

TERMS AND CONDITIONS OF COMMERCIAL SALE

In these General Terms and Conditions of Commercial Sale, Seller shall mean NXP Semiconductors Austria GmbH, an Austrian company incorporated under the laws of Austria.

1. OFFER, CONFIRMATION OR AGREEMENT

These terms and conditions of commercial sale (the "Terms and Conditions") apply to and form an integral part of:

- a. all quotations and offers (hereinafter both referred to as "Offer") Seller to Buyer,
- b. all acceptances, acknowledgements or confirmations by Seller (hereinafter all referred to as "Confirmation") of any order of Buyer, including without limitation orders of Buyer resulting from any pricing- or other framework agreement between any Buyer and Seller, unless explicitly agreed otherwise in writing between Seller and Buyer,
- c. any agreement resulting from such Offer or Confirmation and
- d. any agreement incorporating these Terms and Condition by reference (both types of agreements referred to under (c) and (d) shall hereinafter be referred to as an "Agreement")

regarding the sale by Seller and purchase by Buyer of goods ("Products"), unless Seller explicitly agrees in writing to the exclusion hereof.

These Terms and Conditions shall constitute all of the terms and conditions of any Offer, Confirmation and Agreement between Seller and Buyer relating to the sale by Seller and purchase by Buyer of Products. Any terms and conditions set forth on any document or documents issued by Buyer (including "Pull Documents" as defined below) either before or after issuance of any document by Seller setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by Seller, and any such document shall be wholly inapplicable to any sale made by Seller and shall not be binding in any way on Seller. No Offer, Confirmation or Agreement constitutes an acceptance by Seller of any other terms and conditions and Seller does not intend to enter into an Agreement other than under these Terms and Conditions.

Any Offer is expressly made conditional on Buyer's assent to all of the terms contained in the Offer without deviation. Acceptance by Buyer of an Offer may be evidenced by (i) Buyer's written or verbal assent or the written or verbal assent of any representative of Buyer, (ii) Buyer's acceptance of delivery of the Products or payment of purchase price for the first installment of the Products (if applicable), or any such acceptance by any representative of Buyer, or (iii) other conduct by Buyer or any representative of Buyer consistent with acceptance of the Offer.

In the event that any Offer or Confirmation is sent in response to Buyer's blanket purchase order, the terms and conditions of that Offer or Confirmation, including these Terms and Conditions, shall apply to any "pull" by Buyer or delivery by Seller, irrespective of whether Buyer submits additional purchase orders (electronically or otherwise) ("Pull Documents") and whether Seller provides a Confirmation to such additional purchase orders. All terms and conditions of such Pull Documents are hereby rejected.

Seller's Offers are open for acceptance within the period stated by Seller in the Offer or, when no period is stated, within thirty (30) days from the date of the Offer, but any Offer may be withdrawn or revoked by Seller at any time prior to the receipt by Seller of Buyer's acceptance related thereto.

If Seller receives an order from Buyer for the sale by Seller and purchase by Buyer of Products and such order is not a response to an Offer by Seller, or if Seller receives an order or acceptance by Buyer which deviates from Seller's Offer, such order or acceptance, respectively, shall be deemed to be a request for an Offer only.

An acceptance by Buyer of any Offer made by an order gatherer, liaison officer, agent or sales representative for Seller shall first constitute an Agreement between Seller and Buyer upon explicit Confirmation by Seller itself.

2. PRODUCTS, QUANTITIES AND PRICING

Prices in any Offer, Confirmation or Agreement are in euros, based on delivery Ex-Works (Incoterms 2000) Seller's manufacturing facility or other facility designated by Seller, unless agreed otherwise in writing between Buyer and Seller and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products. Seller will add taxes, duties and similar levies to the sales price where Seller is required by law to pay or collect them and will be paid by Buyer together with the price.

With regard to Custom Products (as defined in Section 6 below) Seller may deliver a quantity that is a maximum amount of ten percent (10%) more or less than the ordered quantity of any order line item. Such delivered quantity will be accepted and paid for - against an amount being the actual delivered quantity times the unit price - in full satisfaction of each party's obligation under the Agreement for the quantity ordered.

3. RIGHTS IN SOFTWARE, DOCUMENTATION AND INTELLECTUAL PROPERTY

Subject to the provisions set forth herein, the sale by Seller of a Product implies the non-exclusive and non-transferable license to Buyer under any of Seller's and/or its Affiliates' intellectual property rights ("Seller's IPR") (1) to use and resell Products as sold by Seller to Buyer, as well as (2) to use and resell apparatuses manufactured by or on behalf of Buyer that include one or more of such Products as supplied by Seller ("Buyer's Products"), but such license under (2) is only granted if and to the extent infringement of Seller IPR necessarily results from applying one or more of such Products.

To the extent that software and/or documentation is embedded in a Product, the sale of such Product shall not constitute the transfer of ownership rights or title in such software and/or documentation to Buyer, but, subject to the provisions set forth herein, shall only imply a non-exclusive and non-transferable license to Buyer under Seller IPR (1) to use such software and/or documentation in conjunction with and as embedded in the Products as supplied by Seller (the "Seller Product"), and (2) to use such Seller Product in or in conjunction with Buyer's Products, if and to the extent infringement of Seller IPR necessarily results from applying one or more of such Seller Products.

If Seller in connection with the sale of Products would supply any software and/or documentation to Buyer that is not embedded in the Product but that is intended for use in or in conjunction with such Product, and such software and/or documentation is not subject to a separate license agreement, such sale of Products implies, subject to the provisions set forth herein, the non-exclusive and non-transferable license to Buyer under Seller's IPR:

- a. to use said software and/or documentation in conjunction with the Products as supplied by Seller and/or its Affiliates and of which Seller and/or its Affiliates have identified in writing that such software and/or documentation can be used in or in conjunction with such Products, as required to enable Buyer to make the normal and intended use of Buyer's Products; and
- b. to make and distribute copies of the software and/or documentation, either in electronic or hardcopy format, only as shall be reasonably necessary to enable Buyer to make the normal and intended use of Buyer's Products.

Any and all references to "sale" or "sold" of any software or documentation shall be deemed to mean a license regarding such software or documentation, and no ownership or assignment of any intellectual property rights is intended nor shall be implied thereby.

The term "Affiliate" of Buyer or Seller shall mean any entity or person which: (i) is Controlled by Buyer or Seller; or (ii) Controls Buyer or Seller; or (iii) is under common Control Buyer or Seller. For this purpose "Control" means that more than fifty percent (50%) of the controlled entity's shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity. An entity is considered an Affiliate only so long as such ownership or control exists.

Unless otherwise specifically agreed in writing by Seller, no rights or licenses with respect to any software source code are granted by Seller to Buyer. Any and all source code included as part of any software residing in or provided by Seller in conjunction with any Products and any compilation or derivative thereof is the proprietary information of Seller or its Affiliates and is confidential in nature.

Buyer shall not:

- a. modify, adapt, alter, translate, or create derivative works from, any software residing in or provided by Seller in conjunction with any Products;
- b. assign, sublicense, lease, rent, loan, transfer, disclose, or otherwise make available such software;
- c. merge or incorporate such software with or into any other software; or
- d. reverse assemble, decompile, disassemble, or otherwise attempt to derive the source code for such software without written authorization from Seller. Buyer shall reproduce, without any amendments or changes thereto, any proprietary rights legends of Seller and/or its Affiliates or its third party suppliers in any software or documentation provided by Seller.

Notwithstanding anything to the contrary herein, these Terms and Conditions shall not be construed as conferring any right, license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party:

- a. under any Seller IPR or intellectual property rights of any third party other than explicitly granted under these Terms and Conditions;
- b. for the combination of any Products or assemblies of which such Product forms part with one or more other items (including items acquired from Seller and/or its Affiliates) even if such Products or assemblies have no substantial use other than as part of such combination, unless infringement of Seller IPR necessarily results from applying one or more Products as sold by Seller to Buyer.
- c. with respect to any trademark, trade or brand name, a corporate name of Seller and/or its Affiliate(s), or any other name or mark, or contraction abbreviation or simulation thereof.
- d. under any intellectual property rights of Seller and/or its Affiliates covering a standard set by a standard setting body and/or agreed to between at least two companies.
- e. under any intellectual property rights of Seller and/or its Affiliates with respect to which Seller and/or its Affiliates has informed Buyer or has published (in a datasheet or other specifications concerning the Product or elsewhere) a statement that a separate license has to be obtained and/or that no implied license is granted.

Buyer's rights under the Agreement are conditional upon Buyer not performing, and Buyer shall not perform any actions in a manner that would require any software furnished with the Product, the Product and/or any derivative work thereof, to be licensed under Open License Terms. These actions include but are not limited to:

- a. combining such software, the Product or a derivative work thereof with Open Source Software, by means of incorporation or linking or otherwise; or
- b. distributing such software, the Product or a derivative work thereof with Open Source Software; or
- c. using Open Source Software to create a derivative work of the Product or such software, insofar as these actions would require such software, the Product or a derivative work thereof to be licensed under Open License Terms.

As used herein, "Open Source Software" means any software that is licensed under Open License Terms. "Open License Terms" means terms in any license agreement or grant that require as a condition of use, modification and/or distribution of a work that:

1. source code will be made available, or
2. permission will be granted for creating derivative works, or
3. a royalty-free license is granted to any party under any intellectual property rights regarding that work and/or any other work that contains, is combined with, requires or is based on that work.

Buyer shall indemnify Seller and its Affiliates against and hold Seller and its Affiliates harmless from any damage or costs arising from or in connection with any violation or breach of the provisions of this Section 3 and Buyer shall reimburse all costs and expenses incurred by Seller and/or its Affiliates in defending any claim, demand, suit or proceeding arising from or in connection with such violation or breach.

4. PAYMENT

- a. Unless agreed otherwise between Seller and Buyer in writing, Seller may invoice Buyer for the price of the Products delivered upon delivery of the Products in accordance with the applicable Incoterm. Net payment is due within thirty (30) days of date of invoice unless agreed otherwise between Seller and Buyer in writing. All payments shall be made to the designated Seller's address. If deliveries are made in installments, each installment may be separately invoiced and shall be paid for when due. No discount is allowed for early payment unless agreed to in writing by Seller. Interest will accrue on all late payments, at the rate of 18% per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full.
- b. All deliveries and performance of work agreed to by Seller shall at all times be subject to credit approval of Seller. If, in Seller's judgment, Buyer's financial condition at any time does not justify production, performance of work or delivery on the above payment terms, Seller may require full or partial payment in advance or other payment terms as condition for delivery, and Seller may suspend, delay or cancel any credit, delivery or any other performance by Seller.
- c. Payment by Buyer of non-recurring charges, as may be made to Seller for special design, engineering or production materials, shall not convey title to either the design, engineering work or special materials, but title shall remain in Seller.
- d. Buyer shall not offset, withhold or reduce any payment(s) due by it to Seller. The payment of fees and charges is a covenant of Buyer that is independent of the other covenants made by the parties hereunder.
- e. If Seller incurs exchange rate losses due to Buyer's failure to pay when payments are due, Seller shall be entitled to equivalent compensation from Buyer for such losses.
- f. In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, Seller shall have the right to refuse performance of any work and delivery of any Products until payments are brought current and Seller may suspend, delay or cancel any credit, delivery or any other performance by Seller. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law or in equity.

5. DELIVERY AND QUANTITIES

- a. Products shall be delivered EXWORKS (Incoterms 2000) Seller's manufacturing facility, or other facility as designated by Seller, unless otherwise agreed in writing between Seller and Buyer. Delivery dates communicated or acknowledged by Seller are approximate only, and Seller shall not be liable for, nor shall Seller be in breach of its obligations to Buyer, because of any delivery made within a reasonable time before or after the stated delivery date. Seller agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the agreed delivery date.
- b. In the event Buyer contests delivery, Buyer must request a proof of delivery from Seller within ninety (90) days of the date of Seller's invoice, otherwise delivery shall be deemed completed.
- c. Buyer will give Seller written notice of failure to deliver and thirty (30) days within which to cure. If Seller does not cure within thirty (30) days, Buyer's sole and exclusive remedy is to cancel the affected and undelivered portions of the Agreement.
- d. Title in the Products shall pass to Buyer upon payment in full of the purchase price in respect thereof. Risk of loss in the Products shall pass to Buyer upon Seller's delivery in accordance with the applicable Incoterm.
- e. If Buyer fails to take delivery, then Seller may deliver the Products in consignment at Buyer's costs and expenses.
- f. In the event of shortages Seller may allocate its available production and Products, in its sole discretion, among its customers and as a result may sell and deliver to Buyer fewer Products than specified in Seller's Offer, Confirmation or Agreement, as the case may be.

6. CUSTOM PRODUCT

Seller shall have exclusive rights to goods designed and manufactured for the unique needs of Buyer, to Buyer's specifications or requirements, such as an ASIC or ASSP or to military specifications ("Custom Product"). Seller shall retain title to and possession of designs, masks and database tapes. Individual segments or parts of Custom Product designs, including but not limited to standard cells, megacells, or base arrays, are the property of Seller and may be used by Seller in other designs and may not be used by Buyer except as a part of Custom Product designed and manufactured by Seller. Prices and/or schedules for Custom Products are subject to change by Seller if any specifications are revised or supplemented or there are unforeseen difficulties with the design.

7. RESCHEDULING AND CANCELLATION

No order, Agreement or any part thereof may be rescheduled or cancelled without Seller's prior written consent.

8. FORCE MAJEURE

Seller shall not be liable for any failure or delay in performance if:

- a. such failure or delay results from the fact that Seller's manufacturing volume of the Products concerned is lower than anticipated due to interruptions in the manufacturing process; or
- b. such failure or delay does not result from its fault; or
- c. such failure or delay is caused by Force Majeure as defined below or by law.

In case of such a non-attributable failure, the performance of the relevant part(s) of the Agreement will be suspended for the period such non-attributable failure continues, without Seller being responsible or liable to Buyer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond Seller's reasonable control - whether or not foreseeable at the time of the Offer, Confirmation or Agreement - as a result of which Seller cannot reasonably be required to execute its obligations. Such circumstances or occurrences include but are not restricted to: acts of God, war, civil war, insurrections, strikes, fires, floods, earthquakes, labor disputes, epidemics, governmental regulations and/or similar acts, freight embargoes, non-availability of any permits, licenses and/or authorizations required, defaults or delays of suppliers or subcontractors and/or inability or impracticability to secure transportation, facilities, fuel, energy, labor, materials or components. In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by Seller to extend for a period of three (3) consecutive months), Seller shall be entitled to cancel all or any part of the Agreement without any liability of Seller towards Buyer. In the event Seller's production is curtailed, for any reason, Seller shall have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result may sell and deliver to Buyer fewer Products than specified in Seller's Offer, Confirmation or Agreement, as the case may be.

9. LIMITED WARRANTY AND DISCLAIMER

- a. Seller warrants that under normal use the Products, excluding any software that is either (1) licensed under Open License Terms (as defined in Section 3 of these Terms and Conditions), (2) provided by Buyer or any of its designees to Seller, (3) modified by Buyer or any third party, other than at Seller request or (4) that is not embedded in a Product by Seller (hereinafter collectively referred to as "Excluded Software"), prototypes, risk production units (as defined in this Section 9 (a) below), experimental Products, beta testing Products and samples of newly developed Products, shall, at the time of delivery to Buyer and for a period of twelve (12) months from the date of delivery (or such other period as may be agreed-upon in writing by the parties), be free from defects in material or workmanship and shall substantially conform to Seller's specifications for such Product, or such other specifications as Seller has agreed to in writing, as applicable. All Custom Products manufactured and/or delivered prior to both parties' written acceptance of the prototypes thereof ("risk production units"), all Excluded Software, prototypes, experimental Products, beta testing Products and samples of newly developed Products, shall be AS IS WITHOUT WARRANTY OF ANY KIND. Seller's sole and exclusive obligation, and Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at Seller's option, either to the replacement or repair of a defective or non-conforming Product or to an appropriate credit for the purchase price thereof. Seller will have a reasonable time to repair, replace or credit. The non-conforming or defective Products shall become Seller's property as soon as they have been replaced or credited for.
- b. Buyer may ship Products returned under warranty claims to Seller's designated facility only so long as the returns are in conformance with Seller's then-current return material authorization policy and are accompanied by a duly completed return material authorization form issued by Seller. Where warranty adjustment is made,

Seller will pay for freight expenses. Buyer shall pay for returned Products that are not found to be defective or non-conforming together with the freight, testing and handling costs associated therewith.

- c. Notwithstanding the foregoing, Seller shall have no obligations for breach of warranty if the alleged defect or non-conformance is found to have occurred as a result of environmental or stress testing, misuse, neglect, improper installation, or accident, or as a result of improper repair, alteration, modification, storage, transportation or improper handling.
- d. The express warranty granted above shall extend directly to Buyer and not to Buyer's customers, agents or representatives. Except for warranty of title, the express warranty granted above is in lieu of all other warranties, whether express or implied, including without limitation any implied warranties of fitness for a particular purpose, merchantability, or non-infringement of intellectual property rights. All other warranties are hereby specifically disclaimed by Seller.
- e. Subject to the exclusions and limitations set forth in Section 11 of the Terms and Conditions, the foregoing states the entire liability of Seller in connection with defective or non-conforming Products supplied hereunder.

10. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- a. Seller, at its sole expense, shall: (i) defend any legal proceeding brought by a third party against Buyer to the extent that the proceeding includes a claim that any Product (excluding Excluded Software) as furnished by Seller under an Agreement directly infringes the claimant's patent, copyright, trademark, or trade secret; and (ii) hold Buyer harmless against damages and costs awarded by final judgment in such proceeding to the extent directly and solely attributable to such infringement.
- b. Seller shall have no obligation or liability to Buyer under Section (a) (1) if Seller is not: (i) promptly notified in writing of any such claim; (ii) given the sole right to control and direct the investigation, preparation, defense and settlement of such claim, including the selection of counsel; and (iii) given full reasonable assistance and cooperation by Buyer in such investigation, preparation, settlement and defense; (2) if the claim is made after a period of three (3) years from the date of delivery of the Product; (3) to the extent that any such claim arises from: (i) modification of the Product if the claim of infringement would have been avoided by use of the unmodified Product; (ii) design, specifications or instructions furnished by Buyer; or (iii) the combination of the Product with any other product, service or technology; or (iv) the use of the Product or any part thereof in the practise of a process if Buyer does not incorporate the Product into a device of which the end-user is a consumer; (4) to the extent the claim is based directly or indirectly upon the quantity or value of products manufactured by means of the Product or upon the frequency of use or the amount of use of the Product irrespective of whether such claim alleges that the Product as such, or its use, infringes or contributes to the infringement of any intellectual property rights of the claimant ; (5) for unauthorized use or distribution of the Product or use beyond the specifications of the Product; (6) to the extent any such claim arises from Buyer's manufacture, use, sale, offer for sale, importation or other disposition or promotion of the Product after Seller's notice to Buyer that Buyer should cease any such activity, provided such notice shall only be given if the Product is, or in Seller's opinion is likely to become, the subject of such a claim of infringement; or (7) for any costs or expenses incurred by Buyer without Seller's prior written consent; or (8) to the extent the claim is based on any prototypes, risk production units, or Excluded Software; (9) to the extent any such claim arises from any infringement or alleged infringement of third party's intellectual property rights covering a standard set by a standard setting body and/or agreed between at least two companies, (10) for infringement of any third party's intellectual property rights covering the manufacture, testing or

application of any assembly, circuit, combination, method or process in which the Product may have been used, or (11) for infringement of any third party's intellectual property rights with respect to which Seller or any of its Affiliates has informed Buyer or has published (in a datasheet or other specifications concerning the Product or elsewhere) a statement that a separate license has to be obtained and/or that no implied license is granted.

Buyer shall indemnify Seller against and hold Seller harmless from any damages or costs arising from or connected with such claims of infringements and shall reimburse all costs incurred by Seller in defending any claim, demand, suit or proceeding for such infringement, provided Seller gives Buyer prompt notice in writing of any such suit or proceeding for infringement.

- c. If any Product is, or in Seller's opinion is likely to become, the subject of a claim of infringement as referred to under Section 10 (a) above, Seller shall have the right, without obligation and at its sole option, to: (i) procure for Buyer the right to continue to use or sell the Product; (ii) replace or modify the Product in such a way as to make the modified Product non-infringing; or (iii) terminate any Agreement to the extent related to such Product. In the event of any such termination, Seller shall repurchase all Products in Buyer's possession at the time of such termination, which are then subject to the claimant's continuing claim of infringement.
- d. Subject to the exclusions and limitations set forth in Section 11 of the Terms and Conditions, the foregoing states Seller's entire liability and obligation to Buyer and Buyer's sole remedy with respect to any actual or alleged infringement of any intellectual property rights of any kind.

11. LIMITATION OF LIABILITY

- a. Except for Buyer's liability under Section 3 or 11 (c) hereof, no party shall be liable to the other for any lost profits or lost savings, indirect, incidental, punitive, special or consequential damages whether or not such damages are based on tort, warranty, contract or any other legal theory - even if such party has been advised, or is aware, of the possibility of such damages. In no event shall Seller be liable for any damage, costs or expenses associated with warranty or intellectual property infringement claims whether for the replacement or repair of products, including labor, installation or other costs incurred by Buyer and, in particular, any costs related to the removal or replacement of any Products soldered or otherwise permanently affixed to any printed circuit board, excess procurement costs, or rework charges.
- b. Seller's and its Affiliates aggregate and cumulative liability towards Buyer under any agreements regarding sale by Seller and/or its Affiliates and purchase by Buyer and/or its Affiliates between Seller and/or its Affiliates and Buyer and/or its Affiliates and resulting from any event(s) occurring during a calendar year and for any series of events triggered by the same cause started during a calendar year, shall not exceed the lesser of (a) the amount actually received by Seller in the twelve (12) months immediately preceding the event, or series of events, as the case may be, giving rise to any liability for the Products causing any liability and (b) an amount of Euro 1 million, but in case of liability for delay or non-delivery of Products, also never more than the purchase price of the delayed or non delivered Products concerned.
- c. Seller's Products are not designed, authorized or warranted to be suitable for use in medical, military, air craft, space or life support equipment nor in application where failure or malfunction of a Seller's Product can reasonably be expected to result in a personal injury, death or severe property or environmental damage. Inclusion and /or use of Seller's Products in such equipment or applications, without prior authorization in writing of Seller, is not permitted and for Buyer's own risk. Buyer agrees to fully indemnify Seller for any damages resulting from such inclusion or use.

- d. Any Buyer's claim for damages must be brought by Buyer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed in conflict with the preceding sentence are null and void.
- e. The limitations and exclusions set forth above in this Section 11 shall only apply to the extent permitted by applicable mandatory law.

12. CONFIDENTIALITY

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by Seller and/or its Affiliates is the confidential information of Seller and/or its Affiliates. Buyer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

13. COMPLIANCE WITH LAWS

Each party hereto represents that it is duly authorized to enter into the Agreement and represents that with respect to its performance hereunder, it will comply with all applicable federal, state and local laws, including, but not limited to those pertaining to U.S. Export Administration or the export or import controls or restrictions of other applicable jurisdictions.

If the delivery of Products or services under the Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, Seller may suspend its obligations and Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and Seller may even terminate the Agreement, without incurring any liability towards Buyer.

Furthermore, if an end-user statement is required, Seller shall inform Buyer immediately thereof and Buyer shall provide Seller with such document upon Seller's first written request; if an import license is required, Buyer shall inform Seller immediately thereof and Buyer shall provide Seller with such document as soon as it is available.

By accepting Seller's Offer, entering into any Agreement and/or accepting any Products, Buyer agrees that it will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

14. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of Seller. Buyer hereby waives any and all rights to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Buyer and Seller may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf. Seller is allowed to assign any rights or obligations under the Agreement to its Affiliates or to any third party in connection with a merger or a change of control.

15. GOVERNING LAW AND FORUM

All Offers, Confirmations and Agreements are governed by and construed in accordance with the laws of Austria. All disputes arising out of or in connection with any Offer, Confirmation or Agreement shall first be attempted by Buyer and Seller to be settled through consultation and negotiation in good faith and a spirit of mutual cooperation. All disputes that are not so settled within a period of thirty (30) days from the date the relevant dispute first arose may be submitted to the courts of Vienna, Austria, provided that Seller shall always be permitted to bring any action or proceedings against Buyer in any other court of competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Offer, Confirmation or Agreement. Nothing in this Section 15 shall be construed or interpreted as a limitation on either Seller's or Buyer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

16. BREACH AND TERMINATION

Without prejudice to any rights or remedies Seller may have under the Terms and Conditions and/or the Agreement or at law, Seller may, by written notice to Buyer, terminate with immediate effect the Agreement, or any part thereof, without any liability whatsoever, if:

- (i) Buyer fails to make payment for any Products to Seller when due;
- (ii) Buyer fails to accept conforming Products supplied hereunder;
- (iii) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer; or
- (iv) Buyer violates or breaches any of the provisions of these Terms and Conditions and/or the Agreement.

Upon occurrence of any of the events referred to under (i) through (iv) above, all payments to be made by Buyer under the Agreement shall become immediately due and payable.

In the event of cancellation, termination or expiration of any Agreement the terms and conditions destined to survive such cancellation, termination or expiration, which shall include without limitation Sections 8, 9, 10, 11 and 12, shall survive.

17. PRODUCT AND PRODUCTION CHANGES

Seller reserves the right to make at any time Product and/or production changes. In such event Seller represents that said changes shall not negatively affect form, fit or function of the Products and their performance characteristics.

18. DISCONTINUATION OF PRODUCT

Seller reserves the right to discontinue manufacturing and sale of Products at any time. If however at any time during the term of an Agreement under which Seller sells and Buyer purchases Products on a regular basis, such regularly sold and purchased Products are to be permanently discontinued ("Discontinued Product"), Seller shall use its reasonable commercial efforts to give Buyer prior written notice of such discontinuance and shall use reasonable commercial efforts to accept last-time-buy orders for such Discontinued Product all in accordance with Seller's product discontinuation process and general information related thereto as published on Seller's website.

19. SEVERABILITY

In the event that any provision(s) of the Agreement or these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof.

20. WAIVER

The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from any Offer, Confirmation or Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from any Offer, Confirmation or Agreement or from any related document or by law.

21. NOTICES

All notices and communications to be given under this Agreement shall be in writing and shall be deemed delivered upon hand delivery, confirmed facsimile communication, or three (3) days after deposit in the mail of the home country of the party, postage prepaid, by certified, registered, first class or equivalent mail, addressed to the parties at their addresses set forth on the Offer, Confirmations and/or Agreements.

22. ATTORNEYS' FEES

Should a dispute arise from the subject matter of any Offer, Confirmation or Agreement, the prevailing party in any resulting litigation shall be reimbursed by the other party for any and all reasonable attorneys' fees and expenses incurred.

23. RELATIONSHIP OF PARTIES

The parties hereto intend to establish a relationship of buyer and seller and as such are independent contractors with neither party having authority as an agent or legal representative of the other to create any obligation, express or implied, on behalf of the other.

24. MODIFICATIONS AND CHANGES

Seller reserves the right to make any amendments or changes to these Terms and Conditions at any time. Such amendments, modifications and changes shall have effect (1) to all Offers, Confirmations and Agreements referring to such amended or modified Terms and Conditions as from the date of such Offer, Confirmation or Agreement, and (2) to any existing Agreement thirty (30) days from notification of such amendments or modifications by Seller to Buyer, unless Buyer has notified Seller within such 30 days period that it objects thereto.