

**NXP JAPAN LIMITED.**  
**TERMS AND CONDITIONS OF COMMERCIAL SALE**

In these Terms and Conditions of Commercial Sale (“Terms”), “Seller” means NXP Japan Limited., a limited liability company established in Japan., and “Buyer” means the person or legal entity (i) purchasing Products (as defined in Section 1 below) or Services (as defined in Section 3 below) from Seller or (ii) obtaining Software (as defined in Section 1 below) from Seller.

**1. OFFER, CONFIRMATION OR AGREEMENT**

These Terms apply to and form an integral part of:

- a. all quotations and offers (each referred to as “Offer”) of Seller to Buyer,
- b. all acceptances, acknowledgements or confirmations by Seller (each referred to as “Confirmation”) of any order of Buyer, including without limitation orders of Buyer resulting from any pricing or other framework agreement between Buyer and Seller, unless explicitly agreed otherwise in writing between Seller and Buyer,
- c. any agreement resulting from an Offer or Confirmation, and
- d. any agreement incorporating these Terms by reference (both types of agreements referred to under Sections 1(c) and 1(d) are referred to as an “Agreement”),

regarding the sale by Seller and purchase by Buyer of Products, the licensing of Software, and the provision of Services, unless Seller explicitly agrees in writing to the exclusion hereof. “Product” means goods of Seller, including any firmware embedded by Seller, offered by Seller in the ordinary course of business. “Software” means computer programs licensed by Seller for use with Products, excluding any firmware embedded in Products by Seller. “Services” means services, such as development, integration, training or support, provided by Seller in connection with Products or Software.

These Terms constitute all of the terms and conditions of any Offer, Confirmation and Agreement between Seller and Buyer relating to the sale by Seller and purchase by Buyer of Products or Services or the licensing of Software. Any terms and conditions set forth on any document issued by Buyer (including Pull Documents as defined in this Section below) either before or after issuance of any document by Seller setting forth or referring to these Terms are hereby explicitly rejected and disregarded by Seller, and any such document is wholly inapplicable to any sale or licensing made by Seller and is not binding in any way on Seller. No Offer, Confirmation or Agreement constitutes an acceptance by Seller of any other terms and conditions, and Seller does not intend to enter into an agreement other than under these Terms. These Terms apply to the exclusion of any other terms that Buyer may seek to assert, or which are implied by law, statute, trade, or course of dealing. Seller’s failure to object to the terms contained in any communication from Buyer shall not be deemed a waiver of these Terms. Any Offer is expressly made conditional on Buyer’s assent to all terms contained in the Offer without deviation. Acceptance by Buyer of an Offer may be evidenced by (i) Buyer’s written or verbal assent or the written or verbal assent of any representative of Buyer, (ii) Buyer’s acceptance of delivery of Products, Software, or Services or payment of purchase price for the first installment of Products, Software, or Services (if applicable), or any such acceptance by any representative of Buyer, or (iii) other conduct by Buyer or any representative of Buyer consistent with acceptance of the Offer.

If any Offer or Confirmation is sent in response to Buyer's blanket purchase order, then the terms and conditions of that Offer or Confirmation, including these Terms, shall apply to any "pull" by Buyer or delivery by Seller, irrespective of whether Buyer submits additional purchase orders (electronically or otherwise) ("Pull Documents") and whether Seller provides a Confirmation to such Pull Documents. All terms and conditions of such Pull Documents are hereby rejected.

Seller's Offers are open for acceptance within the period stated by Seller in the Offer or, when no period is stated, within thirty (30) days from the date of the Offer, but any Offer may be withdrawn or revoked by Seller at any time prior to Seller's receipt of Buyer's acceptance related thereto.

If Seller receives an order from Buyer and such order is not a response to an Offer by Seller, or if Seller receives an order or acceptance or other writing from Buyer which deviates from Seller's Offer or Confirmation, such order or acceptance or writing, respectively, shall be deemed to be a request for an Offer only.

An acceptance by Buyer of any Offer made by any third-party order gatherer, liaison, agent or sales representative for Seller shall constitute an Agreement between Seller and Buyer only upon explicit Confirmation by Seller.

In these Terms, the term "Affiliate(s)" means: (a) with respect to Seller, any entity that is now or hereafter Controlled by NXP Semiconductors N.V., and (b) with respect to Buyer, any entity that Controls, is Controlled by or is under common Control with Buyer; where "Control" means the direct or indirect beneficial ownership of greater than fifty percent (50%) of the voting stock, or decision-making authority in the event that there is no voting stock, in another entity. An entity may be considered an Affiliate only when such Control exists. Seller and its Affiliates are individually and/or collectively referred to as "NXP".

## **2. PRICING**

Prices in any Offer, Confirmation or Agreement are in United States Dollars and do not include any freight, insurance and delivery charges or any taxes, duties, tariffs, or similar levies, now or hereafter enacted, applicable to the Products, Software, or Services. Seller will add taxes, duties, tariffs, and similar levies to the sales price where Seller is required by law to pay or collect them and freight, insurance and delivery charges and these will be paid by Buyer together with the price.

The price in the Agreement will be that specified in the most recent Seller Offer (if any) for the supply of Products, Software or Services that remains valid, or, if there is no valid Seller Offer, the price published in Seller's price list (available upon request). The price list is subject to change without notice to Buyer.

All Product prices are based on FCA (the airport in the country of dispatch or other facility designated by Seller) Incoterms 2010.

At any time prior to the delivery of Products, Software, or Services, Seller reserves the right to vary the price to take account of any increase in the cost of Products, Software, or Services which is beyond Seller's control, including but not limited to, increases in materials, labor and other manufacturing costs, delivery charges, increases in taxes, duties, tariffs and foreign exchange fluctuations.

### **3. SERVICES**

Services will be provided on a time and materials basis at Seller's then current hourly rates or at rates mutually agreed to in writing. Seller will use commercially reasonable efforts to provide any agreed deliverables in accordance with the delivery schedule as agreed by Seller. Seller will invoice Buyer on or after the date of performance of the relevant Services. Seller owns and will continue to own all worldwide right, title and interest in any materials, documentation, and software that are used in performing the Services, as well as any deliverables created during the performance of or resulting from the Services. Title to all intellectual property rights created by or on behalf of Seller in performing Services shall vest in Seller, including without limitation intellectual property rights created by Seller in the design, development and manufacture of Custom Products (as defined in Section 7 below) or software and no transfer of title to, or license in favor of, Buyer of any intellectual property rights used by or on behalf of Seller in the provision of Services shall occur.

### **4. RIGHTS IN SOFTWARE, DOCUMENTATION AND INTELLECTUAL PROPERTY**

Unless otherwise provided in a separate license agreement between Seller and Buyer, the terms of this Section 4 shall apply to Software. Software is licensed and not sold by Seller. Seller grants Buyer a non-transferrable, non-exclusive license to use internally and distribute Software in machine-readable form, only in combination with or as part of the Product for which the Software has been provided and only one copy for each unit of Product. No rights or licenses with respect to any Software source code are granted to Buyer. Buyer will maintain in original and reproduce on copies, all of Seller's (or its licensor's) copyright notices and other proprietary legends in the Software, and related documentation.

Seller grants Buyer a non-exclusive license to use, copy, and distribute non-confidential documentation with the Product for which the documentation has been provided and only one copy for each unit of Product.

To the extent that firmware is embedded in a Product, the sale of the Product shall not constitute the transfer of ownership rights or title in the firmware, and all references to "sale" or "sold" of any firmware shall be deemed to mean a license to use the firmware with the Product.

With respect to all or portions of Products, Software, documentation, Buyer is not authorized to and agrees that it will not: (i) reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code, ideas, technology or algorithms, except to the extent expressly authorized by applicable law; (ii) modify or create derivative works; (iii) remove or alter any proprietary markings or notices; (iv) merge, link or incorporate Software into any other software; or (v) attempt to determine whether any of its patents or patent applications read on Products, Software, or documentation, or create or modify its patents or patent applications based on Products, Software, or documentation. If Buyer creates any modifications or derivative works of all or a portion of Products, Software, documentation, Buyer shall grant an irrevocable, worldwide, and perpetual license to NXP to make, have made, use, sell, import, commercialize, sublicense and reproduce such modifications or derivative works without any payment to Buyer. Buyer's rights under these Terms are conditional upon Buyer not performing any actions that may require any Software, Products or any derivative works of the Software or Products, to be licensed under open source software license terms that may, for example, require disclosing source code, granting a license under intellectual property rights, such as granting a permission to develop derivative works, or granting other rights or assuming responsibilities commonly associated with open source software.

If Buyer is in default of any of the terms in this Agreement, Buyer's license to Software and documentation will automatically terminate. Buyer shall indemnify NXP against and hold NXP harmless from any damage or costs arising from or in connection with any breach of the provisions of this Section and Buyer shall reimburse all costs and expenses incurred by NXP in defending any claim, demand, suit or proceeding arising from or in connection with such breach.

Except for the rights expressly granted in this Agreement: (i) NXP and its suppliers reserve all rights, title and interest, together with all intellectual property rights thereto, in all Products, Software and documentation provided or made available to Buyer, and (ii) no other express or implied license, right or interest in or to any patent, patent application, copyright, trade secret, trademark, trade name, service mark, mask work, or any other intellectual property right is granted hereunder.

Third party software (including any open source software) included in the Software is provided under different license terms if specified to the Buyer accordingly in the documentation, Software, or otherwise.

Neither the sale of any of the Products, the licensing of any Software, nor these Terms, shall be construed as conferring any right, license or immunity:

- a. under any intellectual property rights to any combination, machine, or process in which Products and Software might be used, or to any modifications of Products, Software, or documentation;
- b. with respect to any trademark, trade or brand name, corporate name, or any other name or mark, or contraction, abbreviation or simulation thereof;
- c. under any intellectual property rights covering an industry standard set by a standard setting body or agreed to between at least two companies; or
- d. under any intellectual property rights with respect to which NXP has informed Buyer or has published a statement that a separate license has to be obtained or that no license is granted or implied.

## **5. PAYMENT**

a. Unless agreed otherwise between Seller and Buyer in writing, Seller may invoice Buyer for the price of the Products, Software, or Services delivered upon delivery of the Products, Software, or Services. Payment is due within thirty (30) days of date of invoice. All payments shall be made to the designated Seller's accounts. If deliveries are made in installments, each installment may be separately invoiced and shall be paid for when due. No discount is allowed for early payment. Interest will accrue on all late payments, at the rate of eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is lower, from the due date until payment in full. In addition, Buyer shall pay all expenses incurred by Seller, including but not limited to legal fees and exchange rate losses in connection with collection of any late payments.

b. All fees and amounts payable by Buyer to Seller are exclusive of any value added tax, goods and service tax, sales tax, use tax, consumption tax or any other similar tax only (collectively referred to as "VAT"). If the transactions as described in this Agreement are subject to any applicable VAT, Seller shall provide Buyer with an invoice which specifically states this VAT. Provided Seller has stated VAT (as identified above) on an invoice Buyer will pay to Seller the VAT properly chargeable in respect of that payment. Seller will not invoice or otherwise attempt to collect from Buyer any taxes with respect to which Buyer has provided Seller with (i) a valid resale or exemption certificate, (ii) evidence of direct payment authority, or (iii) other evidence, reasonably acceptable to Seller, that such taxes do not apply.

c. If Buyer is required by law to withhold and remit tax relating to a purchase under this Agreement, Buyer will transmit to Seller official tax receipts or other evidence issued by the tax or other government authorities sufficient to enable Seller to support a claim for tax credit or refund in respect to such withheld taxes paid by Buyer.

d. All deliveries of Products or Software or performance of Services agreed to by Seller are subject to credit approval of Seller. If, in Seller's judgment, Buyer's financial condition does not justify production, performance of Services or delivery of Products or Software on the above payment terms, Seller may require full or partial payment in advance or other payment terms as a condition for delivery, and Seller may suspend, delay or cancel any credit, delivery or any other performance by Seller.

e. Payment by Buyer of non-recurring charges (as may be made to Seller for special design, engineering work or production materials) shall not convey title to any design, engineering work or production materials, and title shall remain in Seller.

f. Buyer shall not offset, withhold or reduce any payment(s) due by it to Seller. The payment of fees and charges is a covenant of Buyer that is independent of the other covenants in these Terms.

g. If Buyer breaches these Terms, including but not limited to failing to pay fees when due, Seller has the right to refuse performance of any Services and delivery of any Products or Software until the breach is cured and Seller may suspend, delay or cancel any credit, delivery or any other performance by Seller. This right shall be in addition to, and not in lieu of, any other rights and remedies available under these Terms or at law or in equity.

## **6. DELIVERY, QUANTITIES AND INSPECTION**

a. Products will be delivered Free Carrier (FCA) Incoterms 2010 at the airport in the country of dispatch or other facility designated by Seller. Delivery dates communicated or acknowledged by Seller are approximate only, and Seller shall not be liable for, nor shall Seller be in breach of its obligations to Buyer, because of any delivery made within a reasonable time before or after the stated delivery date. Seller will use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the agreed delivery date.

b. In the event Buyer contests that the Products were delivered, Buyer must request a proof of delivery from Seller within ninety (90) days of the date of Seller's invoice, otherwise delivery shall be deemed completed. Buyer will give Seller written notice of failure to deliver and thirty (30) days within which to cure. If Seller does not cure within thirty (30) days, Buyer's sole and exclusive remedy is to cancel the affected and undelivered portions of the Agreement.

c. Title in the Products will pass to Buyer at Seller's point of shipment. Risk of loss in the Products will pass to Buyer upon Seller's delivery in accordance with the applicable Incoterm.

d. Buyer shall accept receipt of the Products upon delivery. If Buyer fails to take delivery, then Seller may deliver the Products in consignment at Buyer's expense and invoice Buyer for the Products.

e. With regard to Custom Products Seller may deliver a quantity that is a maximum amount of ten percent (10%) more or less than the ordered quantity of any order line item. The delivered quantity will be accepted and paid for (actual delivered quantity times the unit price) in full satisfaction of each party's obligation under the Agreement for the quantity ordered.

f. If Seller experiences Product shortages, or production is curtailed for any reason, Seller may allocate its available production and Products, in its sole discretion, among its customers and as a result may sell and deliver to Buyer fewer Products than specified in Seller's Offer, Confirmation or Agreement, without liability to Buyer, as the case may be.

g. Buyer shall inspect the Products on arrival at the delivery destination and shall within seven (7) calendar days inform Seller in writing of: (a) any damage to the Products; (b) any discrepancy between the Products and Seller's specification which is, or should be, apparent from inspection; or (c) any discrepancy between the quantity of Products received and the quantity specified on the paperwork accompanying the delivery, otherwise the Product will be deemed to be accepted by Buyer. If Buyer notifies Seller of any damage or discrepancy, Buyer shall give Seller reasonable opportunity to inspect the Products concerned.

## **7. CUSTOM PRODUCT**

Seller shall have exclusive rights to goods designed and manufactured for the unique needs of Buyer, to Buyer's specifications or requirements, such as an ASIC or ASSP ("Custom Product"). Seller shall retain title to and possession of designs, masks, database tapes and source code. Individual segments or parts of Custom Product designs, including but not limited to standard cells, megacells, base arrays or software libraries, are the property of Seller and may be used by Seller in other designs and may not be used by Buyer except as a part of Custom Product designed and manufactured by Seller. Prices and/or schedules for Custom Products are subject to change by Seller if any specifications are revised or supplemented or there are unforeseen difficulties with the design.

## **8. RESCHEDULING AND CANCELLATION**

No order, Agreement, in whole or in part, may be rescheduled or cancelled without Seller's prior written consent.

## **9. FORCE MAJEURE**

Seller shall not be liable for any failure or delay in performance if:

- a. such failure or delay results from Seller's manufacturing volume of the Products being lower than anticipated due to interruptions in the manufacturing process; or
- b. such failure or delay does not result from its fault; or
- c. such failure or delay is caused by Force Majeure as defined in this Section below or by law.

In case a failure is not attributable to Seller, the performance of the relevant part(s) of the Agreement will be suspended while the failure continues, without Seller being responsible or liable to Buyer for any damage resulting from the failure.

The expression "Force Majeure" means and includes any circumstances or occurrences beyond Seller's reasonable control (whether or not foreseeable at the time of the Offer, Confirmation or Agreement) as a result of which Seller cannot reasonably be required to execute its obligations. Such circumstances or occurrences include but are not restricted to: acts of God, war, civil war, terrorism, insurrections, strikes, fires, floods, earthquakes, labor disputes, epidemics, governmental regulations and/or similar acts, freight embargoes, non-availability of any permits, licenses and/or authorizations required, defaults or delays of suppliers or subcontractors and/or inability or impracticability to secure transportation, facilities, fuel, energy, labor, materials or components. If the Force Majeure extends for a period of three (3) consecutive months (or if the delay is reasonably expected by Seller to extend for a period of three (3) consecutive months), Seller may cancel all or any part of the Agreement without any liability of Seller towards Buyer.

## 10. LIMITED WARRANTY AND DISCLAIMER

a. General. Except as provided in subsection (e) below, Seller warrants that under normal use the Products will, at the time of delivery to Buyer, be free from defects in material or workmanship and will substantially conform to Seller's specifications for such Products. Buyer may ship Products returned under warranty claims to Seller's designated facility only so long as the returns are in conformance with Seller's then-current return material authorization policy and are accompanied by a duly completed return material authorization form issued by Seller. Where warranty adjustment is made, Seller will pay for freight expenses. Buyer shall pay for returned Products that are not found to be defective or non-conforming together with associated freight, testing and handling costs. Notwithstanding the foregoing, Seller shall have no obligations for breach of warranty if the alleged defect or non-conformance is found to have occurred as a result of: environmental or stress testing, misuse, neglect, improper installation, accident, improper repair, alteration, modification, improper storage, improper transportation or improper handling of the Products, after the risk of loss in the Products has passed to Buyer. This warranty will not be expanded, and no obligation or liability will arise, due to technical advice or assistance, referrals, qualification/testing data, facilities or any Services in connection with Buyer's purchase.

b. Limitations. THE EXPRESS WARRANTY GRANTED ABOVE WILL EXTEND DIRECTLY TO BUYER AND NOT TO BUYER'S CUSTOMERS, AGENTS OR REPRESENTATIVES. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, ALL PRODUCTS, SOFTWARE, AND SERVICES ARE FURNISHED BY SELLER AND ACCEPTED BY BUYER "AS IS". THE EXPRESS WARRANTY GRANTED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION (I) ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, (II) THAT ANY PRODUCTS, SOFTWARE, OR SERVICES WILL CONFORM TO ANY DEMONSTRATION OR PROMISE BY SELLER, OR (III) THAT MAY ARISE THROUGH ANY COURSE OF DEALING BETWEEN THE PARTIES. ALL OTHER WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED BY SELLER.

c. Time Period. Except as provided in subsections (d) and (e) below, Products are warranted for a period of one (1) year from date of delivery to Buyer.

d. Time Period for Die and Wafers. Die and wafers have received electrical probe/test and visual inspection and are warranted for a period of ninety (90) days from date of delivery to Buyer. This warranty will not apply to die or wafers improperly removed from their original shipping container, not stored per Seller's recommended procedures, or subjected to testing or operational procedures not accepted by Seller in writing.

e. Products, Software, and Services Provided "AS IS". The following are provided "AS IS" and are not covered by any of the above warranties: (i) development Products (including without limitation prototypes and pre-production samples, whether or not paid for by Buyer), (ii) experimental Products; (iii) beta testing Products, (iv) reference designs, (v) Software, (vi) Services, and (vii) information and technology external to the Product.

f. Seller's sole and exclusive obligation, and Buyer's sole and exclusive right, with respect to claims under this warranty is limited, at Seller's option, either to (a) the replacement or repair of a defective or non-conforming Product, or (b) an appropriate credit for the purchase price of the defective Product. Seller will have a reasonable time to repair, replace or credit. The non-conforming or defective Products shall become Seller's property as soon as they have been replaced or credited for.

g. Seller makes no representations or warranties that the Products or the Software will meet Buyer's requirements, that the Products or Software will be free of security vulnerabilities, or that the use of the Software will be uninterrupted or error-free.

h. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING WARRANTY AND DISCLAIMERS ALLOCATE THE RISKS AND ARE AN ESSENTIAL ELEMENT UNDER THE AGREEMENTS AND SELLER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE ABOVE WARRANTY AND DISCLAIMERS. Subject to the exclusions and limitations set forth in Section 12 of these Terms, the foregoing states the entire liability of Seller in connection with defective or non-conforming Products, Software and Services.

## 11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

a. Subject to Section 12 (Limitation of Liability), Seller, at its expense, will: (i) defend against a claim in a legal proceeding brought by a third party against Buyer that any Product as furnished by Seller under these Terms directly infringes the claimant's patent or copyright; and (ii) hold Buyer harmless against damages and costs awarded by final judgment in the legal proceeding (or agreed upon in a settlement to which Seller consents) to the extent directly and solely attributable to direct infringement by the Product of the asserted patent or copyright.

b. Seller shall have no obligation or liability to Buyer under Section 11(a): (1) if Seller is not: (i) promptly notified in writing of the claim, (ii) given the sole right to control the defense and settlement of the claim, including the selection of counsel, and (iii) given full reasonable assistance and cooperation by Buyer in the defense and settlement; (2) if the claim is made more than three (3) years after the date of delivery of the Product; (3) to the extent that any claim arises from: (i) modification of the Product, (ii) design, specifications or instructions furnished by Buyer, or (iii) the combination or use of the Product with any product, software, service or technology; (4) for unauthorized use or distribution of the Product or use beyond the specifications of the Product; (5) if the claim is made in response to Buyer's assertion that third party infringed any intellectual property rights of Buyer; (6) for any costs or expenses incurred by Buyer without Seller's prior written consent including any settlement or legal costs; (7) to the extent that the claim is based on any items listed in Section 10(e); (8) to the extent that any claim arises from any infringement or alleged infringement of third party's intellectual property rights covering an industry standard; or (9) for infringement of any third party's intellectual property rights with respect to which NXP has informed Buyer or has published a statement that a separate license has to be obtained or that no license is granted or implied. If any claim of infringement is brought against Seller as a result of Buyer's actions in connection with items (3), (4), or (5) of this Section, Buyer shall indemnify Seller against and hold Seller harmless from any damages or costs arising from or connected with the claim of infringement and shall reimburse all costs incurred by Seller in defending any claim, demand, suit or proceeding for the infringement, provided Seller gives Buyer prompt notice in writing of the suit or proceeding for infringement.

c. If any Product is, or in Seller's opinion is likely to become, the subject of a claim of infringement, Seller shall have the right, without obligation and at its sole option, to: (i) procure for Buyer the right to continue to use or sell the Product, (ii) replace or modify the Product in such a way as to make the modified Product non-infringing, or (iii) terminate any Agreement to the extent related to the Product. If Seller terminates under Section 11(c)(iii), Buyer may return to Seller all affected Products in Buyer's possession at the time of the termination, which are then subject to the claimant's continuing claim of infringement; and upon return Seller will credit Buyer the sum paid to Seller by Buyer for returned Products, less appropriate depreciation.

d. The foregoing indemnity is personal to Buyer and is not assignable, transferable or subject to passthrough to any third party including Buyer's customers.

e. Seller's liability for damages under this Section will not exceed a reasonable royalty rate as applied solely to the Product that is the subject of the indemnified claim.



f. Upon request by Seller, Buyer shall execute a joint representation agreement and waiver of conflicts of interests that will allow counsel retained and directed by Seller to represent both Seller and Buyer in the suit, and that will also allow counsel retained and directed by Seller to represent Seller in the future and be averse to Buyer in the future.

g. If a patent or copyright infringement claim against the Product is asserted prior to completion of delivery of the Product, Seller may decline to make further shipments.

h. SUBJECT TO THE EXCLUSIONS AND LIMITATIONS SET FORTH IN SECTION 12 OF THESE TERMS, THE FOREGOING STATES SELLER'S ENTIRE LIABILITY AND OBLIGATION TO BUYER OR ITS MEDIATE OR IMMEDIATE CUSTOMERS AND BUYER'S SOLE REMEDY WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

## **12. LIMITATION OF LIABILITY**

a. NXP SHALL NOT BE LIABLE TO BUYER FOR ANY LOST PROFITS OR LOST SAVINGS, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF NXP HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF THESE DAMAGES.

b. The aggregate liability of NXP, for all Buyer claims arising out of or in connection with all Agreements and any Product, Software, and Services, shall not exceed the amount that Buyer has paid NXP for such Product, Software, or Service during the twelve (12) months immediately preceding Buyer's notification to NXP of the applicable Buyer claim. Notwithstanding the above (a) the liability of NXP, for Buyer claims regarding delay or non-delivery of Products, shall not exceed twenty percent (20%) of the purchase price of the delayed or non-delivered Products, and (b) the liability of NXP for all Buyer claims for all Products, Software, and Services shall not exceed one million dollars (\$1,000,000.00) in the aggregate. The existence of more than one Buyer claim, or Buyer claims involving more than one Product, Software, or Service shall not enlarge or extend the above specified limits.

c. THE LIMITATIONS SET FORTH IN SECTIONS 12(A) and 12(B) ABOVE ARE ESSENTIAL ELEMENTS OF EACH AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE OR LIMITED REMEDY, AND WHETHER OR NOT NXP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATION ALLOCATES THE RISKS AND IS AN ESSENTIAL ELEMENT UNDER ALL AGREEMENTS AND SELLER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE ABOVE LIABILITY LIMITATIONS.

d. In some cases, NXP may promote certain Products and Software for use in the development of, or for incorporation into, products or services (a) used in applications requiring fail-safe performance or (b) in which failure could lead to death, personal injury, or severe physical or environmental damage (these products and services are referred to as "Critical Applications"). NXP's goal is to educate customers so that they can design their own end-product solutions to meet applicable functional safety standards and requirements. Buyer makes the ultimate design decisions regarding its products and is solely responsible for compliance with all legal, regulatory, safety, and security related requirements concerning its products, regardless of any information or support that may be provided by NXP. As such, Buyer assumes all risk related to use of any Products and Software in Critical Applications and NXP SHALL NOT BE LIABLE FOR ANY SUCH USE IN CRITICAL APPLICATIONS BY BUYER. Accordingly, Buyer will indemnify and hold NXP harmless from any claims, liabilities, damages and associated costs and expenses (including attorneys' fees) that NXP may incur related to Buyer's incorporation of any Product or Software in a Critical Application.

Only those Products and Software that NXP has specifically designated as “Automotive Qualified” are designed and intended for use in automotive applications or environments. If Buyer uses any Product or Software that has not been designated as “Automotive Qualified” in an automotive application or environment, Buyer does so at its own risk.

e. Buyer must provide notice to Seller of any claim that Buyer has under these Terms within ninety (90) days of the date that the claim arises, and any lawsuit relative to any claim must be filed within one (1) year of the date of notice to Seller of the claim. Buyer agrees that any claim noticed or filed outside of the deadlines set forth in the preceding sentence are deemed waived.

f. The limitations and exclusions set forth above in this Section shall only apply to the extent permitted by applicable mandatory law.

### **13. GOVERNMENT CONTRACT COMPLIANCE**

a. If Buyer sells Products or distributes Software directly to any government or public entity, including U.S., state, local, foreign or international governments or public entities, or indirectly via a prime contractor or subcontractor of governments or public entities, Seller makes no representations, certifications, or warranties about compliance with government or public entity acquisition statutes or regulations, including, without limitation, statutes or regulations that may relate to pricing, quality, origin or content.

b. Products and Software provided in furtherance of these Terms have been developed at private expense and are “Commercial Items” as defined in 48 C.F.R. §2.101. Products and Software include commercial “Technical Data”, “Computer Software”, and/or “Computer Software Documentation”, as these terms are used in 48 C.F.R. §§ 12.211 and 12.212 (or 48 C.F.R. §§ 227.7102 and 227.7202, as applicable) and may only be licensed to or shared with U.S. Government end users with the rights as are set forth in this Section. Buyer agrees that it will not share Products or Software consisting of “Technical Data”, “Computer Software”, and/or “Computer Software Documentation”, with anyone not covered by these Terms, including government customers.

c. Buyer agrees that any agreement pursuant to which Buyer shares Products or Software will include a provision that reiterates the limitations of these Terms and requires all sub-agreements to similarly contain such limitations.

### **14. CONFIDENTIALITY**

Except for non-confidential documentation provided to Buyer for distribution with a corresponding Product or Software, Buyer acknowledges that all technical, commercial and financial information (including without limitation any source code) disclosed to Buyer by NXP is the confidential information of NXP. Buyer shall not disclose any confidential information to any third party and shall not use any of the confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transactions under these Terms.

### **15. COMPLIANCE WITH LAWS; EXPORT CONTROLS**

Each party represents that it is duly authorized to enter into these Terms and represents that with respect to its performance hereunder, it will comply with all applicable federal, state and local laws, including, but not limited to those pertaining to U.S. Export Administration (including restrictions on certain military end uses and military end users as specified in Section 15 C.F.R. § 744.21), prohibited party lists issued by other federal governments, catch-all regulations and all national and international embargoes or the export or import controls or restrictions of other applicable jurisdictions.

If the delivery of Products, Software, or technology (collectively, "Items") under these Terms is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, Seller may suspend its obligations and Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and Seller may even terminate any Agreement related to such Items, without incurring any liability towards Buyer.

If an end-user statement is required, Seller will inform Buyer immediately and Buyer shall provide Seller with required documentation upon Seller's written request. Buyer shall inform Seller immediately if an import license is required, and Buyer shall provide Seller with the applicable document as soon as it is available. By accepting Seller's Offer, entering into any Agreement and/or accepting any Items, Buyer agrees that it will not deal with the Items, and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

## **16. ASSIGNMENT**

Buyer shall not assign any rights or obligations under these Terms or any Agreement without the prior written consent of Seller. Seller may assign, in whole or in part, any rights or obligations under these Terms and any Agreement (i) to its Affiliates, or (ii) in connection with a corporate reorganization or restructuring, business combination, or sale of all or a substantial portion of the assets of a division, business unit or entity, in one or a series of related transactions. Any attempted assignment in violation of this Section will be void.

## **17. GOVERNING LAW AND FORUM**

These Terms, and all Offers, Confirmations and Agreements, are governed by and construed in accordance with the laws of the State of Delaware, U.S.A. without regard to provisions concerning conflicts of law and subject to the dispute resolution terms set forth in this Section 17 regardless of any conflicting terms in any other agreements between Buyer and Seller. All disputes arising out of or in connection with these Terms and Conditions, or any Offer, Confirmation or Agreement, shall first be attempted by Buyer and Seller to be settled through consultation and negotiation in good faith and a spirit of mutual cooperation. All disputes that are not so settled within a period of thirty (30) days from the date the relevant dispute first arose may be submitted to and finally be resolved by arbitration (hereinafter referred to as "Arbitration") under the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"), which ICC Rules are deemed to be incorporated by reference into this clause. The seat, or legal place, of arbitration shall be Singapore. One arbitrator, who shall not be of a nationality of either Seller or Supplier, shall be appointed in accordance with the Rules and the language to be used in the Arbitration proceedings shall be English. The arbitration award shall be final and binding on the parties and be enforceable in any court of competent jurisdiction. Accordingly, the parties hereby confirm that they shall treat the performance of this award as an obligation under this Agreement and expressly agree to carry out such arbitral award without delay. The arbitrator shall determine which party shall bear the fees of such arbitration. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms, or any Offer, Confirmation or Agreement. Nothing in this Section shall be construed or interpreted as a limitation on either Seller's or Buyer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

## **18. BREACH AND TERMINATION**

Without prejudice to any rights or remedies Seller may have under these Terms or the Agreement or at law, Seller may, by written notice to Buyer, terminate with immediate effect any Agreement in whole or in part, without any liability, if:

- a. Buyer fails to make payment for any Products, Software, or Services to Seller when due;
- b. Buyer fails to accept conforming Products, Software, or Services supplied;
- c. any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer; or
- d. Buyer violates or breaches any of the provisions of these Terms and/or the Agreement.

Upon occurrence of any of the events referred to under Sections 18(a) through 18(d) above, all payments to be made by Buyer under the Agreement shall become immediately due and payable.

Upon cancellation, termination or expiration of any Agreement the terms and conditions destined to survive cancellation, termination or expiration (which shall include without limitation all defined terms and Sections 5, 9 through 18, and 21 through 25 of these Terms) shall survive.

## **19. PRODUCT AND PRODUCTION CHANGES**

Seller reserves the right to make at any time Product and/or production changes. In such event Seller represents that said changes shall not negatively affect form, fit or function of the Products and their performance characteristics.

## **20. DISCONTINUATION OF PRODUCT**

Seller reserves the right to discontinue manufacturing and sale of Products at any time. If during the term of an Agreement under which Seller sells and Buyer purchases Products on a regular basis, these regularly sold and purchased Products are to be permanently discontinued ("Discontinued Product"), Seller will use its reasonable commercial efforts to give Buyer prior written notice of the discontinuation, and to accept last-time-buy orders for the Discontinued Product in accordance with Seller's product discontinuation process and general information related thereto as published on Seller's website.

## **21. RESALE PROHIBITED**

Buyer will not resell Products, through brokers, exporters, or otherwise, except as integrated into a product sold by Buyer that contains substantial value-added circuitry or software. If Buyer breaches the terms of this Section, in addition to Seller's cancellation rights, Buyer agrees to fully indemnify Seller, its officers, employees, Affiliates, agents, and distributors, from any liability related to the resale, including, without limitation, attorneys' fees and costs.

## **22. SEVERABILITY**

If any provision(s) of the Agreement or these Terms is held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, the holding or action shall not negate the validity or enforceability of any other provisions of the Agreement or Terms.

## **23. WAIVER**

The failure or delay by Seller to exercise any right or remedy arising from any Offer, Confirmation or Agreement, or these Terms, shall not operate as a waiver of the right or remedy; and no single or partial exercise of any right or remedy will preclude any other or future exercise of the right or remedy or the exercise of any other right or remedy arising from any Offer, Confirmation or Agreement, or these Terms or by law.

Specifically, and not derogating from the generality of the foregoing, if Buyer is in default of any Agreement or these Terms, Seller may stop further deliveries without affecting its rights under the Agreement, these Terms, or any other agreement. If Seller elects to continue to deliver despite a Buyer default, Seller's continued delivery will not constitute a waiver of any default by Buyer or affect Seller's legal remedies for the default.

## **24. NOTICES**

All notices to be given under these Terms shall be in writing and shall be deemed delivered upon hand delivery, confirmed delivery by a delivery services such as UPS, FedEx, or DHL, or three (3) days after deposit in the mail of the home country of the party, postage prepaid, by certified, registered, first class or equivalent mail, addressed to the parties at their addresses set forth on the Offer, Confirmations and/or Agreement.

## **25. ATTORNEYS' FEES**

If a dispute arises relating to any Offer, Confirmation or Agreement, or these Terms, the prevailing party in any resulting litigation shall be reimbursed by the other party for all reasonable attorneys' fees and expenses incurred.

## **26. RELATIONSHIP OF PARTIES**

The parties intend to establish a relationship of buyer and seller and as such are independent contractors with neither party having authority as an agent or legal representative of the other to create any obligation, express or implied, on behalf of the other.

## **27. MODIFICATIONS AND CHANGES**

Seller reserves the right to modify these Terms at any time. Modifications shall have effect: (a) on all Offers, Confirmations and Agreements referring to the modified Terms from the date of the Offer, Confirmation or Agreement, and (b) on any existing Agreement thirty (30) days from notification of the modifications by Seller to Buyer, unless Buyer has notified Seller within the thirty (30) day period that it objects thereto.

Terms and Conditions of Commercial Sale, version Japan

Revised June 10, 2020