



## EM MICROELECTRONIC-MARIN SA GENERAL TERMS AND CONDITIONS OF PURCHASE

### 1. SCOPE

- 1.1. These General Terms and Conditions of Purchase of EM Microelectronic-Marine SA (hereinafter referred to as 'EM') apply to all orders from EM, unless both parties have agreed different conditions in writing.
- 1.2. The supplier expressly waives its own terms and conditions.

### 2. QUOTATION

- 2.1. Supplier quotations submitted are binding for the supplier but are not binding for EM. They are always submitted to EM for information only and this applies even when they have been provided specifically at the request of EM.
- 2.2. If the quotation is in response to a request from EM, it must in all cases refer to it. In the event of discrepancies, the supplier must alert EM to any difference between the request and its quotation.

### 3. ORDER

- 3.1. Only an order in writing (by post or fax) and duly signed from EM can be binding on EM. Any agreement made orally, by telephone or electronically (e-mail, etc.), and in particular concerning any additional service or any subsequent modification of the orders is valid only if EM confirms it in writing.
- 3.2. The performance of the order (in part or in full) by a subcontractor is permitted only with the prior written agreement of EM. Under all circumstances, the supplier remains responsible for observing and performing the conditions of the contract.

### 4. ORDER CONFIRMATION

- 4.1. Confirmation of the order is to be sent to EM at once, at the latest within 5 (five) days' counting from the date the order was sent. It will state specifically the order number as well as the price and the exact delivery time.
- 4.2. If the order confirmation has not been sent to EM within the time stated at point 4.1., EM reserves the right to cancel the order. Until the order has been confirmed, EM may at any time, and without incurring any cost, decide to cancel or to modify the order.

### 5. PRICE

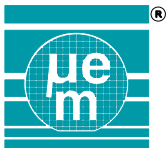
- 5.1. The agreed prices are binding and include, with the exception of transport insurance, all incidental costs (e.g. transport, packaging, etc.).
- 5.2. EM must expressly agree in writing any change in price subsequent to the agreement of the contract.
- 5.3. In the event of the parties expressly agreeing on an estimated price, EM reserves the right to reject any variation of more than 10% of the estimated price. The suppliers must notify EM immediately of any difference greater than 10% of the estimated price and request its prior agreement thereto.
- 5.4. The supplier guarantees to EM the same price and delivery conditions that it grants to its preferential clients.

### 6. PERFORMANCE OF ORDERS AND DELIVERY

- 6.1. Delivery must take place on the date and at the place specified by EM. The delivery dates are arrival dates at the place indicated by EM and are binding. The delivery dates are deemed to have been complied with if the goods have been delivered within the time and at the location specified.
- 6.2. If the delivery has not taken place within the specified timescale, EM may choose:
  - 6.2.1. to demand delivery and claim damages against the supplier on grounds of late delivery; or
  - 6.2.2. demand delivery reducing, at its own discretion, the volume ordered and claim damages against the supplier on grounds of late delivery; or
  - 6.2.3. cancel the delivery and claim damages on grounds of non-performance; or
  - 6.2.4. withdraw from the contract and claim damages for loss resulting from termination of the contract.
- 6.3. In the event of a foreseeable delay in delivery or in case of *force majeure*, (war, strikes, epidemics, riots, natural catastrophes, etc.) the supplier must inform EM immediately, and at the latest during the week at the start of the event, specifying the reasons and the probable extent of the delay in delivery. In the event of there being no such notification, the supplier may not invoke *force majeure*. Where notification has been given, a new time limit will be set by mutual agreement. If the delivery is postponed for longer than one month, EM shall have the right to withdraw from the contract and, if the delay in delivery is attributable to the supplier, to claim in addition damages for the consequences resulting from the delay.
- 6.4. EM reserves the right to reject any partial delivery or delivery in advance of the due date that is made without EM's prior agreement.
- 6.5. EM reserves the right to return to the supplier any surplus parts and to claim full compensation for the additional costs incurred and, in the case of partial delivery, to demand that the supplier provides the missing parts.
- 6.6. Acceptance of deliveries that are early, late, partial or not in conformity with the order or the specifications does not constitute a waiver by EM of the right to claim damages or compensation for the additional costs incurred through the non-conformant delivery.
- 6.7. In the event of goods ordered being subject to import or export controls or restrictions required by US regulations or those of the country of origin or of destination, the supplier undertakes to provide EM in advance with all necessary information and to convey any useful documents relating thereto.

### 7. DELIVERY

- 7.1. Delivery of goods shall be made DDU to the address specified on the order (according to the version of Incoterms in force on the day of delivery).
- 7.2. A detailed delivery note, stating the order number, order status, description of the article, the number of parts, the gross weight and the references of the applicant/buyer must be enclosed with each order. In the event of non-observance, EM reserves the right to refuse to accept the delivered goods or to store them at the expense and risk of the supplier until the elements necessary to receive it have been provided.
- 7.3. Packaging materials will not be returned unless so agreed and on condition that the redispach is made only at the risk and expense of the supplier.



## 8. PERFORMANCE OF CONTRACT AND GUARANTEE

- 8.1. Profit and risk are transferred to EM on receipt of delivery of the product, at place of performance of the contract.
- 8.2. The supplier is obliged to check the quantity and quality of the product before delivery.
- 8.3. The supplier guarantees that there are no defects affecting title to the product delivered and in particular that the delivery or use of the product or object does not violate any patents or any other rights of third parties. In this respect the supplier must indemnify EM and/or its affiliated companies against any claim or action by a third party on the grounds of infringement of industrial and/or intellectual property rights occasioned by the incorporation, sale, storage or more generally the use or distribution of the goods delivered and undertakes to indemnify EM for the direct and/or indirect financial consequences of such actions or claims.
- 8.4. The supplier guarantees, for a period of 24 months, that the delivery has been made in accordance with the contract, that the product delivered has the promised or expected specifications and that it has no material, economic or legal defects. This period starts from the date of delivery at destination.
- 8.5. The supplier guarantees that all products delivered correspond to the current technical requirements and satisfy all official regulations, norms and other public authority directives, particularly those relating to prohibited substances, to hazardous substances, to health, safety, the environment, electromagnetic compatibility, etc., in force at the time of delivery.  

The supplier must indemnify EM and/or its affiliated companies against any claim issued by a third party and compensate for any loss or harm suffered by EM due to the products delivered that do not fulfil the above guarantees. EM undertakes to inform the supplier without delay of any such demands and/or claims.
- 8.6. Where applicable, the supplier guarantees that the origin of the products delivered gives entitlement to the benefit of preferential rates within the meaning of the customs regulations of Switzerland and of the European Union and undertakes to inform EM immediately of any change that would no longer allow access to this preferential regime. The supplier will indemnify EM, its affiliated companies or clients against financial consequences resulting from a refusal by the customs authorities to grant this preferential system because of a declaration of origin that is false, unsatisfactory or incomplete.
- 8.7. EM reserves the right to demand remedy of defects or replacement with a flawless product or, else, either to terminate the contract or to demand an indemnity for the encountered losses. Furthermore, EM reserves the right to order replacement products from a third party or to arrange for repairs to be carried out at the expense of the supplier.
- 8.8. All costs in relation to works under guarantee will be borne by the supplier.
- 8.9. In the event of a replacement delivery or after rectifying defective goods a new guarantee period of 24 months is granted.
- 8.10. The goods delivered are to be examined as soon as possible after delivery, at the latest at the time of their subsequent processing or installation. Any defects will be reported immediately to the supplier. However, since in most instances it is not possible to examine

the conformity of the goods on delivery, the supplier acknowledges the validity of notices of defect at any time, provided that they have been communicated before expiry of the guarantee period.

## 9. OWNERSHIP OF TOOLING AND EQUIPMENT

- 9.1. The supplier undertakes to transfer to EM, the property rights and/or the exploitation rights relating to prototypes, tools, dies, moulds, calipers, plans, software or other equipment and materials acquired or devised specifically for the purpose of carrying out the order.
- 9.2. All tooling and/or equipment consigned to the supplier by EM in order to carry out the order remain the property of EM, and are provided on a loan basis for the use of the supplier who shall not entrust them to a third party and must return them to EM at any time on request and cannot exercise any right to retain them or to claim any indemnity.
- 9.3. The supplier shall not use these materials other than for the purpose of carrying out the orders of EM and not for any other purpose on its own account or that of a third party.

## 10. RIGHT TO USE TRADEMARKS

- 10.1. Any authorisation granted to the supplier to affix or to use one of EM's trade marks (or a trade mark which EM is entitled to use or to affix) is strictly limited to the fulfilment of the order concerned and may not be deemed equivalent to the granting of a licence or an equivalent right to use this trademark.

## 11. USE OF SOFTWARE

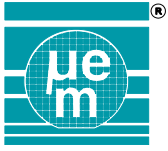
- 11.1. In so far as software proves to be essential to the use of the products delivered, the supplier will grant to EM, free of charge and without any limitation as to time and place, a licence to use the software.

## 12. SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

- 12.1. The supplier guarantees that EM's services or orders will be carried out under strict compliance with the norms and legal provisions in force or which are applicable to them, particularly with regard to labour legislation and with regard to health and safety or environmental protection, and that it satisfies in this respect all the applicable legal obligations or responsibilities. In this respect, the supplier states that it complies with the "Social and Environmental Responsibility [SER] Principles of Conduct" of EM, which can be consulted at <http://www.emmicroelectronic.com/Quality.asp>. This statement applies equally to its suppliers and subcontractors. EM has the right to terminate with immediate effect the contract with the supplier in the event of failure to observe the aforementioned SER principles.
- 12.2. The supplier undertakes to indemnify EM and/or its affiliated companies for any and all loss or damage they may suffer as a result of its own, its suppliers' or its subcontractors' failure to respect the provisions defined in 12.1.

## 13. CONFIDENTIALITY

- 13.1. All technical data, designs, documents, software and other information provided to the supplier by EM may only be used for the purpose of fulfilling orders. This data and information and any updates, copies or corrections, remain the exclusive property of EM and may not be communicated to any third party without EM's prior written agreement; they must also be returned to EM on demand. This obligation extends beyond the duration of the contract.
- 13.2. The supplier may not disclose that it is a supplier of EM, without EM's prior written agreement.



## 14. INVOICE AND PAYMENT

- 14.1. Invoices are to be prepared in duplicate for every delivery and must reach EM by mail or as otherwise explicitly agreed immediately following delivery.
- 14.2. Invoices must be in accordance with the text and terms of the order and must include the order number, VAT and all other EM references.
- 14.3. The time limit for payment starts from the date of the invoice. If this date precedes the delivery, it starts from the date of receipt of the goods ordered. For anticipated deliveries, the time limit for payment starts from the date initially agreed for delivery. Payment does not affect the supplier's guarantee obligation.
- 14.4. Payment of the price by EM does not imply acceptance of the goods with regard to quality and conformity with the agreed specifications.
- 14.5. In the event of goods being defective, EM reserves the right to withhold all or part of the payment until the supplier fulfils its obligation to deliver replacement goods of perfect quality or until EM and supplier have agreed or a court order has been made as to replacement of the goods, as to a reduction in the price or as to a claim for damages.
- 14.6. Unless agreed to the contrary, payments are to be made in accordance with the conditions specified in the order.

## 15. APPLICABLE LAW AND PLACE OF JURISDICTION

- 15.1. All EM's orders in relation to these general terms and conditions of purchase and all consequent legal relationships are subject to Swiss law, with the exception of Switzerland's rules on conflict of laws. The application of the United Nations Convention of 11.4.1980 on the International Sale of Goods is excluded.
- 15.2. **The exclusive place of jurisdiction shall be at the registered office of EM.**
- 15.3. The parties, however, remain free to request provisional measures before the ordinary courts competent to deliver them.
- 15.4. These terms and conditions of purchase are available in English and French. In case of doubt, the English version takes precedence.

EM Microelectronic-Marine SA  
Rue des Sors 3  
2074 Marin, Switzerland  
Phone: +41 (0) 32 755 51 11  
Fax: +41 (0) 32 755 54 03