

Infineon Technologies North America Corp.  
Terms and Conditions of Service

These Terms and Conditions of Service (the "Agreement") shall apply to any offer made by Infineon Technologies North America Corp. ("Infineon") to provide services to buyer ("Buyer") and/or any order for services from Buyer accepted by Infineon, and shall govern any provision of services 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 services provided 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.

No order for services 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.

**1. PRICES: TERMS OF PAYMENT**

- 1.1 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.
- 1.2 Unless otherwise agreed, terms are net 30 days from the date of invoice. All charges are payable in U.S. dollars. 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). Infineon may change credit or payment terms at any time should Buyer's financial condition or payment record so warrant.
- 1.3 Any sales, use, manufacturer's or other tax which may be imposed upon the sale or use of the services and/or deliverables, 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.

**2. SCOPE OF SERVICES**

- 2.1 Infineon shall provide the services and related deliverables, if any, in accordance with the applicable quotation.
- 2.2 Delivery and completion schedules are approximate only. 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.
- 2.3 All pre-existing intellectual property used and any intellectual property developed by Infineon in the performance of the services or provided as part of the deliverables (including, without limitation, any drawings, data, designs, software programs or other technical information supplied by Infineon) shall be owned by Infineon or its licensors and be held in confidence by Buyer. Such information shall not be reproduced or disclosed to others without Infineon's prior written consent.

### **3. WARRANTY**

Infineon warrants that the services shall be performed in a professional and workman-like manner. 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. 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. In the event of a breach of the foregoing warranty, Infineon shall re-perform the services. The warranty period shall be 90 days from completion of the services. The foregoing is Buyer's sole remedy for breach of warranty.

### **4. ASSUMPTION OF LIABILITY; LIMITATION OF LIABILITY**

- 4.1 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 5), 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 services and/or deliverables, 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 deliverables or services (i.e., "cost of cover"); or (d) indirect, incidental, punitive, special or consequential damages, including downtime costs and lost profits or revenues.
- 4.2 Apart from warranties and liabilities expressly stated in this Agreement, Infineon disclaims all liability regardless of the cause in law (including, without limitation, negligence).

### **5. PATENT, TRADEMARK AND OTHER INFRINGEMENT CLAIMS**

Infringement by Buyer. If some or all of the services and/or deliverables provided hereunder are made by Infineon pursuant to drawings or specifications furnished by Buyer, should a claim be made that such services and/or deliverables 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 SERVICES PROVIDED HEREUNDER.

### **6. SOFTWARE LICENSE**

- 6.1 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 the services and/or deliverables 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.

### **7. EXPORT**

- 7.1 It is the sole and exclusive responsibility of Buyer to understand, verify and comply with all export or re-export requirements relevant to any deliverables (including, without limitation, 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 such deliverables purchased or received from Infineon, including, without limitation, any item incorporating such deliverables, 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.

## **8. GENERAL**

- 8.1 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. This Agreement may not be changed, modified or amended, except in writing signed by authorized representatives of the parties. 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. 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. This Agreement and any written documentation and proceedings thereto shall be in the English language.

## **9. GOVERNING LAW; ARBITRATION**

- 9.1 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.
- 9.2 Arbitration. 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. The seat of arbitration shall be San Jose, California. The procedural law of this place shall apply where the Rules are silent. Notwithstanding the foregoing, Infineon shall have the right to seek injunctive relief in a court of competent jurisdiction to protect its intellectual property rights. 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.