

Melexis GmbH standard terms and conditions for sale and delivery of products and services

- A. The term "Melexis" as used herein shall mean Melexis GmbH. The term "Customer" shall mean a third party placing a purchase order or otherwise desiring to purchase products or services from Melexis.
- B. Subject to the provisions hereof, all quotes submitted are firm for thirty (30) days from the date of the quotation unless indicated differently on the face of the quotation. Alterations or changes of quotations after thirty (30) days may be made at the discretion of Melexis without notice.
- C. No contractual relationship between Melexis and Customer shall arise until such time as Melexis has accepted Customer's purchase order through an order acknowledgement.

1. Object

- 1.1. The terms and conditions for sale and delivery of products and services contained herein apply to Melexis' quotations, any purchase order placed by Customer on Melexis and any order acknowledgement with regard to the sale of both Application Specific Integrated Circuits (ASICs) and Application Specific Standard Products (ASSPs), as well as related services (these documents, including these terms and conditions, referred to hereafter as the "Agreement").
- 1.2. Acceptance of the Customer's purchase order or any other documents of the Customer is made only on the express understanding and condition that insofar as the terms and conditions contained herein conflict with any terms and conditions of the Customer's order or cover matters not addressed in Customer's documentation or not agreed otherwise individually, only Melexis' terms and conditions shall apply. Melexis' failure to object to provisions contained in any communication from Customer shall not be deemed a waiver of the application of the terms and conditions described herein. Without limiting the generality of the foregoing, any terms or conditions set forth on any documents or forms utilized by Customer and any communications (written or oral) between the parties that are inconsistent with, or are not included within, the terms and conditions contained herein shall be of no force or effect unless signed by an authorized officer of each party.
- 1.3. Any changes from the Agreement must be specifically agreed in writing by an authorized officer of Melexis before becoming binding on Melexis.
- 1.4. By entering into the Agreement, the Customer expressly confirms that he is not a consumer.

2. Prices and payment terms

- 2.1. Prices are ex works (EXW, Incoterms 2000), excluding VAT and any other taxes and/or duties.
- 2.2. Payment shall be made thirty (30) days from the date of Melexis' invoice. Payment shall be made in full, without any set-off or deduction whatsoever.
- 2.3. All payments shall be in EUR unless otherwise agreed in writing.
- 2.4. In case of default, interest will automatically and without any separate notice of default ("Mahnung") accrue on invoices for which the due date is determined or determinable on the date of the invoice from the due date until payment at the rate of 8 percentage points above the «marginal lending facility» interest rate of the European Central Bank per annum, limited to the maximum rate permitted under German law.
- 2.5. Melexis reserves the right to carry out a credit check against the Customer prior to acceptance by Melexis of any

purchase order and subsequently may request from the Customer prepayment or a bank guarantee in a form to be approved by Melexis and issued by a bank acceptable to it in an amount not exceeding the total price of the purchase order. If Customer fails to make payment for goods delivered as herein provided, or if a negative change in Customer's financial condition or other circumstances have created reasonable concerns as to Customer's credit worthiness, Melexis may at any time request (additional) guarantees or may demand prepayment before delivery of any part of the goods or services.

3. Title and delivery

- 3.1. The goods shall be delivered ex works Melexis' premises (EXW INCO-terms 2000).
- 3.2. Title in the goods shall not pass to Customer until Melexis has received in full all amounts owed by Customer to Melexis under the Agreement or any other agreement. Customer shall be entitled to use and resell the goods in the ordinary course of business as long as he is not in default of payment. However, as long as the title in the goods has not passed to Customer, he shall not be entitled to put the goods under pledge or liens or to encumber them.
- 3.3. If payment is overdue for all or part of a certain shipment, Melexis shall be entitled at any time to recover possession of the shipment from the Customer.
- 3.4. As far as the value of the goods for which title is retained exceeds the claims of Melexis against Customer by more than 10 %, Melexis shall release such security upon request of Customer.

4. Delivery schedule

- 4.1. Customer acknowledges that any delivery schedule provided by Melexis is only an estimation of the lead times. Melexis will use commercially reasonable efforts to initiate shipment and schedule delivery as close as possible to Customer's requested delivery schedule but shall not be liable to Customer for failure to meet any delivery schedule or for the costs to procure or design substitute goods.
- 4.2. Delays or changes in schedules resulting from Customer's acts or negligence may be subject to a reasonable price adjustment. In case of default of acceptance by more than one month after ready for shipment notification, Melexis may charge reasonable demurrage costs. Demurrage costs will be invoiced at 0.5% of the purchase price of the order for each started month of default of acceptance with a maximum of 5% of the purchase price. If Customer fails to pick up the goods within two (2) months after notification, Melexis will be free to sell the goods to other customers without any indemnity.
- 4.3. Melexis reserves the right to make deliveries in installments as far as reasonable. Delivery of a quantity that varies from the quantity specified in Customer's order shall not relieve Customer of its obligation to accept delivery and pay for the goods delivered. The Customer shall not refuse to accept delivery or any consignment or installment on account of any shortage or defect in any other delivery.

5. Inspection

- 5.1. Customer shall notify Melexis promptly in writing upon receipt of goods of all discoverable defects, including, but not limited to, quantity shortages, incorrect product and visible defects, but no later than thirty (30) days from delivery date.
- 5.2. Variations in quantities in the amount usual in trade not exceeding 10% shall constitute compliance with the

- Customer's order and the stated unit price will continue to apply.
- 5.3. Returned goods must be in original manufacturer's shipping cartons complete with all packing materials or other reasonable packing devices.
- 5.4. In the event that Customer fails to inspect the goods or does not present a rejection notice to Melexis in writing within thirty (30) days of delivery date as set forth in clause 5.1, the goods shall be deemed accepted. At that time, Customer's only recourse or remedy for non-conforming or defective goods shall be Melexis' standard warranty as provided for in clause 7.

6. Specifications

- 6.1. Melexis reserves the right to change the specifications of ASSPs (including all statements and data appearing in Melexis' catalogs, data sheets and advertisements) without notice. Melexis will publish the modified specifications on its website and will notify the Customer if he properly subscribed on Melexis' website to receive this information. If such changes to specifications are made, Melexis assumes no obligation to provide the change on goods previously purchased.
- 6.2. Any changes to the specifications of ASICs will be proposed by Melexis in accordance with Process Change Notice (PCN) provisions. In the event that Customer fails to reply to any Process Change Intent Notification (PCIN) to Melexis in writing within thirty (30) days of submitting such proposal, the change shall be deemed accepted

7. Warranty

- 7.1. Melexis is liable pursuant to statutory provisions that:
- (a) The goods delivered hereunder will at time of delivery conform to the specifications agreed upon between parties and the quality levels specified in a quality agreement if any;
- (b) title to the goods will be free and clear of third party industrial property rights in the country of shipment and without liens to the extent used in accordance with the specifications.
- 7.2. Melexis gives no warranty or guarantee whatsoever with respect to sales or orders through unauthorized sales channels.
- 7.3. Melexis' liability for defective goods or failure to meet the applicable specifications or quality levels is limited to the obligation, at Melexis' sole discretion, to either repair or replace the defective goods. If such subsequent delivery or removal of defects fails, Customer may request the reduction of the purchase price or the withdrawal from the Agreement. Section 478 German Civil Code shall remain unaffected. Damage claims may only be raised pursuant to clause 15 below. Melexis will only be liable against Customer if and as far as :
- (a) Melexis is notified in writing by Customer promptly after discovery of hidden defects or failure to meet the specifications or quality levels;
- (b) Melexis' examination of such goods shall conclude that such defects or failures have not been caused by misuse, abuse, neglect, improper installation or application, repair, alteration, damage by water, fire, casualty or by accident or negligence in use, storage, transportation or handling, or by non-compatibility with other components used by Customer, or by power surges or failures, or other events beyond Melexis' control;

- (c) the Customer did not request a third party to repair or replace the defective or non-conforming goods without Melexis' authorization.
- 7.4. To the extent that any of the conditions mentioned in clause 7.3 is not met, Melexis shall have no liability under this warranty whatsoever.
- 7.5. The statute of limitations period for any claims against Melexis under the Agreement shall be 12 months as of the passage of risk save for claims based on statutory guarantee, wilful misconduct, personal injury or death in which case the statutory statute of limitations shall apply. Section 438 paragraph 1 no. 2 and paragraph 3 German Civil Code shall remain unaffected.

8. Intellectual property rights

- 8.1. Goods sold hereunder are or will be protected by intellectual property rights of Melexis anywhere in the world, including, but not limited to, rights under issued and pending patents, issued and pending model and design rights, copyright rights, issued and pending trademark rights, database rights, rights on semi-conductors and know-how rights. Nothing in this Agreement is intended to confer on Customer or third parties any rights or interests therein.
- 8.2. In case of an ASIC and upon full payment of all charges in accordance with clause 2, Customer shall have a limited non-transferable, exclusive license for a period of eighteen (18) months as from the date of the purchase order to use the goods sold hereunder and only for the applications set forth therein. Such license to use the goods shall exclude any rights which may be conferred to Customer by law to the extent that they are not mandatory, such as, but not limited to, the right to disassemble or reverse engineer the goods, unless the provisions of Section 69e German Copyright Act apply.
- 8.3. Further, Customer and third parties will acquire hereby no rights or interests or licenses in any:
- (a) drawings, specifications, technical information, moulds, masks, tools, know-how used by Melexis,
- (b) building blocks or custom cells used or designed by Melexis to develop the goods;
- (c) business processes used by Melexis to design, develop, manufacture or test the goods.
- 8.4. Customer agrees and acknowledges that any intellectual property rights to an improvement in or modification to drawings, specifications, technical information, tools, know-how used by Melexis shall be irrevocably transferred to and become the sole property of Melexis, regardless of whether any such improvement or modification was developed by or made on specific request of Customer.
- 8.5. Customer further agrees to use and respect all appropriate copyright and proprietary notices and markings on all goods delivered hereunder regardless of their intended use, and shall ensure that such notices and markings remain apposed upon delivery.

9. Infringement on intellectual property rights

- 9.1. Melexis shall defend any legal proceeding brought against Customer insofar as such legal proceeding is based on a claim that any goods shipped by Melexis infringe any patent(s), copyright(s) or trademark(s) in the country of the place of delivery, if Melexis is notified promptly in writing of the existence of such suit or proceeding or the risk of such suit or proceeding being initiated and is given full and complete authority, information and assistance by Customer for such defense.
- 9.2. In the event that such goods are held in such suit or proceeding to be infringing and their use is enjoined, Melexis

will make reasonable efforts at its option and at its expense to either:

- (a) procure for Customer the right to continue using such goods;
- (b) modify such goods so that they become non-infringing;
- (c) replace such goods with non-infringing goods; or
- (d) accept the return of such goods, granting Customer a refund or credit equal to the depreciated value.

If such efforts to remedy the defect fail, Customer shall be entitled to raise its statutory rights. Any claims for damages shall be limited pursuant to clause 15.

9.3. Any provision herein to the contrary notwithstanding, Melexis shall have no obligation to Customer and Customer shall indemnify and hold Melexis harmless against any claim arising from any infringement, misappropriation or misuse claimed by any third party or parties if any such claim arises out of

- (a) a modification of the goods not introduced or approved by Melexis; or
- (b) the interconnection or use of the goods in combination with goods or other devices or with a manufacturing, assembly or other process; or
- (c) the use of the goods in other than an application recommended by Melexis or
- (d) compliance with Customer's design, specifications and/or instructions.

9.4. Melexis shall notify Customer promptly in writing of a proceeding provided for in clause 9.3 and give Customer full and complete authority, information and assistance for such defense. Customer shall pay all damages and costs finally awarded against Melexis in any such suit or proceeding, but Customer shall not be responsible for any settlement in this respect made by Melexis without the written consent of Customer.

9.5. The foregoing clauses state the sole and exclusive liability of the parties in respect on infringement of intellectual property rights.

10. Confidentiality

10.1. For the purpose of this Agreement, Confidential Information shall mean: all information (in whatever format) which: (i) relates to the Agreement; (ii) is designated as confidential by either party; or (iii) relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of either party (including customer data) and which may reasonably be regarded as confidential information of the disclosing party.

10.2. Subject to clause 10.3, Melexis and the Customer shall:

- (a) only use Confidential Information for the purposes of this Agreement;
- (b) only disclose Confidential Information to a third party with the prior written consent of the other party (except that Melexis may disclose Confidential Information to Melexis affiliates or to its employees, agents or contractors, including professional advisors or auditors, and Customer may disclose Confidential Information to Customer affiliates for the purposes of this Agreement); and
- (c) ensure that any third party to whom Confidential Information is disclosed executes a confidentiality undertaking substantially similar to the terms of this clause 10.

10.3. The provisions of clause 10.2 shall not apply to any Confidential Information which: (i) is or comes into the public domain other than by breach of this clause 10; or (ii) is or has been independently generated by the recipient party; or

(iii) is properly disclosed pursuant to a separate written consent or a statutory obligation, the order of a court of competent jurisdiction or the requirement of a competent regulatory body.

11. Force majeure

11.1. Melexis shall not be liable for delay in performance or failure to perform in whole or in part the terms of this Agreement due to causes beyond the reasonable control of Melexis and for which Melexis is not responsible (*"nicht zu vertreten hat"*), including, without limitation, strike, labor disputes, shortages of material, war, riot or civil commotion, acts of the public enemy, insurrection, sabotage, or fire, flood or other acts of God.

11.2. The period for performance for the party affected by such a cause shall be extended by the duration of the condition, provided, however, if any such delay shall continue for more than three (3) consecutive months, each party shall have the right of withdrawal from this Agreement or any purchase order.

12. Assignment and subcontracting

12.1. Neither party may assign, charge, transfer or otherwise dispose of this Agreement or any rights or obligations therein in whole or in part, without the written consent of the other party (which consent shall not be unreasonably withheld or unduly delayed).

12.2. Notwithstanding clause 12.1, Melexis may assign any and all of its rights and obligations hereunder upon notification to (i) any Melexis affiliated company; (ii) a third party pursuant to any sale or transfer of all or part of the assets or business of Melexis; or (iii) a third party pursuant to any financing, merger, or reorganisation of Melexis.

12.3. Melexis may subcontract any part of the work or services to be provided under this Agreement.

13. Export control

13.1. Customer acknowledges that Melexis will provide Customer with technical data/technology, services, and/or, products, in finished or unfinished state that may be subject to U.S. export controls under the laws and regulations of the United States (collectively "Export Controlled Technology" or "ECT"). U.S. export control laws and regulations include, but are not limited to, the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. §§ 120 et seq., and/or the Export Administration Regulations, 15 C.F.R. §§ 730 et seq.

13.2. Customer warrants and agrees that it shall not export any ECT, except pursuant to a U.S. government license or other approval, or upon determination that such export may be lawfully exported without prior approval under a license exception, exemption, or other authority.

13.3. Customer will be fully responsible to apply for export licenses in order to ship ECT to Customer and Melexis may assist Customer in order to obtain such license.

13.4. In compliance with U.S. regulations regarding Technology and Software under Restriction ("TSR"), Customer hereby agrees that, without express approval of Melexis (pursuant to issuance of an export license from the Bureau of Industry and Security), Customer will not re-export or release any technology related to the products provided by Melexis to Customer to a national of a country specified in Country Groups D:1 or E:2 as set forth in 15 C.F.R. Part 740, Supplement No. 1 and as amended.

13.5. Melexis shall have no responsibility for delayed delivery or non-delivery resulting from (i) any governmental action under U.S. or other applicable law suspending or revoking a necessary export license or authorization, or (ii) any failure

by Customer to furnish reasonable assurance, upon request, of its compliance with applicable export requirements, or (iii) obtaining a necessary export license for the goods to be shipped hereunder.

14. Use of goods in life support, nuclear and certain other applications

- 14.1. Goods sold by Melexis are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications, including, but not limited to, public transportation operating systems, in which the failure of such goods could reasonably be expected to result in personal injury, loss of life or severe property or environmental damage.
- 14.2. Customer acknowledges that use of Melexis' goods in such product applications is understood to be fully at the risk of Customer and that Customer is responsible for verification and validation of the suitability of Melexis' goods in such application. Customer agrees that Melexis is not liable, in whole or in part, for any claim or damage arising from use in such applications. Customer agrees to indemnify, defend and hold Melexis harmless from and against any and all claims, damages losses, costs, expenses and liabilities arising out of or in connection with such use.

15. Limitation of liability

- 15.1. Subject to clause 15.3 but otherwise notwithstanding anything else in this Agreement, each party's total liability under the Agreement (including for warranty or violation of a material obligation or «Kardinalpflicht»), shall be limited to the foreseeable damages. The Parties deem the foreseeable damages under this Agreement to be the amounts paid by Customer for the goods giving rise to such claims in any six months period preceding the event with a maximum of one (1) million EUR.
- 15.2. Each party explicitly agrees that any indirect, incidental, collateral, special, punitive, or consequential damages or losses shall be considered as unforeseeable damages or losses, including but not limited to line stop, recalls, harm to business or business reputation, loss of revenues, loss of anticipated savings or lost profits.
- 15.3. Nothing in this Agreement shall serve to limit either party's liability in respect of (i) death or personal injury caused by or arising from its negligence, (ii) material obligations («Kardinalpflichten») caused by or arising from its negligence, (iii) gross negligence and wilful misconduct or (iv) product liability.
- 15.4. Any liability other than described in this clause 15 – irrespective on the basis thereof – shall be excluded.

16. Term and termination

- 16.1. The Agreement shall take effect from the date the first purchase order is accepted by Melexis, or the date Customer first takes receipt of the goods, whichever of these is earlier, and shall continue in force unless and until terminated in accordance with this clause 16.
- 16.2. If the Agreement relates to a one time, non-recurrent delivery of products or services, the Agreement will automatically expire after the products or services concerned have been delivered, accepted and paid for in full. Except if agreed differently between the parties, if the Agreement relates to a recurrent delivery of products or services, the Agreement only expires after all products and services concerned have been delivered, accepted and paid for in full.
- 16.3. Either Melexis or Customer may terminate this Agreement or any purchase order immediately upon notice in writing:

- (a) if the other has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up or a court of competent jurisdiction makes an order to that effect or if the other enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business, or undergoes or is subject to any analogous acts or proceedings under any foreign law; or
- (b) in the event of a force majeure event as provided for in clause 12.1, which has application to all goods or services and which subsists for a period exceeding three (3) consecutive months.
- 16.4. Melexis may terminate this Agreement or the relevant purchase order without further obligation or liability of Melexis after a reasonable grace period upon a five (5) business days' notice if Customer fails to:
- (a) make any payment, when due, in accordance with the terms of this Agreement.
- (b) comply with any request made by Melexis under clause 2.5.
- 16.5. Clauses 1, 6.1., 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19 and 20 of these terms and conditions will survive the termination or expiration of the Agreement.

17. Cancellations

- 17.1. Subject to any possible statutory cancellation, termination and withdrawal rights, no cancellations of received orders will be accepted within thirty (30) days of the earliest requested ship date.
- 17.2. All cancellations of received orders by Customer between thirty-one (31) and ninety (90) days prior to the earliest requested ship date shall result in a cancellation charge to be reasonably determined by Melexis based on such factors as whether the product was manufactured specifically for Customer, Melexis' ability to change its production schedule within the period of the notice provided by Customer and whether Melexis acquired or allocated particular supplies or equipment to meet Customer's order, with a minimum of:
- (a) Fifty (50)% of the total price set forth in the order acknowledgement that is being cancelled if cancellation is received between thirty-one (31) and sixty (60) days prior to the earliest requested ship date;
- (b) twenty five (25)% of the total price set forth in the order acknowledgement that is being cancelled if cancellation is received between sixty-one (61) and ninety (90) days prior to the earliest requested ship date.

18. Applicable law and jurisdiction

- 18.1. This Agreement shall be governed by the laws of the country in which the Melexis selling entity specified in the order acknowledgement is registered, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 18.2. The sole court that has jurisdiction for any legal actions related to this Agreement shall be the commercial court competent for the registered address of the Melexis selling entity specified in the order acknowledgement. However Melexis, at its option, also has the possibility to summon the Customer before the commercial courts competent for the location of the registered address of the Customer.

19. Notices

Any notice to be given under this Agreement shall be in writing and may be hand-delivered (including delivery by

courier) or sent by fax transmission to the receiving party's address indicated on the order acknowledgment of Melexis, or such other address or number as may be notified by that party from time to time for this purpose.

20. Miscellaneous

- 20.1. **Severability.** If any provision of this Agreement, including any limitation of warranty or liability, is held by a court or any governmental agency or authority to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid, and enforceable.
- 20.2. **No Waiver.** Failure or delay by either party to exercise or enforce any right conferred by this Agreement, including Melexis' right to deliver invoices in accordance with clause 2, shall not be deemed to be a waiver of any such right.
- 20.3. **Relationship.** Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute or be deemed to constitute between the parties a partnership, agency, association, joint venture or other co-operative entity.
- 20.4. **Variation.** This Agreement shall be modified only by the written agreement of the parties represented by duly authorized officers. Customer is aware that the officers of Melexis are only entitled to agree to modifications to this Agreement in writing.
- 20.5. **Entire Agreement.** This Agreement sets out the entire and exclusive agreement between Melexis and Customer and, as the case may be, supersedes all prior proposals, representations, agreements or understandings concerning the subject matter addressed herein.