

TOREX SEMICONDUCTOR EUROPE LTD

CONDITIONS OF SALE

1. GENERAL

- 1.1 In these Conditions (a) "the Company" means TOREX SEMICONDUCTOR EUROPE LTD (Registered Office: Unit 1, The Courtyard, Whitwick Business Park, Stenson Road, Coalville, Leicestershire LE67 4JP, Registered number: 4159177); (b) "Customer" means the person placing the order for the goods or (as the case may be) the person to whom the quotation is submitted for the Company; (c) "Goods" means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part of them) the goods the subject of the Customer's order or (as the case may be) the Company's quotation; (d) "Services" means any services agreed in the Contract to be supplied to the Customer by the Company; (e) "Contract" means any contract between the Company and the Customer for the sale of Goods and/or provision of Services, incorporating these Conditions; and (f) headings are inserted for the sake of convenience and do not affect the construction of these Conditions
- 1.2 The contract shall arise between the Company and the Customer upon the Company's acceptance (at its absolute discretion) of the Customer's order or (if earlier) the Company commences manufacture or dispatch of Goods or performance of the Services.
- 1.3 Save as expressly agreed by the Company in writing, any terms or conditions contained or referred to in any purchase order or other document or communication issued or made by the Customer shall have no effect insofar as they purport to vary or are inconsistent with these Conditions and the Company shall not be deemed to have accepted any such terms or conditions by reason of its failure expressly to object to the same.
- 1.4 The Company's quotation is merely an invitation for an order subject to these Conditions. No Contract will result until the Company has confirmed the Customer's order in writing by its authorised representative. Such Contract will incorporate and be subject to these Conditions.
- 1.5 No person has the authority on behalf of the Company to vary any of these Conditions except the Director of the Company and then only in writing signed by him.
- 1.6 Once the Contract arises, between the Company and the Customer, the Customer cannot cancel or vary the same except with the prior written consent of the Company and then only upon the Customer indemnifying the Company against any loss, liability, loss of profit (direct and indirect) and any additional administrative and other costs incurred.
- 1.7 Any Contract arising between the Company and the Customer in accordance with the paragraph 1.2 shall be subject to English law and the Company and the Customer submit to the non-exclusive jurisdiction of the English Courts in relation thereto.
- 1.8 Any notice to be given under these Conditions may be sent by first class (or where applicable airmail) pre-paid post addressed (a) (in the case of a notice to the Company) to its address stated on its order (or as the case may be) on its quotation (or if none is stated) to its registered office; (b) (in the case of notice to the Customer) to its address stated on its order (or as the case may be) any document accepting the Company's quotation or (if none is stated) either to the to its principle place of business or its registered office for the time being; or (c) (in either case) to such other address as the Company's or the Customer shall have notified to the other for its purpose. Any notice so given shall be deemed to have been received and forty-eight hours (or if sent by airmail 10 days) after the same was posted.

2. CUSTOMER CREDIT

- 2.1 If the Company notifies the Customer before or upon acceptance of its order (as the case may be) submission of the Company's quotation to the Customer that the Company requires references for the Customer the Company's acceptance of the Customer's order or (as the case may be) the Customer's acceptance of the Company's quotation shall be conditional upon the receipt by the Company within 14 days of acceptance of the Customer's order (or as the case may be) the Customer's acceptance of the Company's quotation (or such longer period as the Company may in writing specify) or one bank and two trade references for the Customer satisfactory to the Company. If any such references are not forthcoming within such a period, or if the Company notifies the Customer within the period that any references received are not satisfactory, the Company's acceptance of the Customer's order or (as the case may be) the Customer's acceptance of the Company's quotation shall be automatically withdrawn and neither party shall be under any further liability to the other in respect thereof.

3. DELIVERY

- 3.1 Any time or period for delivery given by the Company shall be given in good faith but shall be an estimate only and not a term on the Contract between the Customer and the Company and the Company shall not be liable for any delay in delivery or any consequential or other loss arising therefrom howsoever such delay may be caused.
- 3.2 The Company shall deliver the Goods to the Customer either by post or by other carrier. The risk of loss of or damage to the Goods shall pass to the Customer at the time the same are placed in a post box or (as the case may be) delivered to the or collected by the postal authorities or other carrier.
- 3.3 The Customer shall pay the cost of delivering the Goods and the cost of packaging the same addition to the purchase price of the Goods.
- 3.4 If the Customer fails to accept delivery of the Goods the Company shall be entitled without prejudice to any other rights it may have to store the Goods at the cost and risk of the Customer.
- 3.5 The Company shall take reasonable care to ensure that the Goods are delivered to or collected by the postal authorities or the other carriers in a condition suitable for delivery but subject thereto it accepts no liability for damage to or loss or shortage of any Goods, occurring during the course of delivery or for any loss or damage (including loss of profits (direct and indirect) and any indirect, special or consequential loss) arising directly or indirectly therefrom.
- 3.6 Any claim in respect of any loss or theft of or damage to the Goods in the course of delivery shall be made by the Customer within two days of the receipt of the Goods by the Customer and (without prejudice to the foregoing provisions of this paragraph) the Company shall provide the Customer with all reasonable assistance in connection with such claim. Any shortages of Goods delivered to the Customer must be notified to the Company in writing within three days of delivery to the Customer.

4. INSTALLMENTS

- 4.1 Except where otherwise expressly agreed in writing by the Company, the Company shall be entitled to deliver the Goods by one or more instalments. Where the Goods are delivered in instalments, whether at the Company's election or at the request of the Customer, each such instalment shall be treated as a separate contract for the purpose of these Conditions and shall be invoiced and paid for separately.
- 4.2 Where the Goods are delivered to the Customer by instalments or over a period and the Customer has failed to pay on its due date any invoice for Goods already delivered by the Company shall be entitled (without prejudice to any other rights it may have) to suspend delivery of further instalments or Goods until all amounts outstanding to the Company from the Customer shall have been paid or to terminate the contract in relation to Goods to the Customer.

5. PRICES

- 5.1 Any price quoted by the Company for the Goods or Services is subject to revision by the Company without notice to take account inter alia of any increase in the cost of the Goods or Services to the Company or any other costs and expenses of the Company occurring between the date of the Company's acceptance of the Customer's order or (as the case may be) of the Customer's acceptance of the Company's quotation and the date of delivery of the Goods or provision of Services to the Customer.
- 5.2 Except where otherwise expressly stated by the Company in writing, any price quoted by the Company for the Goods is the ex-works price thereof exclusive of the cost of packaging and delivery.
- 5.3 Except where otherwise expressly stated in writing by the Company, all process quoted by the Company are in UK pounds sterling and exclusive of value added tax which shall be charged and paid by the Customer at the rate in force at the date the Goods or Services are invoiced.

6. PAYMENT AND INTEREST

- 6.1 The Goods (and any instalment in the case of delivery by instalments) and Services shall be paid in UK pounds sterling within thirty days of the date of the relevant invoice or delivery of Goods or provision of Services whichever is earlier.
- 6.2 The Company shall be entitled to charge interest (occurring from day to day) at the rate of 4% per annum above the National Westminster Bank Plc base rate for the time being on all sums overdue for payment by the Customer hereunder and all such interest so charged shall be payable by the Customer to the Company on demand.

7. TITLE TO THE GOODS

- 7.1 Full legal benefits and equitable title to a property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until:
- (a) Payment in full, in cash or cleared funds, for all the Goods has been received by the Company and;
- (b) All other money payable by the Customer to the Company on any other account or under the Contract or any other contract has been received by the Company.
- 7.2 Until title to and property in the Goods passes to the Customer:
- (a) The Customer shall hold the Goods on a fiduciary basis as the Company's bailee;
- (b) The Customer shall store the Goods at its premises in its proper manner in conditions which adequately protect, preserve the Goods and insure them without any change to the Company and do not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods whether or not supplied by the Company and are clearly identified as belonging to the Company and the Company shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Customer reasonable notice of its intention of doing so.
- (c) The Company may at any time demand and without prior notice require the Customer to deliver the Goods up to the Company and the Company may repossess and resell the Goods if any of the events specified in the Condition 12.1 occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other contract is not paid when due.
- (d) For the purposes of this condition 7 the Company, its employees and agents will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer, and/or any other location

where any of the Goods are situated at any time without prior notice.

- (e) The Company shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that title to and property in the Goods has not passed to the Customer; and
- (f) The Company hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer's business, and to pass the title in the Goods to its customers if they are purchases in good faith without notice of the Company's rights. This right shall automatically cease on the occurrence of any event set out in Condition 12.1 and/or if any sum owed to the Company by the Customer is not paid when due. If the Customer sells the Goods prior to paying to the full price thereof the Customer shall hold their proceeds of the sale on trust for the Company and shall immediately pay the proceeds into a separate bank account. The Company shall be entitled to call upon the Customer to assign all claims that the Customer may have against purchasers of the Goods from the Customer.
- 7.3 The Company's rights and remedies set out in this Condition 7.3 are in addition to and shall not in any way prejudice, limit or restrict any of the Company's other rights or remedies under the Contract or in law or equity.

8. WARRANTIES AS TO QUALITY AND LIMITATIONS OF LIABILITY

- 8.1 So far as it is able the Company will transfer to the Customer the benefits of all warranties or guarantees, in relation to the Goods, which the Company receives from their suppliers to the Company.
- 8.2 The Company accepts no liability for any loss damage injury or expense arising directly or indirectly from any fault defect failure or breakdown of the Goods or any parts thereof PROVIDED THAT the provisions of this paragraph shall not operate to exclude or restrict the Company's liability for death or personal injury resulting from negligence (as defined in section 1 (1) of the Unfair Contract Terms Act 1977) or the Company's liability for fraudulent misrepresentation.
- 8.3 Save as set out in these Conditions all guarantees representations conditions and warranties as to quality, condition, workmanship fitness for any purpose or otherwise, whether express or implied by statute or common law, are hereby expressly excluded PROVIDED THAT the provisions of this paragraph shall not apply so as to exclude or purport to exclude the liability conferred on a seller by the provisions section 12 Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 8.4 The Company warrants that it will carry out the Services under the Contract with reasonable care and skill. This warranty will be the only warranty given in respect of such Services.
- 8.5 Notwithstanding Conditions 8.1-8.4 (inclusive) the Company's total liability contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to 1.5 times the price of the Goods and/or Services in respect of which the Customer suffered or insured such loss or damage.
- 8.6 The Company shall not be liable to the Customer for any loss of profit or other economic loss (direct or indirect), indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (however caused) or loss or damage (contractual, tortious, breach of statutory duty or otherwise) which arises out of or in connection with the Contract, or for any liability incurred by the Customer to any other person for any economic loss, claim for damages or awards howsoever arising from the Goods, Services or otherwise.
- 8.7 The price of the Goods and/or Services has been calculated on the basis that the Company will exclude or its limit its liability as set out in the Contract and the Customer by placing an order agrees and warrants that the Customer shall insure against or bear itself any loss for which the Company has excluded or limited liability in the Contract and the Company shall have no further liability to the Customer.

9. DESCRIPTIVE MATTER AND ILLUSTRATIONS

- 9.1 All statements descriptions representations specifications performance figures drawings particulars weights and dimensions in any quotation catalogue advertisement price list leaflet or other publication or document issued by the Company are approximate only and shall not be construed as enlarging varying or overriding these Conditions or of forming part of any contract between the Customer and the Company.
- 9.2 The property and copyright in all drawings specifications descriptions and other documents supplied by the Company in relation to the Goods shall remain vested in the Company.
- 9.3 The Company reserves the right to update any specifications of Goods (including any spare parts supplied) without notice to the purchaser.

10. PATENTS TRADE MARKS ETC.

- 10.1 The Customer shall not claim ownership of any patents trade marks, trade names, copyrights, know-how or designs (registered or unregistered) in relation to as created pursuant to the Goods or Services and shall not take any action which might infringe any patent trade mark, trade names, copyright design or other form of protection for any invention discovery improvement design mark or log in relation to the Goods and the Customer shall indemnify the Company and keep it indemnified from and against all costs claims liabilities proceedings damages and expenses arising directly or indirectly as a result of any breach of the foregoing obligation by the Customer.
- 10.2 The Customer shall notify the Company immediately of any infringement or apparent or threatened infringement of or any actions claims or demands in relation to any patent trade mark, trade name, copyright design or other form of protection for any invention discovery improvement design mark or logo in relation to the Goods Services and the Customer shall provide the Company at the Company's expense with all assistance which the Company may reasonably require in connection therewith including but not limited to the prosecution of any actions which the Company may deem necessary for the protection of any rights in relation to the Goods and is so requested by the Company in relation to any claim or action brought against the Customer shall authorize the conduct of the same and all negotiations for the settlement of the same by the Company at the Company's expense.

11. FORCE MAJEURE

- 11.1 The Company shall not be liable to the Customer or incur any penalties for the failure to perform or for the delay is due wholly or in part directly or indirectly to causes beyond its reasonable including but not limited to fire, storm, flood or earthquake, explosion, accident, war, acts of the enemy, riots, civil disorders, sabotage, strikes, lockouts, industrial disputes, labor shortages, work delays or stoppages, power outages or energy failures or shortages of appropriate materials or unavailability of supplies or machinery breakdown in machinery or equipment, transportation embargo or delays, inclement weather, delay on the part of third parties (including other trades) acts of omissions of the Customer Acts of God acts or regulations or priorities of the government or agents thereof or for any indirect, specified, or consequential loss or loss of profits (direct or indirect) arising therefrom. If the failure to perform or delay in performance of the Contract continues for a continuous period in excess of 3 months then either party shall be entitled to give notice in writing to the other to terminate the contract.

12. TERMINATION BY THE COMPANY

- 12.1 The Company may as it thinks fit, (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Contract or cancel any outstanding provision of the Services or delivery of the Goods or stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to the Company if:
- (a) The Company commits a material breach of any of its obligations under the Contract which is incapable of remedy.
- (b) The Customer fails to remedy a breach of its obligations under the Contracts which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such a breach within a period of 14 days.
- (c) Any distress execution or diligence is levied upon any of the Customer's good or property and is not paid out within 7 days or it is being levied.
- (d) The Customer (being a partnership) or the Customer's partner offers to make any arrangements with or for the benefit of the creditors of the Customer or the Customer's partner generally or there is presented in relation to the Customer or the Customer's partner a petition of bankruptcy.
- (e) The Customer (being a limited company) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer calls a meeting for the purpose of passing a resolution to wind up its company, or such a resolution is passed or the Customer presents or has presented a petition to wind up or present or has presented a petition to appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of the Customer's business, undertaking, property or assets.
- (f) The Customer ceases, or threatens to cease, to carry on business; or
- (g) The Company reasonably believes that any of the events specified in Condition 12.1 (a) to (f) above is about to occur in relation to the Customer.
- 12.1 Notwithstanding any such termination or suspension in accordance with Conditions 11 or 12.1 above the Customer shall pay the Company of the Contract rate for all goods delivered or Services provided up to an including the date of suspension termination and the termination of the Contract for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any such owing or to become owing to the other.

13. GENERAL

- 13.1 Each provision of these conditions is independent and separate from all other terms and if any provision is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.2 The Customer shall not be entitled to assign, charge subcontract or transfer the Contract or any part of it without the prior written notice of the Company. The Company may assign, charge, subcontract or transfer the Contract or any part of it to any person. A person who is not a party to the Contract (including without limitation any employee, officer, agent, representative or sub contractor or either party) shall not have the right to enforce any term of the Contract, which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Company and the Customer.