

General terms and conditions for deliveries and services provided by IHP Solutions GmbH

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The purpose of IHP Solutions GmbH (referred to hereinafter as 'Solutions'), a 100% subsidiary of IHP GmbH – Innovations for High Performance Microelectronics/Leibniz-Institut für innovative Mikroelektronik, is to provide services in the area of applied technical development, technical measurements and small volume production of ASICs including next production steps for industrial customers (referred to hereinafter as 'Customer'); thus breaking new ground in terms of technology. Solutions performs its services exclusively for civil purposes. The following Terms & Conditions are tailored to such particular aspect.

1. Field of application

1. The following terms & conditions apply to technical development services, technical measurement services, transfer and licensing of IP, small volume production and further processing of the ASICs as well as other services provided by IHP Solutions. Any deviating, conflicting or supplementary terms and conditions of the Customer are not applicable unless Solutions agrees to their validity in writing.

2. Subject of the contract, contract validity, scope of deliveries and services

2.1 For a valid contract between Solutions and the Customer to be concluded, a written order confirmation by Solutions is required.

2.2 If the quotation or the services or manufacturing order include any time limits or deadlines, these are only binding, if Solutions has explicitly confirmed their binding character. If Solutions concludes that such binding time limit or deadline cannot be met, Solutions will communicate the causes for such delay to the Customer and provide a reasonable delivery date. In case of any export limitations, contradicting regulations or trade embargos the delivery is subject to all necessary approvals by German authorities. Solutions is not liable for any delay or stop of deliveries due to export regulations.

2.3 Solutions sole warranty is that the deliveries and services will be in accordance with the specification as described in "IHP Solutions Conditions for production services and technical services" as well as referenced documents not attached hereto but known to the parties. Solutions disclaims any additional warranty, such as, but not limited to, the commercial usefulness of its deliveries and services rendered according to the purpose of use pursued by the Customer.

2.4 No warranties referring to any specification or quality standards are granted for test samples that are explicitly provided for testing purposes.

2.5 Deliveries will be FCA Solutions pursuant to Incoterms 2020.

3. Prices and payment terms

3.1 All prices agreed do not include VAT, packaging, insurance, freight, assembly and further dispatch or transport costs.

3.2 Statutory VAT, as required by the time the services are rendered, has to be added to the prices agreed, and will be shown separately in the invoice.

3.3 Unless agreed otherwise, advance payment of 50% of the contract price agreed is due immediately following receipt of first instalment invoice. For standing orders, the value of the respective called order is relevant. The remaining amount is payable within 14 days following receipt of final invoice. The remaining amount is payable within 14 days following receipt of invoice. Any deviating agreements need to be held in writing. Payments are to be made without deductions to the bank account of Solutions, indicating the invoice no.

3.4 Offset against claims against Solutions is only permitted, if the counter-claim is either undisputed or found to be legally binding.

3.5 The Customer can exercise their right to withhold only, if their counter-claim is based on one and the same contractual relationship.

4. Results of work generated

4.1 Solutions remains the owner of existing copyright, inventions and further rights on intangible property rights (existing proprietary rights).

4.2 Unless explicitly stated otherwise in writing, any inventions made by Solutions staff, or by third parties involved by Solutions, in the course of carrying out the services or manufacturing order remain in the sole property of Solutions.

4.3 Any inventions made jointly by staff of Solutions and of the Customer in the course of carrying out the services or manufacturing order, including any proprietary rights consequentially granted, are owned jointly by both parties to the contract. Any specific activities regarding such proprietary rights require an arrangement of a separate agreement on each single case. Any party involved is entitled to use (free of charge) inventions made jointly, as well as the proprietary rights resulting from them. The parties involved will decide jointly on granting licence on inventions made jointly. If any of the Parties waives their rights to or resulting from the patent, the sole authority of disposal of the respective registration and/or the proprietary rights are transferred to the other party. In this case, the waiving party retains a free-of-charge, non-transferable right of use. Paragraph 4.3 applies accordingly to products falling under copyright act protection, which are created jointly by the Parties to the contract in the course of carrying out the services or manufacturing order (shared copyright).

5. Liability

5.1 Solutions, its legal representatives and vicarious agents are liable to the Customer pursuant to the Product Liability Act, and for breach of duty and tortious act, if caused with intent or by gross negligence. For violating essential contractual duties (main duties), Solutions, its legal representatives and vicarious agents are liable also in cases of ordinary negligence. However, such liability is in any case limited to foreseeable damage typically related to such contract. Such exclusion or limitation does not apply to liability for damage to life, for physical injuries, or for damaged health.

5.2 Beyond that, Solutions will not assume any additional liability, unless mandatory and prescribed by the German law. Any liability for consequential damage is explicitly ruled out.

5.3 No liability is assumed for breach of proprietary rights of any third Party during the use by the Customer of results generated by Solutions, unless Solutions had been aware of such breach by the time of transferring these results, and has, with intent or by gross negligence, failed to inform the Customer about this.

6. Defect claims

6.1 The Customer is obliged to examine with no delay the service delivered by Solutions, and to notify any defects immediately. Any claims resulting from discernible defects can only be alleged, if they are reported to Solutions within 14 days following delivery.

6.2 Solutions does not assume any liability for the usability of the provided deliveries and services according to the intended purpose of use pursued by the Customer.

6.3 If the service provided by Solutions appears to be defective, Solutions will at first be given an opportunity to remedy such defect – depending on the character of the defect and all further circumstances also several times – by providing supplementary service, which according to choice can be rework or substitute delivery. For such purpose, the Customer has to concede to Solutions an appropriate period of time, considering the particular circumstances of a single case of a service.

6.4 If Solutions refuses to render supplementary service, if supplementary service fails, or if it cannot be reasonably accepted by the Customer, the Customer may choose either to withdraw from the Contract, or to claim lowering (reduction) of remuneration owed, or to claim damages. The right to withdraw can only be exercised in case of a grave defect. It expires, if the Customer does not declare withdrawal within 14 days, at the latest, following notification on such refusal by Solutions or the failure of supplementary service, nor declares withdrawal within 14 days, by the latest, following the moment that unacceptability of supplementary service has become clear to the Customer. Solutions is liable to pay damages only on the basis of further preconditions, as set forth in paragraph § 5.

6.5 Claims resulting from defects lapse according to paragraph 7.

7. Statute of Limitation

7.1 Claims resulting from defects as to quality and defects in title are subject to 12-month limitation, unless prescribed otherwise by the law.

7.2 Limitation of claims resulting from defects starts from the time of delivery.

7.3 Negotiations between the Parties on claims or circumstances being the basis for such claims lead to limitation being suspended. However, such suspension ends, if one of the parties to the contract does not fulfil within 4 week-time the desire of the other party to continue these negotiations.

8. Retention of Ownership

8.1 In cases involving ownership transfer to the Customer as part of the service owed, the Customer will acquire title only after full payment of the price agreed. No property of Solutions must ever be pledged or assigned as security.

8.2 In the event that ownership of Solutions expires as a result of merger, intermingling or working up, it is already now being agreed that ownership to the merged entity arising in such case is, until full payment of remuneration agreed, transferred to Solutions according to the proportional value (invoice value).

9. Confidentiality

9.1 During and for a 5-year period following conclusion of the assignment, the parties to the contract will not make accessible to any third party any technical or commercial information that was mutually disclosed to each other and declared confidential. However, this does not apply, if the information was already known to the other party or to the public domain, or was generally accessible prior to the disclosure, or became known to the other party or to the public domain, or became generally accessible after the disclosure through no help or no breach of the other party to the contract, or which corresponds with information disclosed or made accessible to the other party to the contract by a third party authorized to do so, or developed independently by an employee of the other party to the contract, who did not have knowledge of the information disclosed.

9.2 Authorized third parties within the meaning of this clause are Solutions' subcontractors being entrusted by it to provide particular parts of the service, and who are bound to confidentiality.

10. Termination of contract

10.1 Unless agreed otherwise in writing, contracts can be terminated by the end of each month with 30 days of notice, but not prior to 6 months following the commencement of the contract.

10.2 Termination of contract for compelling reasons remains unaffected.

10.3 After termination becoming effective, Solutions will hand over to the Customer within 4 weeks all results achieved prior to expiry of the period of termination. The Customer is obliged to remunerate to Solutions all costs arising to the latter till the end of the period of termination. Personnel costs are paid for according to expenditure of time. In the event that termination was caused by the fault of one of the Parties to the contract, any claims for damages remain unaffected.

11. Miscellaneous

11.1 Any side agreements, alterations and amendments need to be held in writing.

11.2 Place of service fulfillment to be provided by Solutions is the registered address of the corporation.

11.3 The laws of the Federal Republic of Germany apply, whereas the CISG United Nations Agreement on the International Purchase of Goods is being excluded here.

11.4 Should a provision or several provisions be or become, either in part or completely, ineffective, the validity of the remaining provisions remains unaffected. The same applies in the event of a regulatory gap.