



## Terms & Conditions

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## Terms & Conditions

General Terms and Conditions for Sales of Goods

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## 1. Acceptance

These Terms and Conditions establish the rights, obligations and remedies between Melexis nv, with registered offices at 8900 Ieper, Rozendaalstraat 12, and its affiliated companies, hereinafter Melexis, and the Customer which apply to any offer by Melexis and/or order issued by the Customer for the purchase of the Melexis' Products ("Products"). Unless otherwise stated in a written purchase agreement signed by duly authorized representatives of Melexis and the Customer and covering the specific products that are the subject of any of Customer's Purchase Order, Melexis' acceptance thereof is made on the express condition that the Customer assents with these Terms and Conditions. No additional or different terms or conditions, whether contained in the Customer's Purchase Order or any other document or communication pertaining to the Customer's order will be binding unless accepted in writing, and Melexis hereby expressly objects to any such terms and conditions which shall be deemed ineffective, and are herewith rejected.

## 2. Contractual Relationship

No contractual relationship between Melexis and the Customer shall arise until Melexis has accepted the Customer's Purchase Order through a valid order acknowledgement. The simple remittance of a Purchase Order or acceptance of a Melexis offer of sale by the Customer implies the Customer accepts these Terms and Conditions and, by the same, waives its own General Terms and Conditions of Purchase, if any, even if such acceptance or Purchase order explicitly states otherwise.

## 3. Disclaimer of partnership

Nothing in these Terms and Conditions will be construed to place the Parties in an agency, employment, franchise, joint-venture, or partnership relationship. No party has the authority to obligate or bind the other in any manner. Nothing in these Terms and Conditions gives rise or is intended to give rise to rights of any kind to any third parties. Neither party will make any representation to the contrary. The parties agree that they will perform their obligations as independent contractors. Each party retains the right to exercise full control of, supervision over and responsibility for its performance hereunder, including the employment, direction, compensation and discharge of Supplier's personnel, as well as compliance with workers' compensation, unemployment, disability insurance, social security, withholding and all other laws, rules, codes, regulations and ordinances governing such matters.

## 4. Quality and Nature of the Products

Melexis and the Customer will mutually determine the specifications for the Products including but not limited to special product and process characteristics as well all relevant technical standards or its derivations (e.g. APQP, PPAP, ISO/TS 16949), and the Control Plan to finally define the quality and nature of the products.

Customer with his expertise has the sole responsibility to provide in its sole discretion all relevant information and requirements for Products. No other sources for information to be provided by Customer but those provided in pursue of the foregoing shall be relevant for any performance of Melexis. Melexis and the Customer will

update the specifications and related processes upon mutual consent of the scope and the cost of changes of the Products or processes related to the manufacturing of the Products which constitutes the relevant revision of the specifications at the date of delivery.

Special characteristics or critical characteristics of the Product must expressly be identified as such by the Customer. They do not constitute any extended liability or guarantee of Melexis unless otherwise expressly stipulated and covered by amendments to the Control plan.

## 5. Delivery

The Products shall be delivered ex works Melexis' premises (INCO TERMS 2010).

Melexis will schedule delivery in accordance with its standard lead time unless the Customer's Purchase Order requests a later delivery date, or if Melexis agrees in writing to a separate delivery date.

If Melexis prepays transportation charges, the Customer will reimburse Melexis upon receipt of an invoice for those charges. Melexis reserves the right to quote additional charges for any special routing, packing, labelling, handling or insurance requested by the Customer.

## 6. Title

Melexis reserves retention of title to the Products delivered until payment of all account receivables due and future account receivable already constituted by purchase order or agreement within the total business relationship to the Customer. The Customer may not give Melexis' products in pledge to a third party for his collateralization purposes. Any kind of work to the product or the mixture with other products will be deemed to the benefit of Melexis without any obligation for Melexis and without loss of its ownership. In the event of implementation of the product in components Melexis receives the coownership of the Customer and is entitled to notify this.

The Customer shall give immediate written notice in any event of a pledge or any other encumbrance of third parties on our products. The Customer must undertake any action to extinguish the pledge or the encumbrance and must support us in the defence of our rights in any kind, upon our request also on our behalf.

The Customer may sell the Products in the ordinary course of his business. He must reserve Melexis' retention of title and must undertake any appropriate organizational and legal action for that purpose. The Customer hereby assigns to Melexis the account receivables for security purposes for all payments Melexis is entitled for. He also assigns all claims from bills of exchange drawn for account receivables deriving from the sale of the Products. Melexis is at any time entitled to request the transfer of the bills of exchange and the endorsement by the Customer. Each assignment to us is hereby accepted.

In the event that the extended retention of title should not be admissible nor should it be unreasonable for the Customer under accounting aspects the Customer must grant an adequate security for all account receivables.

## 7. Delivery Schedule

The 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 Products.

Melexis reserves the right to make deliveries in instalments. 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 Products delivered. Customer shall not refuse to accept delivery or any consignment or instalment on account of any shortage or defect in any other delivery.

## 8. Customer Caused Delay

Melexis will not be liable for any delays or increased costs caused by a failure of the Customer, such as delays in providing necessary information or other Customer deliverables or delays by the Customer designated suppliers in providing Products or services. In the event of a non force majeure Customercaused delay, the price and other affected terms will be adjusted accordingly to reflect Melexis' increased costs and other adverse impacts associated with such delay. In addition, if delivery of Products or services is delayed due to the acts or omissions of the Customer or Customer-designated suppliers, Melexis may store the Products at Customer's risk and expense and, may invoice the Customer just as if there had been no delay in delivery.

Any delay or change in schedules resulting from Customer's acts or negligence may be subject to a price adjustment. If a delivery is delayed at Customer's request by more than one month after ready for shipment notification, Melexis may charge demurrage costs in the amount of 0,5% of the purchase price of the order for each started month of delay up to a maximum of 5% of the total purchase price. If Customer fails to pick up the Products within two (2) weeks after notification, Melexis will be free to sell the Products to other Customers without any indemnity.

## 9. Excusable Delay ("Force Majeure")

Except for payment obligations, neither party will be liable to the other for any failure to meet its obligations due to any cause beyond the non-performing party's reasonable control. If the inability to perform continues for longer than ninety (90) days, either party may terminate the Purchase Orders which are affected by the Force Majeure by providing written notice to the other party and the Customer will pay Melexis for Products delivered and services performed prior to termination.

Force majeure events may include but are not limited to:

- a) delays or refusals to grant an export license or the suspension or revocation thereof;
- b) any other acts of any government that would limit the ability for its performance;
- c) fires, earthquakes, floods, severe weather conditions, or any other acts of God;
- d) quarantines or regional medical crisis;
- e) labour strikes or lockouts;

- f) riots, strife, insurrection, civil disobedience, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property);
- g) shortages or inability to obtain materials or components, and;
- h) Inability or refusal by the Customer's directed third party suppliers to provide Melexis with parts, services, manuals, or other information necessary to the Products or services to be provided by Melexis

If a force majeure event causes a delay, the date of performance will be extended by the period of time that the non-performing party is actually delayed or for any other period as the parties may agree in writing. When performance is excused, Melexis will allocate its services or its supplies of materials and Products in any manner that is fair and reasonable. However, Melexis will not be obligated to obtain services, materials or Products from other sources or to allocate materials obtained by Melexis from third parties for Melexis' internal use.

## 10. Cancellations

Customized Application Specific Standard Products and Application-Specific Integrated Circuits (ASIC's) are non-cancellable.

Application Specific Standard Products (ASSPs) are non-cancellable within thirty (30) days of the earliest requested ship date. All cancellations of 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 Melexis' ability to change its production schedule within the period of the notice provided by Customer, the lead time of the Product 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.

## 11. Inspection

The Customer will inspect the Products within a reasonable period after delivery not to exceed ten (10) calendar days, promptly notifying Melexis in writing upon receipt of the Products of all discoverable defects, including, but not limited to, quantity shortages, incorrect product and visible defects.

The Products are presumed accepted unless Melexis receives written notice of rejection explaining the basis for proper rejection within the same timeframe.

Any variation in quantities shipped over or under the quantities ordered not to exceed ten (10)% shall constitute compliance with the Customer's order and the stated unit price will continue to apply.

## 12. Trademarks and Other Labels

The Customer agrees not to remove or alter any indicia of manufacturing origin or patent numbers contained on or within the Products, including without limitation the serial numbers or trademarks on nameplates.

## 13. Product Change and Last Time Buy

Melexis reserves the right to change the specifications of Application Specific Standard Products (ASSP), including all statements and data appearing in Melexis' catalogues, data sheets and advertisements, without notice. Melexis will publish the modified specifications on its website and will notify the Customer if it properly subscribed on Melexis' website to receive this information. If such changes to specifications are made, Melexis shall have no obligation to provide the change on Products previously purchased.

Any changes to the specifications of Application-Specific Integrated Circuit (ASIC) will be proposed by Melexis in accordance with Process Change Notice (PCN) provisions. In the event that Customer fails to reply in writing to such a Process Change Notice (PCN) within thirty (30) days of submitting such notice, the change shall be deemed accepted.

In case of unavoidable product discontinuation, Melexis will send a Product Termination Notification (PTN) to the customer, in writing minimum twelve (12) months prior to such discontinuation. Customer will have the possibility to order its all time requirements within a period of 12 months from such notice. Melexis will deliver such products in accordance with the delivery schedule of the customer taking the leadtime into account. Last delivery is planned 18 months after discontinuance of production.

## 14. Prices, Taxes, Duties, Order Sizes and Hardship

All prices are based on delivery EX WORKS MELEXIS' PREMISES (INCO TERMS 2010).

Prices do not include any additional charges for special services such as packaging, insurance or brokerage fees.

Melexis' pricing excludes all taxes (including but not limited to, sales, use, excise, value-added, and other similar taxes), duties and charges. The Customer is responsible for all such taxes, duties and charges as a result of Melexis' performance hereunder, whether now or hereafter imposed, levied, collected, withheld, or assessed. If Melexis is required to impose, levy, collect, withhold or assess any such taxes, duties or charges on any transaction, then in addition to the purchase price, Melexis will invoice the Customer for such taxes, duties, and charges unless at the time of order placement the Customer furnishes Melexis with an exemption certificate or other documentation sufficient to verify exemption from such taxes, duties or charges.

Melexis reserves the right to change its prices if series production ends, or if, from the time of quotation:

- a) raw material prices have changed, or;
- b) actual volume is less than forecast volume, or;
- c) There is any significant change in economic circumstances.



If for any reason Melexis' production or purchase costs for the Product (including without limitation costs of energy, equipment, labour, regulation, transportation, raw material, or Product) increases over Melexis' production or purchase costs for the Product on the date of entering into the contractual relationship with the Customer, then Melexis may, by written notice to the Customer of such increased costs, request a renegotiation of the price of the Product. In the event the Parties are not able to agree on a revised Product price within ten (10) days after a request for renegotiation is given, then Melexis may terminate the remaining Purchase Orders on a sixteen (16) weeks written notice to the Customer.

## 15. Payment Terms

Payment is due thirty (30) calendar days from the date of invoice. For new customers the payment terms are prepayment, 30 days net only after approval by Finance Department.

Payments must be made in the applicable currency quoted.

The Customer may not claim any dispute or breach of warranty in order to suspend payment for the Products.

If the Customer is delinquent in its payment obligation to Melexis, Melexis may upon written notice to the Customer stop work and withhold future shipments until all delinquent amounts and late interest, if any, are paid. Additionally, Melexis may at its option:

- a) repossess Products for which payment has not been made, or;
- b) charge interest on delinquent amounts at the maximum rate permitted by law for each full or partial month, or;
- c) charge a detrimental clause on delinquent amounts at the maximum rate permitted by law, or;
- d) recover all costs of collection, including but not limited to reasonable attorneys' fees, or;
- e) Combine any of the above rights and remedies.

These remedies are in addition to all other remedies available at law or in equity. Melexis may reevaluate the Customer's credit standing at all times. If Melexis reasonably determines in its sole discretion that the Customer fails to qualify for the above payment terms at any time, then Melexis may without notice to the Customer modify or withdraw credit terms, including but not limited to requiring advance payment, guarantees, or other security.

## 16. Set Off

Neither Party will set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from the other Party, its parent, affiliates, subsidiaries or other divisions or units.

## 17. Warranty

Melexis warrants for a period of twelve (12) months from the date of delivery that:

- a) the Products delivered hereunder meet the specifications stipulated in the Agreement of Quality and Nature, and;
- b) the Products shall be free from defects in material and workmanship, and;
- c) The Products do not infringe any third party's industrial property rights.

Melexis at its options shall either repair or replace rejected Products or refund the purchase price.

MELEXIS MAKES NEITHER WARRANTIES NOR IMPLIED WARRANTIES SUCH AS A MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FUNCTION OR ANY OTHER EXPRESS OR IMPLIED WARRANTY, EXCEPT AS PROVIDED IN THIS ARTICLE. MELEXIS EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS OR FUNCTION FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM USAGE OF TRADE OR COURSE OF DEALING. CUSTOMER ACCEPTS THIS DISCLAIMER.

IN ADDITION TO THE FOREGOING MELEXIS DOES NOT, NEITHER EXPRESSLY NOR IMPLIED, ASSUME ANY WARRANTY, GUARANTEE, RESPONSIBILITY OR LIABILITY IN PARTICULAR DERIVING FROM OR ATTRIBUTED TO EXPECTATIONS, ASSUMPTIONS OR INTENDED PURPOSES OR FUNCTION OF THE CUSTOMER NOT EXPRESSLY SPECIFIED IN WRITING IN THE DOCUMENTS OF THE SPECIFICATIONS ATTRIBUTED TO THE QUALITY AND NATURE OF THE PRODUCT AS STIPULATED IN SECTION 4. THE CUSTOMER ASSUMES ALL RISK AND LIABILITY RESULTING FROM THE USE OF THE PRODUCTS AND ITS APPLICATIONS, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS.

Warranty claims against Melexis set forth in this article shall not apply in the event of any violation of any contractual provision stipulated in these Terms and Conditions and/or the documents specifying the Quality and Nature of the Products, if any, or in the event defects or damages caused by:

- a) any defect caused by the Customer, misuse, wear and tear, or;
- b) Alterations, modifications, additions, or repairs made during the applicable warranty period by anyone other than Melexis, its employees, agents or subcontractors.

Any warranty claim against Melexis is subject to the written information of the Customer without undue delay, latest within five (5) working days after knowledge or detection of the alleged defect, and the return of such rejected Products upon a Return of Material Authorization (RMA) to Melexis.

The RMA is under no circumstances an acknowledgement of Melexis with regards to the reasons of the alleged defects or Melexis' responsibility. Customer shall provide to Melexis any information and document Melexis deems necessary or appropriate to enable Melexis to investigate the root cause of the alleged defect including but not limited to the information provided to the Customer by its customers or third parties or authorities within the supply chain after delivery to the Customer and to granting Melexis access to the entire environment in which the alleged defect has occurred. Melexis' assent to investigate the root cause or to collect information related to the alleged defect under no circumstances shall constitute or be deemed any kind of acknowledgement of the defect or Melexis' responsibility or liability or any waiver of Melexis for any objections.

If the Customer requests any intermediary report relating to the findings during the investigations for the root cause Customer acknowledges that such reports were only based on preliminary findings and do not constitute any acknowledgement of Melexis for any responsibility and has no legal relevance to determine contractual or statutory liabilities.

If Melexis is not responsible for the defect Customer shall reimburse to Melexis the reasonable costs Melexis has incurred in the course of the investigations of the root cause.

## 18. Unauthorized Sales Channels

Melexis gives no warranty or guarantee whatsoever with respect to sales or orders through unauthorized sales channels.

## 19. LIMITATION OF LIABILITY

IN NO EVENT WILL MELEXIS BE LIABLE NEITHER ON THE MERITS NOR IN TERMS OF THE AMOUNT FOR ANY INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, PUNITIVE DAMAGES, STATUTORY DAMAGES, INDIRECT DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES, OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

IN ANY CASE, MELEXIS' LIABILITY FOR DAMAGES SHALL NOT EXCEED A SUM EQUAL TO TWICE THE AMOUNT ACTUALLY PAID TO MELEXIS FOR THE PRODUCTS OR RELATED SERVICES FROM WHICH THE CLAIM AROSE, WITH AN ABSOLUTE AGGREGATED MAXIMUM OF TWO (2) MILLION EUROS PER CUSTOMER PER YEAR, FOR ALL CLAIMS, EVEN IF THESE CLAIMS AROSE FROM DIFFERENT PRODUCTS AND/OR SERVICES, OR IF THESE CLAIMS.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE. NOTHING HEREIN, HOWEVER, IS INTENDED TO DISCLAIM MELEXIS' LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY DEFECTIVE PRODUCTS TO THE EXTENT SUCH LIABILITY IS MANDATED BY APPLICABLE LAW.

MELEXIS SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY RESULTING FROM DELAY IN DELIVERY OR INSTALLATION OF THE GOODS OR FOR ANY FAILURE TO PERFORM WHICH IS DUE TO CIRCUMSTANCES BEYOND ITS CONTROL. CUSTOMER EXPRESSLY ACKNOWLEDGES THIS DISCLAIMER.

ANY COST OR DAMAGES COMPULSORILY TO BE INCURRED BY MELEXIS IN PARTICULAR UNDER STATUTORY OR CONTRACTUAL PROVISIONS OR COURT RULINGS ARE SUBJECT TO REASONABLE EVIDENCE IN COMPLIANCE WITH ACCOUNTING STANDARDS BY THE CUSTOMER. MELEXIS DOES NOT ASSUME ANY COST OR DAMAGES DERIVED FROM AGREEMENTS OF THE CUSTOMER OR ANY THIRD PARTY CLAIM WITHIN ITS SUPPLY CHAIN SUCH AS FORSEEABLE COST AND DAMAGES IN THE SENSE OF ARTICLE 74 CISG. THE CUSTOMER SHALL SECURE THE RETRACEABILITY OF THE PRODUCTS TO MITIGATE DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, MELEXIS SHALL NOT BE RESPONSIBLE FOR, AND SHALL INCUR NO LIABILITY WITH RESPECT TO, ANY INFORMATION SUPPLIED BY CUSTOMER OR ANY OF ITS SUBCONTRACTORS AND ANY DESIGN OR ENGINEERING DRAWINGS, REGARDLESS OF WHETHER SUCH DRAWINGS ARE REVIEWED BY CUSTOMER.

## 20. Software License

Software, if included in the Agreement between parties is hereby licensed and not sold. The license is nonexclusive, and is limited to such equipment and/ or location(s) as are specified in the Agreement. No other use is permitted and Melexis retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes without limitation all rights in patents, copyrights, trademarks and trade secrets. Customer shall not undertake any sale, transfer, sublicense, reverse compilation or disassembly (save to the extent expressly permitted by law) or redistribution of the software. Nor shall Customer copy, disclose or display any such software, or otherwise make it available to others (except as Melexis authorizes in writing).

## 21. Intellectual Property Rights

“Intellectual Property Rights” are, amongst others but not exclusively, registered patent rights, registered or unregistered model and design rights and registered or unregistered trademarks, as well as applications for patents, model and design rights or trademarks, copyright rights, database rights, rights on semiconductors or software and know-how rights anywhere in the world.

Nothing in these Terms and Conditions is intended to assign the intellectual property rights in the Products to Customer or third parties. All intellectual property rights in the Products are and remain vested with Melexis. This applies even if these intellectual property rights come into existence or are created pursuant to a specific purchase order or request of the Customer.

Upon full payment of all charges, Customer shall obtain a non-transferable license that is limited to the use of the Products sold hereunder solely for the applications set forth in the purchase order. Such limited license to use the Application-Specific Integrated Circuits shall include all mandatory rights conferred to Customer by law. It shall however exclude all other rights or uses.

In case of an Application-Specific Integrated Circuit (ASIC), the license will be exclusive for a period of eighteen (18) months from the date of first delivery in relation to the use of the Products sold hereunder for the applications set forth in the purchase order.

This Agreement does not provide Customer any rights or interests or licenses in any:

- a) drawings, specifications, technical information, moulds, masks, tools, know-how used by Melexis, or;
- b) building blocks or custom cells used or designed by Melexis to develop the Products, or;
- c) Business processes used by Melexis to design, develop, manufacture or test the Products.

Customer agrees and acknowledges that any intellectual property rights in 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.

## 22. Patent/Copyright Indemnification

In the event of any suit by an unrelated third party against Customer allegedly related to the infringement of any patent, trademark or copyright by Products manufactured or sold by Melexis pursuant to the Contract, Melexis at its own expense, shall defend or settle any suits to the extent such suits, if such infringement directly arises out of the use of such Products, or components thereof were sold by Melexis under the Contract.

In any such event the Customer shall:

- a) give Melexis immediate notice in writing of any such suit, and;
- b) transmit to Melexis immediately upon receipt all processes and papers served upon Customer, and;
- c) permit Melexis or its counsels, either in the name of Customer or in the name of Melexis, to defend such suits, and;
- d) Provide all needed information, assistance and authority to enable Melexis to do so.

If Products of Melexis sold to the Customer by final court decision or a settlement approved by Melexis are held to infringe any patent and their use is precluded from future use, Melexis, at its option, shall:

- a) pay any final award of damages in such suit to the extent such damages are directly attributable to such infringement, and;
- b) Procure for Customer the right to continue using such Products to the extent contemplated in the Contract, or modify such Products to render them non-infringing, or replace such Products with noninfringing Products, or refund the price paid by Customer for such Products after Customer's return of such Products to Melexis.

Any other remedy of the Customer with respect to patent, trademark or copyright infringement shall be excluded and Melexis' liability thereof is limited to the price paid by the Customer for the infringing Products. Should the infringement be caused by or attributed to contributions of the Customer or by the use of the Products any remedy of the Purchase shall be excluded. In any such event the Customer shall indemnify and hold Melexis harmless from and against all claims, demands and suits, including, without limitation, the cost of legal defence, arising out of any act of infringement under the responsibility of the Customer.

Melexis will not be responsible for any compromise or settlement made without Melexis' written consent. Melexis will have no obligation or liability with respect to:

- a) products provided pursuant to Customer's designs, drawings or manufacturing specifications or use of trademark or logos supplied or approved by Customer, or;
- b) products used other than for their ordinary purpose, or;
- c) claims of infringement resulting from combining any Product furnished hereunder with any product not furnished by Melexis, or;
- d) use of other than the latest version of software Product released by Melexis, or;
- e) Any modification of the Product other than a modification by Melexis.

The Customer agrees to indemnify, hold harmless and defend Melexis to the same extent and subject to the same restrictions set forth in Melexis' obligations to the Customer as set forth in this Article for any suit against Melexis based upon a claim of infringement resulting from a), b), c), d) e) above. In no event will Melexis be liable for Customer's attorney fees or costs.

## 23. Drawings and other Design Data

All sketches, models and samples submitted by Melexis shall remain the property of Melexis and shall be treated as confidential information of Melexis unless Melexis has indicated a contrary consent in writing. All specifications, drawings, designs, data, information, ideas, methods, patterns and/or inventions made, conceived, developed or acquired by Melexis in connection with any Contract or any related order shall vest in and inure to Melexis' full benefit, notwithstanding any charges therefore that may have been or may be imposed by Melexis, and shall not be disclosed to third parties without Melexis' prior written consent. This obligation shall continue as long as any Purchase Order for Products related to or using such technical information or data is in effect and for a period of two (2) years thereafter. This obligation will not apply to information that is or becomes publicly known through no fault of Customer.

## 24. Special Tooling

Special Tooling includes, but is not limited to, jigs, dies, fixtures, moulds, patterns, special tapes, special gages, special test equipment, other special equipment and manufacturing aids and replacements items, now existing or hereafter created, together with all specifications, drawings, engineering instructions, data, material, equipment, software, processes, and facilities related thereto, created or used by Melexis in the performance of its obligations. Melexis owns all Special Tooling, except to the extent an authorized representative of Melexis' procurement department specifically transfers title thereto in a formal, written bill of sale to the Customer. Any transfer of title to Special Tooling does not include transfer of Melexis' intellectual property rights related to the tools, its processes and products being produced with the tool or used to create the tool or that may be embodied in the Special Tooling in any other way, other than a license to use the Special Tooling. This license to use does not include the right to reproduce the Special Tooling unless specifically authorized in writing by Melexis.

## 25. Confidentiality

"Proprietary Information" means:

- a) any information, technical data or know-how in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information contained in physical components, mask works and artwork, that is clearly identified as being confidential, proprietary or a trade secret;
- b) business related information including but not limited to pricing, manufacturing, or marketing;
- c) the terms and conditions of any proposed or actual agreement between the parties;
- d) either party's business policies, or practices, and;
- e) The information of others that is received by either party under an obligation of confidentiality.

The receiving party will keep all Proprietary Information disclosed hereunder confidential for a period of five (5) years following the expiration or termination of the contractual relationship between parties. Each party will retain ownership of its Proprietary Information including, without limitation, all rights in patents, copyrights, trademarks and trade secrets. No right or license is granted hereby to a Party or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent, patent application or other proprietary right of the other Party, notwithstanding the expiration of the confidentiality obligations

stated herein. Melexis agrees to use the Proprietary Information of Customer only to provide products or services for Customer. Customer agrees that it will not use or disclose Melexis'

Proprietary Information for any purpose besides the purchase or use of products or services under these Terms and Conditions. Customer will not use Melexis' Proprietary Information to provide services or for the manufacture or procurement of parts or any similar parts or to cause such services to be provided or products to be manufactured or procured from any other source.

The receiving Party has no duty to protect information that is proven by written records to be:

- a) publicly known at the time of disclosure or becomes publicly known through no fault of recipient;
- b) known to recipient at the time of disclosure through no wrongful act of recipient;
- c) received by recipient from a third party without restrictions similar to those in this section, or;
- d) Independently developed by recipient.

## 26. Compliance with laws

The Customer shall comply with all local laws and regulations applicable to the installation, use, or import of all Products delivered hereunder. As a condition of purchase, the Customer shall comply with all applicable export control laws and regulations of the European Union, the United States and any other country having proper jurisdiction and shall obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder.

## 27. Export and Import Compliance

The Customer is responsible for compliance with all import and export control laws and regulations. The Customer will obtain import, export, and re-export approvals and licenses required for Products, transfers, services and technical data delivered and will retain documentation evidencing compliance with those laws and regulations.

Melexis will not be liable to Customer for any failure to provide Products, services, transfers or technical data as a result of government actions that impact Melexis' ability to perform, including:

- a) the failure to provide or the cancellation of export or re-export licenses;
- b) any subsequent interpretation of applicable import, transfer, export or re-export law or regulation after the date of any order or commitment that has a material adverse effect on Melexis' performance, or;
- c) Delays due to the Customer's failure to follow applicable import, export, transfer, or re-export laws and regulations.

If the Customer designates the freight forwarder for export shipments from the United States, then the Customer's freight forwarder will export on the Customer's behalf and the Customer will be responsible for any failure of the Customer's freight forwarder to comply with all applicable export requirements. Melexis will provide the Customer's designated freight forwarder on request with commodity information.

## 28. Use of Products in life support, nuclear and certain other applications

The Products sold by Melexis are not designed, intended or authorized for use in life support, life sustaining, aviation, aeronautic, nuclear or other applications, including, but not limited to, public transportation operating systems, in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or severe property or environmental damage.

The Customer acknowledges that use of Melexis' Products in such applications is fully at the risk of the Customer and that the Customer is responsible for verification and validation of the suitability of Melexis' Products in such applications. The Customer agrees that Melexis is not and shall not be liable for any claim or damage arising from the use in or with such application. The 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.

The Customer shall not sell, transfer, export or re-export any Melexis Products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Melexis Products or technology in any facility which engages in activities relating to such weapons, unless Melexis has given its prior written approval of such sale, transfer export or re-export.

The foregoing applies to all uses and applications violating national or international prohibitions in particular from embargos or international regulations.

## 29. Applicable Law and Jurisdiction

The laws of the country in which MELEXIS nv has its registered offices shall exclusively apply to these Terms and Conditions and the implementation thereof. All disputes arising in connection with these Terms and Conditions shall be settled by negotiations between the parties. If an acceptable result cannot be so obtained, the dispute shall be exclusively rules or settled by the Courts competent for the jurisdiction in which MELEXIS nv has its registered offices.

In the event of any conflicting international private laws, Melexis expressly reserves the right to determine the venue.

## 30. Attorney's fees

In the event of Melexis' enforcement of any term or condition in the Contract, Customer shall be liable to Melexis for all costs, including attorneys' fees, incurred by Melexis in enforcing the Contract and in collecting any sums owed by Customer to Melexis.



## 31. Assignment

Neither Party will assign any rights or obligations without prior written consent of the other Party, which consent will not be unreasonably withheld. Either Party may assign its obligations to any affiliate of such party or in connection with the sale or transfer of all or substantially all of the assets of the product line or business to which it pertains. Any attempt to assign or delegate in violation of this clause will be void.

## 32. Waiver

The failure of either Party to enforce at any time any of the provisions of these Terms and Conditions shall not be construed to be a continuing waiver of any provisions hereunder nor shall any such failure prejudice the right of such party to take any action in the future to enforce any provisions hereunder.

## 33. Interpretation and translation

The headings contained in these Terms and Conditions are included for information only, and shall not be referred to for the purpose of interpretation.

These Terms and Conditions are drawn up in English.

The English version is the only official version. If a translation of these Terms and Conditions is made, such translation shall only be made for the convenience of the parties. The parties agree that the English version shall prevail in case of doubt or uncertainty due to such a translation.

All support, technical, descriptive or other information provided by Melexis to Customer regarding Products shall be in the English language only.

All technical terms in these Terms and Conditions and the related contractual documents shall primarily be defined and interpreted in accordance with the relevant and applicable European and international standards such as EN DIN ISO 9000 or ISO/TS 16949 in the version as of the date of the acceptance of an order by Melexis.

## 34. Notices and other communications

All notices and other communications related to these Terms and Conditions shall only be validly communicated when delivered by in person or sent by letter, e-mail or fax with acknowledgement of receipt, or sent by registered mail or recorded delivery with advice of receipt, or delivered by an approved courier service.

Notices and communications will be deemed to have been made on the date of their receipt at the addressee's office.

## 35. Severability

If any provision of these Terms and Conditions is determined to be illegal, invalid, or unenforceable, the validity and enforceability of the remaining provisions of these Terms and Conditions will not be affected and, in lieu of such illegal, invalid, or unenforceable provision, there will be added, as part of this Terms and Conditions, one or more provisions as similar in terms as may be legal, valid and enforceable under applicable law. In such case, Melexis will amend these Terms and Conditions as soon as possible, in order to comply with the applicable laws.

## 36. Modification

The Terms and Conditions can only be modified by mutual agreement of both parties represented by duly authorized officers, expressed in written form.

## 37. Termination

A Party may terminate any or all unperformed orders by giving written notice to the other party upon the occurrence of any of the following events:

- the other Party materially breaches these Terms and Conditions and fails to remedy the breach within thirty (30) calendar days after receipt of written notice that specifies the grounds for the material breach, or;
- the other Party fails to make any payment required to be made when due, and fails to remedy the breach within seven (7) calendar days after receipt of written notice of non-payment, or;
- Any insolvency or suspension of the other Party's operations or any petition filed or proceeding made by or against the other Party under any state, federal or other applicable law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors or other similar proceedings.

Termination does not affect any debt, claim or cause of action accruing to any party against the other before the termination. The rights of termination provided in this clause are not exclusive of other remedies that either party may be entitled to in law or equity. In any event of termination or cancellation of a contract the provisions protecting Melexis' industrial property rights, the provisions for providing information in a warranty or product liability case, provisions for confidentiality and the governing shall survive.

## 38. Entire Agreement

These Terms and Conditions set forth the entire intent and understanding between the Parties, relating to the subject matter hereof, and supersedes all prior negotiations and discussions between them. No Party shall be bound by any conditions, representations or warranty other than as expressly set forth herein, or subsequently set forth in writing, and executed by both Parties.