.6 Infineon products are not designed or intended for use in online control of aircraft, air traffic, aircraft navigation or aircraft communications; in the design, construction, operation or maintenance of any weapons systems or nuclear facility; or in the design, construction, operation or maintenance of any applications intended to support or sustain life where personal injury or death may occur. Such use of any Infineon goods shall be a Buyer's risk and Infineon disclaims any liability for such use.

10. ASSUMPTION OF LIABILITY; LIMITATION OF LIABILITY

- 10.1 The remedies in this Agreement are Buyer's sole and exclusive remedies. To the extent Infineon is held legally liable to Buyer hereunder (including without limitation with respect to Section 11), Infineon's liability is limited to the amounts paid to Infineon under the relevant purchase contract. In no event will Infineon or its subsidiaries, affiliates, subcontractors and suppliers be liable for any of the following: (a) actual loss or direct damage that is not for a personal injury or damage to tangible property that has been directly caused by the goods, without any modification or misuse and as used based on the written instructions of Infineon; (b) damages for loss of data, or software restoration; (c) damages relating to Buyer's procurement of substitute goods or services (i.e., "cost of cover"); or (d) indirect, incidental, punitive, special or consequential damages, including downtime costs and lost profits or revenues.
- 10.2 Apart from warranties and liabilities expressly stated in this Agreement, Infineon disclaims all liability regardless of the cause in law (including, without limitation, negligence).

11. PATENT, TRADEMARK AND OTHER INFRINGEMENT CLAIMS

If some or all of the goods sold hereunder are made by Infineon pursuant to drawings or specifications furnished by Buyer, should a claim be made that such goods infringe the rights of any third party under patent, trademark or otherwise, Buyer shall indemnify and hold Infineon harmless against any liability or expense, including reasonable attorneys' fees, incurred by Infineon in connection therewith. INFINEON HEREBY DISCLAIMS ANY AND ALL INDEMNITY OBLIGATIONS WITH RESPECT TO GOODS PROVIDED HEREUNDER.

12. SOFTWARE LICENSE

- 12.1 Software provided by Infineon, if any, remains the property of Infineon or its licensors. Unless otherwise provided in a software license agreement between Infineon and Buyer, in which case such agreement shall prevail over the terms set forth in this Agreement, Infineon grants Buyer

a non-exclusive license to use the software in machine-readable form only and only in combination with other goods provided by Infineon. Buyer shall not, under any circumstances, reverse engineer, reverse compile, decrypt or disassemble the software, in whole or in part, except to the extent expressly authorized by statutory law.

13. EXPORT

13.1 It is the sole and exclusive responsibility of Buyer to understand, verify and comply with all export or re-export requirements relevant to any goods, commodities, software or technologies, purchased or received from Infineon. Buyer agrees and confirms that Buyer shall not export or re-export, directly or indirectly, any commodity, software or technology purchased or received from Infineon, including without limitation any item incorporating such commodity, software or technology, to any country, destination or individual for which the U.S. Government or any agency thereof requires an export license or other approval for export or re-export, without first obtaining such license or approval.

14. GENERAL

14.1 Designs and Trade Secrets and Disclosures by Infineon. Any drawings, data, designs, software programs or other technical information supplied by Infineon to Buyer in connection with sales of the goods shall remain Infineon property and be held in confidence by Buyer. Such information shall not be reproduced or disclosed to others without Infineon's prior written consent.

14.2 Assignment. Neither this Agreement nor any rights or duties hereunder may be assigned or delegated to any other person or entity by Buyer, without the express prior written consent of Infineon. Infineon may freely assign this Agreement and/or any of its rights hereunder.

14.3 Modification. This Agreement may not be changed, modified or amended, except in writing signed by authorized representatives of the parties.

14.4 No Waiver. Any waiver of any provision of this Agreement shall not constitute a waiver of any continuing or succeeding breach of such provision, a waiver, or modification of the provision itself or any other rights arising under this Agreement. Moreover, Infineon's failure to object to terms in any communication from Buyer shall not be a waiver of the terms and conditions set forth herein.

14.5 Severability. If any provision of this Agreement is invalid or unenforceable under any applicable statute, regulation, ordinance, executive order or other rule of law ("Law"), such provision shall be deemed reformed or deleted, but only to the extent necessary to comply with such Law, and the remaining provisions of this Agreement shall remain in full force and effect.

14.6 Governing Law. The rights and obligations of the parties under this Agreement shall be governed by the law of the State of California, without regard to its conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods of April 11th, 1980 ("CISG") will not apply.

14.7 Language. This Agreement and any written documentation and proceedings thereto shall be in the English language.

15. ARBITRATION

15.1 Both parties shall attempt to resolve disputes between themselves. Only if this is not possible after a reasonable time, all disputes arising out of or in connection with this Agreement or individual purchase contracts signed hereunder, including any question regarding their existence, validity or termination, shall be finally settled under the Commercial Arbitration Rules of the American Arbitration Association ("Rules") by three arbitrators in accordance with the said Rules.

- 15.2 Each party shall nominate one arbitrator for confirmation by the competent authority under the applicable Rules ("Appointing Authority"). Both arbitrators shall agree on the third arbitrator within 30 days. Should the two arbitrators fail within the above time limit to reach agreement on the third arbitrator, he shall be appointed by the Appointing Authority.
- 15.3 The seat of arbitration shall be San Jose, California. The procedural law of this place shall apply where the Rules are silent.
- 15.4 Notwithstanding the foregoing, Infineon shall have the right to seek injunctive relief in a court of competent jurisdiction to protect its intellectual property rights.
- 15.5 If legal action is taken by Infineon, Buyer shall be liable for Infineon's reasonable attorney's fees plus the other costs of such action.