



## GENERAL TERMS OF SALE

### 1. Applicability

Subject to these General Terms of Sale ("Terms"), EM Microelectronic-Marine SA ("EM") offers for sale to you ("Customer") the goods and services (collectively "Goods") specified in EM's written order acknowledgment to Customer ("Acknowledgment"). "Order" means Customer's written, electronic, or verbal purchase order for the Goods. EM's execution of the Order presumes Customer's assent to these Terms.

An Order is accepted only after EM has issued an Acknowledgment to Customer. Unless Customer and EM have a written executed agreement for the purchase of Goods from EM, only these Terms apply to the Order. These Terms may in some instances conflict with some of the terms and conditions proffered by Customer. Regardless of any such possible conflicts, acceptance and execution of the Order by EM is made only on the express understanding and condition that solely the Terms shall apply, irrespective of whether Customer accepts these Terms by a written acknowledgment, by implication, or by acceptance and payment for Goods. EM's failure to object to any deviating terms or conditions received from Customer, including the original Order, will not be a waiver of these Terms.

### 2. Quotations

Quotations of EM containing no indications as to the period of validity are not binding for EM. All EM quotations and related documents are confidential and may neither be disclosed to any third party nor any person who does not have a need to know.

### 3. Prices

Prices quoted in EM price lists, leaflets, press releases and websites are indicative and not binding. If not clearly marked differently, all prices are in Swiss Francs (CHF) excluding Value Added Tax (VAT) and EXW EM production site (Incoterms 2010). Costs for freight and insurance are offered and charged separately.

For all Orders and/or quantities not confirmed by EM to Customer in writing, EM expressly reserves the right to adapt the offered prices in connection with possible increases in production costs (salaries, employers' national insurance contributions, taxes, components, material, equipment, etc.).

EM reserves the right to adjust any price relating to an acknowledged Order in a currency other than Swiss Francs (CHF), should an exchange rate fluctuation exceeding 3% occur between the date of the Acknowledgment and the date of delivery (basis: Interbanking exchange rate, last working day of the month, 14:00 CET).

### 4. Modifications and Substitutions

EM reserves the right to modify its process, materials, or specifications for Goods and to substitute goods substantially equivalent to those initially ordered. It is Customer's responsibility to test all Goods to determine suitability for its needs.

### 5. Intellectual Property; No License; Confidential Information

All intellectual property rights in the Goods remain vested in EM or its licensors. Title to all software and firmware remains vested in EM or its licensors. Software and firmware are licensed to Customer a) to the strict extent necessary for the Goods to perform in accordance with their specification and/or b) to allow free use of the Goods without violating any intellectual property rights of EM or its licensors. No other rights are transferred or licensed to Customer as a result of the sale of Goods to it. Software and firmware are provided "AS IS".

All products, designs, cells, circuits, devices, software, firmware, mask sets, design tapes, processes, methods, plans, drawings, drafts, sketches, schematics, quotations, cost estimates and other technical documents or items that are designed, developed, generated or produced by EM in connection with the Goods are and remain the sole property of EM. Any form of reproduction, communication to third parties and/or use of such documents in design, development and/or production of any product or its components is prohibited.

Customer must maintain the secrecy of and not disclose, without EM's express written consent, all trade secrets, proprietary information, or confidential information, which Customer receives from EM.

Customer must not, nor permit others to, manufacture, reverse engineer, translate, decompile, create derivative works based on the whole or any part of the Goods, disassemble, adapt, modify, duplicate, or otherwise copy or reproduce any of the Goods without obtaining EM's prior express written permission.

Customer may not resell Goods without EM's prior written consent unless the Goods are sold embedded within Customer's application or products.

### 6. Terms of Delivery

Unless otherwise agreed in writing, all deliveries by EM are EXW EM production site (Incoterms 2010). Title and risk of loss or damage to Goods will pass to Customer upon delivery to Customer at EM's production site.

EM's delivery and performance dates are estimates only. EM will use commercially reasonable efforts to deliver in accordance with the delivery or performance dates, but may change those dates as it deems necessary. EM will not be liable for failure to deliver or perform by the estimated dates. Failure to deliver or perform by the estimated dates does neither give Customer the right to cancel an Order or any part thereof nor to claim damages.

EM reserves the right to make partial deliveries. For customer specific Goods, due to technical reasons which cannot be avoided, EM has the right to vary the quantity of Goods to be supplied up to  $\pm 10\%$  of the total acknowledged Order quantity.

### 7. Inspection and Acceptance

Goods are deemed to be accepted by Customer unless Customer provides EM written notice to the contrary specifying the non-conformance within 30 days of delivery of the Goods. EM may examine Goods which Customer claims are non-conforming on Customer's premises. EM may impose charges to reimburse it for its costs if it finds Customer's claim is unsupported. No Goods may be returned to EM unless Customer has first received EM's return material authorization ("RMA") and complied with EM's thereto related instructions.

### 8. Payment Terms

Subject to EM's credit check and approval, and unless EM otherwise specifies, all invoices are payable net within 30 days of the invoice date.

If Customer fails to timely pay any amount owed to EM, EM reserves the right to charge a late payment interest charge of 1% per month (or up to the legally permitted maximum rate) starting at the due date for any invoiced amounts, to withdraw credit, to impose other payment terms or late charges, to cease further shipments, or to impose any combination of these actions.

For new customers and in special cases, payment in advance or by letter of credit may be requested.

Customer is under no circumstance permitted to offset any of its alleged claims against any amount Customer owes to EM.

Any banking fees that apply for the settlement of invoices are at the expense of Customer.

### 9. No Cancellation; Rescheduling

Acknowledged Orders may only be cancelled by mutual prior written agreement between EM and Customer. Customer may reschedule any acknowledged Order once without charge by providing EM with written notice at least 6 weeks for standard Goods and at least 12 weeks for customer specific Goods before acknowledged delivery.



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performance dates in the Acknowledgement, provided that the cumulative total of any rescheduled dates does not exceed three (3) months. Any rescheduling of acknowledged Orders becomes effective only upon prior written confirmation by EM.

### 10. Health Care, Military and Automotive Applications

Without the specific prior written approval of EM, Goods are neither designed nor authorized for use as components in a) safety and life supporting devices and systems, where malfunction of such Goods might result in damage to and/or injury or death of persons; b) military, armament, nuclear or aerospace applications or environments; c) automotive applications unless specifically designated by EM as automotive-grade.

The unauthorized use of Goods in such systems/applications/equipment is solely at the risk of Customer and Customer agrees to defend and hold EM harmless from and against any and all claims, suits, damages, cost, and expenses resulting from any unauthorized use of Goods.

### 11. Ethical, Social and Environmental Responsibility

EM expects that the entire EM supply chain strictly complies with all applicable legal provisions with regard to labor legislation and with regard to health and safety and environmental protection, and that it satisfies in this respect all the applicable legal obligations or responsibilities. The entire EM supply chain shall comply with the "Social and Environmental Responsibility SER Principles of Conduct" of EM, which can be consulted at <http://www.emmicroelectronic.com/Quality.asp>. EM reserves the right to terminate with immediate effect the business relationship with any of the EM supply chain partners in the event of failure by the latter to observe the aforementioned SER Principles.

### 12. Warranty and Limited Liability

EM hereby warrants that during twenty four (24) months from the date of delivery of the Goods, these Goods shall comply with their specification(s) and that they will be free from defects in material and workmanship, provided that a) the Goods have been operated within their specifications, b) the appropriate handling and manufacturing precautions in accordance with recognized standards and practices of the industry of manufacturing technical, electronic or mechanical components have been strictly observed by Customer, c) the Goods have not been altered and/or modified by anybody else than EM, and d) Goods have not been provided to Customer as engineering samples which EM provides only "as is".

EM furthermore warrants that Goods, to the best of its knowledge, do not infringe any third parties' intellectual property rights. For the avoidance of doubt, intellectual property rights infringements deriving from a) the use of the Goods in combination with other products provided by Customer and b) compliance by EM with Customer's designs, specifications, instructions, modifications or improvements, are the exclusive responsibility of Customer and EM assumes no warranty and liability whatsoever resulting therefrom.

If, during the warranty period of twenty four (24) months from the date of delivery of the Goods, the Goods do not comply with the warranties listed herein, upon Customer's prompt written notification, EM shall either replace, repair, redesign all such non-compliant and returned Goods, at its own risk and expense, or refund to Customer the purchase price of such non-compliant and returned Goods by way of credit note, as may be reasonably elected by EM. Replacement Goods, redesigned Goods and repaired Goods are warranted for the remainder of the original warranty period of the non-compliant Goods.

EM cannot be held liable for any costs due to disassembling or reassembling or for damages that occurred directly or indirectly through the Goods supplied, through their use or through their possible defects. In particular EM declines all liability for consequential or any other subsequent damages such as lost profit.

Furthermore, EM does not undertake any liability for damages caused by improper operations by Customer, by wrong use in assembling, incorrect fitting of parts or inadequate storage.

### RMA (Return Material Authorization) procedure:

Before returning any Goods, Customer must contact EM's customer service department in order to receive a RMA number for any return. This number must be indicated on the customer's return delivery note to allow EM to identify and treat the return according to their internal guidelines. In addition, each return must contain a description of the alleged defect. In the event that Customer returns the goods without the RMA number and/or without a description of the alleged defect, EM reserves the right to refuse such return. Any damages resulting from inadequate packaging by Customer or its representatives will be at the Customer's expense.

To the maximum extent permitted by applicable law, the warranty remedies set forth in this article 12 constitute EM's exclusive warranty and liability obligations, and customer's exclusive remedies for any Goods covered by these terms. This warranty is exclusive and, in lieu of all other warranties and liabilities. EM makes no other warranties, express, implied, or statutory, including without limitation any warranties of merchantability, fitness for a particular purpose, or non-infringement.

### 13. Warranty and Liability Disclaimer for Software, Firmware and Engineering Samples

Notwithstanding anything to the contrary, software, firmware and engineering samples of Goods are provided "as is" and "with all faults". EM disclaims any and all warranties and liabilities, express or implied, regarding such software, firmware and engineering samples of Goods.

### 14. Export

The Goods delivered by EM to Customer may be subject to national and international export control regulations. The re-export of the Goods may require the approval by the competent authorities. Customer shall exclusively be liable for the observance of any and all applicable export control regulations up to the end-user. Customer will indemnify EM for all damages, including reasonable attorneys' fees, resulting from Customer's failure to comply with these regulations.

### 15. Force Majeure

EM will not be liable for any cause beyond its control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, terrorism, sabotage, labor disputes, yield problems, or inability to obtain materials, components, energy, manufacturing services or facilities, or transportation on commercially reasonable terms. In the event of any such delay, the estimated date of delivery or performance hereunder will be extended by a reasonable period of time.

### 16. Applicable Law and Place of Jurisdiction

The present Terms and all contracts between EM and the Customer shall be exclusively governed by and construed in accordance with Swiss law, without giving effect to Switzerland's rules on conflict of law and regardless of the place or places of their physical execution and performance. Furthermore, the application of the United Nations Convention on Contracts for the International Sale of Goods (11 April 1980) is explicitly excluded.

Neuchâtel, Switzerland, shall be the exclusive forum for the settlement of all and any disputes out of or in connection with these Terms and all contracts between EM and the Customer which cannot be resolved through friendly negotiation. EM reserves the right, however, to take legal action against the Customer before the authority of Customer's legal domicile (or principal place of business) or before any other competent authority, in which event exclusively Swiss law shall remain applicable.