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## General Conditions of Sale and Supply of Applied Micro Electronics "AME" B.V.

### 1. Definition of terms

In these conditions, the words below have the following meanings ascribed to them:

- Supplier: Applied Micro Electronics "AME" B.V.  
Other party: The legal or natural person who wishes to conclude or has concluded a contract with the supplier.  
Parties: The supplier and the other party.  
Legal relationship: The contract to be concluded or already concluded between the parties, including any related negotiations, offers and orders to which these conditions apply.  
Product: The supply of goods and/or services and/or the contracting of work, by which the supplier has bound itself to the other party.

### 2. Applicability and interpretation

- 2.1 These general conditions apply to all current legal relationships between the parties.  
2.2 The other party's general conditions, howsoever named, will not apply. Any departure from these conditions cannot be agreed upon except in writing in the form of a contract. Where such a departure has been agreed upon, these conditions will remain fully in force in matters to which the agreed departure does not relate.  
2.3 Where the other party is not an end user of the product and a purchase contract exists between it and the supplier, the supplier will have the right during the term of such a contract to make changes and amend conditions, provided that these changes and amendments do not have any consequences for orders already confirmed in writing by the other party.  
2.4 Where the supplier, in the performance of the contract, uses third-party goods and/or services -- whether or not supplied by these third parties -- to which the conditions of the third parties apply, these conditions will be deemed to form part of the present contract as if they had been literally included in it, with the proviso that everything which the other party is obliged to do under these conditions in respect of the third parties, the supplier in turn is obliged to do in respect of the other party.  
2.5 Any departure agreed upon as described in Article 2.2 will only remain valid during the term of the contract agreed upon in writing.

### 3. Offer and contract

- 3.1 Each offer and price quotation made by the supplier is at all times without obligation and releases it from contracting accordingly, unless otherwise expressly agreed upon in writing.  
3.2 The provisions of the preceding article (3.1) also apply to the contents of information provided with or in connection with the offer. All data/information supplied with an offer remains the intellectual property of the supplier and must be returned at first request.

- 3.3 Each offer is based on the assumption that the contract will be performed by the supplier under normal conditions and during normal working hours. The other party is bound by the order that it has issued; the supplier is not bound until it has acknowledged or accepted the order in writing to the other party, which can also be done by sending an invoice or -- where written acknowledgement or acceptance is not issued -- because a product is provided: the contract enters into force between the parties when the said acknowledgement/acceptance or supply takes place.
- 3.4 The supplier reserves the right to outsource the products to be supplied to third parties or subcontract them from third parties.
- 3.5 Additional work is deemed to be anything which has been done or provided by the supplier by agreement, whether or not set down in writing, with the other party during the performance of the contract in addition to or more than the goods and services as agreed upon in the contract. The other party accepts that the period of supply of goods and/or the completion of services may be affected by this.
- 3.6 If it is stated in the offer that the work is to be carried out on the basis of subsequent costing, the offer amount will be an estimate of the price calculated in good faith and on the basis of information supplied by the other party. If it is found during completion that the costs are likely to exceed the estimated offer amount by more than 10%, the supplier will notify the other party accordingly at the earliest possible stage.
- 3.7 Oral communications, undertakings and agreements have no legal force unless confirmed in writing by the supplier.
- 4. Supply of goods**
- 4.1 Goods are supplied freight paid to the address specified by the other party, unless expressly agreed otherwise.
- 4.2 Goods are transported at the other party's risk, unless arranged by or on behalf of the supplier.
- 4.3 Returns will only be accepted if the other party has received a written acceptance from the supplier. If the other party returns goods without having received a written acceptance from the supplier and the supplier takes delivery of these returned goods and stores them in its warehouse, these goods will only be deemed to have been accepted after the other party has received the relevant acceptance from the supplier. All costs and risks will be borne by the other party.
- 4.4 Where circumstances arise that impede or delay the performance of the contract which are not the supplier's fault and which are at the other party's risk, the supplier will be entitled to charge the other party with any costs and/or loss that may be incurred.
- 5. Prices and rates**
- 5.1 All prices and rates are exclusive of VAT, import duties, other taxes, levies and duties. The prices of products and/or services are based on the purchase prices, wages, wage costs, social security and government levies, freight charges, insurance premiums and other costs applicable at the time of the contract. Rates are exclusive of travel and accommodation expenses. Likewise, installation costs, assembly costs and other costs incurred in connection with the product to be supplied are not included in the price. The supplier reserves the right to charge shipping, administration and handling charges. The cost of express shipments made at the other party's request and COD shipments will always be charged.
- 5.2 Increases in the cost of the product will, as soon as they arise and after written notification from the supplier to the other party, be passed on by the supplier to the other party, unless expressly agreed otherwise.
- 5.3 The supplier is entitled to request the other party to provide security. The supplier is also entitled, before commencing performance of the contract, to request the other party to pay in advance.

**6. Payment and retention of title**

- 6.1 Payment takes place net cash on delivery of the products and/or services to be supplied without any deduction or offsetting, or by deposit or transfer to the bank or giro account specified by the supplier, within 14 days after invoice date. The value date specified on the supplier's bank/giro statements is the determining factor and is therefore designated as the date of payment. If payment has not taken place within the stated time limit, the other party will be legally in default and the supplier will be entitled, within 14 days after invoice date, to charge interest at the legal rate per month or part of a month on the outstanding sum and then to invoice this to the other party.
- 6.2 In the case of part-shipments, the supplier is entitled to invoice each one separately and request payment from the other party within the time specified in Article 6.1.
- 6.3 All costs incurred by the supplier in respect of extrajudicial or judicial debt collection procedures, including all the fees charged by external experts, will be borne by the other party. These costs will be determined on the basis of a minimum of 15% of the total sum due, including the aforementioned interest, for supplies of services and/or products in the Netherlands. Supplies of products and/or services outside the Netherlands are subject to a rate of 20% of the total sum due, including the aforementioned interest. Supplies inside the Netherlands or outside the Netherlands are subject to a minimum charge of the EUR 125.00 in respect of these costs.
- 6.4 Claims do not suspend the other party's payment obligations.
- 6.5 All goods supplied by the supplier will remain its property until such time as full payment has been made for all sums owed by the other party to the supplier.
- 6.6 In the cases referred to in 13.1 of these conditions, the supplier has the right to cancel the product or any part thereof yet to be completed and to claim back as its own property any goods supplied but not yet paid for (in full), offsetting any sums already paid, but without prejudice to any rights to compensation. In these cases, any debts owed by the other party to the supplier will become immediately payable.
- 6.7 The other party will provide, at the supplier's first request, an authority to arrange for the immediate return of items not yet paid for, wherever they may be.
- 6.8 Any product supplied by the supplier may be used by the other party in the course of its normal business but the other party is not permitted to create security interests in these goods or on the proceeds from the sale thereof or to assign debts arising from the sale thereof to third parties.
- 6.9 Where a product supplied by the supplier and not (yet) paid for is sold on, the other party is obliged to retain title therein and assign its claims to the sum due arising therefrom to the supplier, at the latter's first request.
- 6.10 If and so long as the supplier is the owner of the items which it has supplied, the other party is obliged to inform the supplier without delay if one of the situations described in 13.1 of these conditions arises and/or third parties are asserting their rights to these goods, and to indicate to the bailiff seizing the goods, administrator, receiver or third party supplier's property rights.

**7. Delivery dates**

- 7.1 All delivery dates specified by the supplier in offers, acknowledgements and/or agreements have been quoted in good faith and will be adhered to as far as possible but are not binding unless expressly agreed otherwise. In the event that delivery dates have been or are likely to be exceeded, the supplier will notify the other party as soon as possible.
- 7.2 Failure to meet delivery dates for a reason which should not be at the supplier's risk does not give the other party a right to claim compensation, dissolve the contract, reject products, suspend payments or otherwise fail to fulfil its own obligations.
- 7.3 Changes or extensions to the products to be supplied constitute a right to amend the said delivery dates.

**8. Intellectual property**

- 8.1 All intellectual property rights in the products to be supplied or otherwise made available by the supplier will at all times accrue to the supplier or its licensors. The supplier reserves the right to retain the intellectual property rights in all the information that it provides.
- 8.2 The other party is not permitted to use copies of information supplied by the supplier in any form whatsoever other than for its own use, unless the supplier has given the other party its express permission in writing in advance.
- 8.3 The other party is not permitted to remove or alter any indication of intellectual property rights on or in products supplied or otherwise made available by the supplier.
- 8.4 The supplier will take all reasonable precautionary measures to prevent a situation in which the products to be supplied or otherwise made available infringe any third-party intellectual property right applicable in the Netherlands.
- 8.5 If despite this the supplier is to blame for an infringement of such a right, the supplier will in accordance with the provisions of Article 11.3, take back the infringing part of the product and issue a credit for the cost of acquiring the relevant part paid by the other party to the supplier or will ensure that the other party can continue to use undisturbed the item supplied or made available or other equivalent product, subject to the condition that the supplier is notified immediately of the claims, takes the lead and the other party provides the supplier with the necessary information and lends its assistance in fending off the claims.
- 8.6 If the supplier has supplied a product in accordance with designs, drawings or other instructions provided by or on behalf of the other party, the other party will guarantee that no third-party intellectual property rights will be affected. The other party will indemnify the supplier against any claims by third parties in this regard.
- 8.7 The other party is not permitted to copy by any means or disclose to third parties information and/or data made available or otherwise provided by the supplier.
- 8.8 Neither is the other party permitted to copy products supplied by the supplier, by any means, including the manufacture of items which, although deviating from the product supplied by the supplier in one or more aspects, are based on the "unique principle" effect, which is the intellectual property of the supplier.

**9. Confidential information**

- 9.1 The parties will observe strict confidentiality in respect of any information on the supplier's organisation and the other party's organisation and any information on the products to be supplied, as well as any other information of a confidential nature.

**10. Reciprocal rights and duties**

- 10.1 The parties must provide each other in a timely fashion with all the necessary information that may be reasonably required to achieve proper performance.
- 10.2 The other party is liable for the use, the safeguarding and the correct application in its organisation of the products supplied by the supplier and for any damage to or loss of documents and data entrusted to the supplier; they will at all times be regarded as copies of the original components retained by the other party.
- 10.3 Where it has been agreed that the other party will supply equipment, materials and/or data on information media, they will meet the necessary specifications for the completion of the products.
- 10.4 Where data required for the performance of the contract are not at the supplier's disposal on time, as agreed or at all or where the other party has otherwise failed to fulfil its obligations, the supplier has the right to suspend completion of the products and the supplier has the right to charge the other party for the additional costs and/or losses suffered as a result, in accordance with the supplier's usual rates.
- 10.5 During the term of the contract and up to one year after its expiry, the other party will not, without the supplier's permission in writing, contract any persons previously employed by the supplier to carry out work and whose employment relationship has been terminated for less than a year, either directly or indirectly, to carry out work or provide services.

- 10.6 If the other party is in breach of the provisions of the preceding section of this article, it will be subject to an immediately payable penalty of EUR 25,000 and if the other party then refuses to cooperate in rectifying this breach, it will then be subject to an immediately payable penalty, not open to mitigation, of EUR 2,500 for each day that the breach continues.
- 10.7 The supplier is at all times entitled to recover from the other party the goods supplied if the other party fails to fulfil its obligations.
- 11. Warranty and liability**
- 11.1 For a period of 60 days after being supplied by the supplier, any products found to be faulty will at the supplier's discretion be repaired, replaced or properly completed free of charge provided that the other party has duly submitted a claim without delay and the supplier has accepted the claim, without prejudice to the provisions of Article 11.4 of these conditions. Where a product has been repaired, replaced or properly completed in accordance with the provisions of this article (Article 11), the warranty period will not recommence either in respect of the product as a whole or in respect of any part of the product regardless of the method adopted by the supplier to fulfil the warranty. Where goods have been replaced, the other party will become the owner of the replaced components (goods).
- 11.2 The warranty does not apply:
- if the products supplied are used in a manner or for purposes other than that for which they were intended in terms of the contract;
  - if the other party performs work or arranges for third parties to perform work on the product supplied without the prior approval of the supplier;
  - if, when faults and/or defects have arisen, the other party has not submitted a claim promptly or properly and has not done everything possible to limit the damage, including the disconnection or shutting down of hardware and the creation of copies and backups of data and software;
  - if a fault, defect or damage has been caused by the negligent conduct of the other party or its customers.
- 11.3 The other party will indemnify the supplier against claims by third parties. Except for the provisions of mandatory (product) liability law and force majeure and in accordance with the legal rules governing public order and good faith, the supplier is not obliged to pay any compensation for injury, loss or damage of any kind, whether direct or indirect, including damage to movable or immovable property or personal injury, on the premises of either the other party or third parties. In accordance with provisions elsewhere in this article (Article 11), the supplier is not under any circumstances liable for injury, loss or damage caused by:
- improper use of the goods supplied or their use for a purpose other than that for which they are, by objective standards, suitable;
  - negligent conduct by the other party, its employees or other persons or organisations which it has engaged;
  - infringement of patents, licences and/or other intellectual property rights of third parties resulting from the use of information provided by or on behalf of the other party such as drawings, models, designs, diagrams, etc.
- 11.4 Where the supplier assists with assembly and/or commissioning, without this being stated in the order, this will be at the other party's risk.
- 11.5 Where advice has been provided, the supplier will only be liable for normally avoidable and/or foreseeable shortcomings in it up to a maximum of an amount equal to the fee charged for the advice.
- 11.6 The supplier's liability will also be assessed on the basis of any product liability or consequential loss insurance held by the supplier. Apart from the cover provided by this, liability will at all times be limited to the net invoice values of the goods supplied or limited to the sum insured of the supplier's liability insurance. If necessary, the supplier will at the other party's request provide information on the amount for which the supplier is insured.
- 11.7 Failure by the other party to fulfil one of its obligations will release the supplier from all its obligations under the warranty. Apart from the arrangements set out in these conditions concerning the supplier's liability, fulfilment by the supplier of its warranty obligations will be deemed to be sole and full compensation.

- 11.8 Any claim for compensation and/or repair or replacement is barred by the lapse of one year after the injury, loss, damage and/or defect has been acknowledged by the supplier in a written report or should reasonably have been acknowledged and, at all events, is precluded three years after a supply.
- 11.9 If the supplier has to purchase goods elsewhere, any provisions governing this transaction will also apply in respect of the other party, if and insofar as the supplier invokes them.
- 11.10 Any additional liability, including liability for indirect or consequential loss or damage and liability resulting from failure to meet delivery dates, is excluded.

## 12. Force majeure

- 12.1 Force majeure means any circumstance over which the supplier has no control and because of which the supplier cannot reasonably fulfil its obligations, and, where not already included in this, war, risk of war, civil war, riot, strikes, lockouts, transport difficulties including obstructions during the transport of the products to be supplied, fire, explosion, natural disasters, delay due to frost and other weather conditions, government measures and other serious disruptions to the supplier's business or that of its supplier. The supplier will also be able to invoke force majeure if its supplier fails to fulfil its obligations as regards delivery on time or at all. If any of the instances as referred to above occurs, the supplier will notify the other party without delay and keep it informed of developments with regard to the force majeure situation.
- 12.2 Where the force majeure has lasted more than six months, or as soon as it is established that it will last six months or more, each of the parties has the right, within 30 days thereafter, to terminate that part of the contract the performance of which is impeded by the force majeure by cancelling it, provided that the party exercising this right sends the other party a registered letter to this effect. Neither of the parties will be entitled to claim any compensation in respect of this cancellation. Products already supplied under the contract will be paid for on a pro-rata basis.
- 12.3 The supplier also has the right to invoke force majeure where the circumstance giving rise to the force majeure occurs after the product should have been supplied.

## 13. Suspension and dissolution

- 13.1 In the event of seizure of property, application for a moratorium, a petition for bankruptcy, shutdown, attachment of a substantial part of its assets, dissolution, liquidation or acquisition of the other party's business, where it fails to fulfil any obligation on it arising from the law, contract or these conditions and where an administrator is appointed in respect of the other party and in the event of being placed under guardianship or death in the case of a natural person, the supplier will be entitled, at its discretion, to suspend fulfilment of its obligations or to dissolve the contract in whole or in part by issuing a statement in writing. All payments due by the other party will be immediately payable to the supplier, without prejudice to the supplier's right to claim compensation for interest, costs and losses.
- 13.2 Where products have already been supplied in fulfilment of the contract at the time of dissolution, the contract can only be partially dissolved and solely in respect of that part of it which has not yet been performed. Payment obligations which arose prior to the date of dissolution and/or which relate to products already supplied will be immediately payable at the time of dissolution.
- 13.3 Obligations which by their nature are intended to continue after dissolution of the contract will remain in force after dissolution of this contract. These obligations include provisions concerning: retention of title (Article 6 of this contract), intellectual property (Article 8), confidential information (Article 9), reciprocal rights and duties (Article 10) and applicable law and disputes (Article 14).

## 14. Applicable law and disputes

- 14.1 All negotiations, offers, the method of concluding contracts and the contents and performance of the contracts will be governed solely by the laws of the Netherlands.
- 14.2 All disputes arising between the parties with reference to negotiations, offers and orders (see Article 1) will at all times be settled by the District Court in 's-Hertogenbosch, the Netherlands, provided that they fall within the jurisdiction of the Sub-District Court.