

TERMS and CONDITIONS



1 DEFINITIONS

The following terms shall have the meaning ascribed below:

“Seller” means NXP Holdings Limited (“NXP”) or any subsidiary of NXP Holdings Limited.

“Buyer” means the customer purchasing from Seller.

“Product” means goods ordered by Buyer from Seller.

“Parties” means both Buyer and Seller.

2 PRICE

The price to be paid for the Product shall be stated on the purchase order (hereinafter, a “PO”). Delivery Incoterms and associated freight costs will be stated on the PO.

3 PRODUCT SPECIFICATION

Buyer will advise Seller in writing (including electronic) of any particular specifications or regulatory requirements at the time of PO placement. It is the sole responsibility of Buyer to ensure the specifications fit its requirements and that Seller is advised of them in writing (including electronic) prior to PO acceptance. No dispute over Product quality or regulatory compliance can be entered into with Seller unless Products sent do not match the agreed specifications.

4 OBLIGATIONS OF THE PARTIES

4.1 Obligations of Seller

a) Order Acceptance: Seller’s acknowledgment and confirmation of any PO is deemed acceptance of that PO in accordance with these Terms and Conditions. The requested delivery date will be confirmed or adjusted at the time of acceptance and Seller will communicate to Buyer the expected dispatch and/or delivery date.

b) Packing: Product shipped by Seller will be packaged in accordance with standard commercial practices. Any Buyer-specific packaging requirements must be discussed and agreed between the Parties before acceptance of the PO, otherwise, material will be shipped in accordance with standard commercial practice.

c) Delivery: Seller will ensure that the Product is delivered to the agreed destination in the agreed way for clearance by Buyer’s nominated agent. Seller will inform Buyer of any potential issues or changes to conditions that may occur pertaining to the specific PO.

4.2 Obligations of Buyer

a) Order Placement. Buyer will order the Product from Seller via the placement of a PO, which must specify or include:

- i) the PO number, sales terms, and payment terms;
- ii) quantity, description, price and specification for the Product ordered;
- iii) the destination address for delivery of the Product;
- iv) the agreed sales basis including applicable Incoterms;
- v) the requested delivery date and shipping instructions;
- vi) any documentation required to facilitate entry to the destination; and
- vii) any documentation required for compliance with regulatory requirements of the intended market.

b) Storage: Buyer shall ensure that the Product is stored in compliance with storage conditions specified in the material safety data sheet, from the time the Product is at Buyer’s risk in accordance with the agreed Incoterm.

c) Inspection and Testing: Buyer shall have thirty (30) days from the date of arrival at delivery destination to inspect the Product for shipping damages, quantity, and consistency with the specifications, Certificates of Analysis and batch records and to accept or reject the Product. If the Buyer rejects the Product, it shall send a notice of rejection to Seller and the date the notice is received by Seller shall be the rejection date. If no such notice is sent within thirty (30) days of arrival, the shipment shall be deemed to have been accepted.

d) Rejection: Seller will not accept any claims for rejected Product if the Product has not been maintained in its original packaging and stored in accordance with the material safety data sheet. If the Product is rejected by Buyer and the fault is determined to be the responsibility of Seller, or its shipping agent, then Seller shall promptly replace the shipment at Seller’s cost, at the earliest possible time, taking all reasonable steps to minimise delay. Buyer should make available

rejected Product to Seller’s designated carrier for return to Seller, including the necessary documentation and suitable packaging.

e) Payment: Buyer shall remit payment on or before the due date stated on the invoice. Failure to remit payment in full by the due date may result in the withholding of future agreed orders, additional finance charges, change of payment terms for future shipments (such as payment in advance), and/or referral of payment dispute to a credit agency.

f) Product Compliance: Buyer shall take sole responsibility for ensuring Product purchased from Seller complies fully with all laws, regulations, codes, rules etc. applicable in the relevant jurisdiction where the Product is used, located, distributed or sold.

5 CANCELLATIONS

Due to processing commitments, POs cannot be cancelled by Buyer once accepted by Seller, unless mutually agreed.

6 SELLER’S WARRANTIES

Seller warrants that the manufacturing process(es) for, and quality of the Product shall conform to the requirements of the agreed specifications as informed by Buyer prior to PO acceptance.

7 MUTUAL WARRANTIES

Both Parties hereby represent and warrant to the other that this contract is legal and valid, the obligations are binding upon both Parties and are enforceable in accordance with such obligations and terms, and the execution, delivery and performance of this contract does not conflict with any agreement, instrument or understanding, oral or written, to which either party may be bound, and does not violate the law(s) or regulations of a court, governmental body or administrative or other agency having jurisdiction over it.

8 NXP TERMS PREVAIL

The Parties agree that the Product is supplied under these NXP Terms and Conditions which prevail over any terms prepared by or sent by Buyer including any attached to or referenced in a PO.

9 EXCLUSION OF CONSUMER LEGISLATION

If the Buyer is located in New Zealand, the parties agree that the provisions of the Consumer Guarantees Act 1993 shall not apply in relation to the supply of Product under this contract and that it is fair and reasonable that such provisions are contracted out of for the purposes of this contract.

10 INSURANCE

Seller shall maintain comprehensive general product liability insurance on the Product until the Product is no longer at Seller’s risk in accordance with the relevant Incoterm.

11 CONFIDENTIALITY

Except as otherwise required by law, the Parties agree to keep this contract and its contents confidential and not to disclose the same to any third party, except legal counsel, accountants or other consultants hired by them and except to the applicable governmental agencies in connection with any required notification or approvals.

12 RELATIONSHIP OF PARTIES

The Parties are independent contracting parties and nothing in this contract shall give either party legal representation or authority to assume or create obligations on behalf of, or in the name of, the other party.

13 DISPUTES AND ARBITRATION

The Parties will use their best efforts and act in good faith to resolve any claim or dispute arising between the Parties and relating to the terms and conditions of this contract, or the performance by either party of its obligations under this contract. Should the Parties be unable to resolve any claim or dispute, then at the option of either party, resolution shall be sought by binding arbitration by the ICC International Court of Arbitration.

14 FORCE MAJEURE

The Parties are not liable for failure to perform their obligations under this contract if such a failure is deemed to be a result of an event categorised as Force Majeure (as defined by International Chamber of Commerce).

15 SEVERABILITY

If any part of this contract is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this contract.

16 GOVERNING LAW

This contract is governed by and construed in accordance with New Zealand law. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with this contract.