

# Standard Terms and Conditions of Sale and Delivery of SIEGERT WAFER GmbH

## I. General provisions and scope of application

- 1.1 The Standard Terms and Conditions of Sale and Delivery of Siegert Wafer GmbH (hereinafter referred to as „Supplier“) shall apply exclusively. Should the Supplier's contracting partner (hereinafter referred to as „Customer“) use terms and conditions which contradict, or deviate from, these Standard Terms and Conditions, such terms and conditions shall not be accepted, except if the Supplier expressly and in writing approves of the application of deviating terms. These Standard Terms and Conditions shall even apply if the Supplier, being aware of terms used by the Customer which contradict, or deviate from, the Supplier's Standard Terms and Conditions, performs delivery to the Customer without reservations.
- 1.2 The Standard Terms and Conditions shall also apply to all future transactions with the Customer. Upon the placement of the order, at the latest, however, upon receipt of the goods, the Customer shall be deemed to have accepted these Standard Terms and Conditions.
- 1.3 The Standard Terms and Conditions shall only apply in the relationship with businesses in accordance with the definition in sec. 14 of the German Civil Code (BGB).
- 1.4 Ancillary agreements, as well as modifications of, amendments to, or the cancellation of the contract must be set out in writing.

## II. Offer, order confirmation and scope of performance

- 2.1 The Supplier's offers are always subject to confirmation. An order placed by the Customer shall only be deemed to have been accepted once the Supplier has confirmed the order in writing. Also, changes and other arrangements shall only be binding if they have been confirmed in writing by the Supplier. Only the written order confirmation and/or the Supplier's offer shall be decisive for the execution of orders. Telephone conversations also must be confirmed in writing. Transmission by telecommunication methods shall suffice to meet the written form requirement.
- 2.2 Only the Customer's order shall constitute an offer pursuant to sec. 145 of the BGB. The Supplier

may accept the order within 4 weeks. The contract shall be concluded at the latest upon dispatch of the ordered goods, in the event of partial deliveries upon dispatch of the first delivery.

- 2.3 In as far as the Customer requests individual cost estimates, such cost estimates shall be subject to a fee. If an order is placed, the fees incurred shall be set off against the purchase price. Should the validity of the concluded purchase contract cease for any reason whatsoever, the obligation to pay the fee for the cost estimate shall continue to apply.
- 2.4 The documents, drawings, weight and measurement data, samples etc. contained in the Supplier's offers shall merely constitute approximations, but shall not qualify as quality characteristics. The Supplier shall have the right to deviate from the descriptions in the offer if such deviations are not of a fundamental or material nature, and if the contractual purpose is not impaired.
- 2.5 In as far as the Supplier supplies components on the basis of Customer drawings, the drawings compiled by the Supplier and approved by the Customer shall be decisive. Deviations from approved drawings must be agreed separately; any additional costs incurred shall be subject to reimbursement.

## III. Prices

- 3.1 Except if the order confirmation states otherwise, the specified prices shall always be „ex works“, not including packaging; packaging shall be invoiced separately.
- 3.2 All specified prices are net; statutory value added tax at the rate applicable at the respective time shall be added to these prices.
- 3.3 The Supplier may invoice to the Customer any additional expenses incurred due to subsequent requests for changes.
- 3.4 Should, after the conclusion of this contract, events occur which increase the Supplier's costs for the production or shipment of the goods, in particular due to increases in the Supplier's purchase prices or due to wage increases, the Supplier shall have the right to increase the prices accordingly.

## IV. Payment terms and prohibition of assignments

- 4.1 Unless agreed otherwise, invoices shall be due for payment without deductions within 21 days from the invoice date. Cash discounts shall only

be deemed to have been agreed if the Supplier has confirmed them expressly and in writing.

- 4.2 The Supplier shall have the right, even if the Customer's payment terms stand against this, to first use any payment to settle the oldest debt for which an enforceable instrument does not exist. If costs or interest has already been incurred, the Supplier shall have the right to first use payments to settle the costs, then interest and finally the principal claim.
- 4.3 The Customer shall only have a right to set off claims if and in as far as his counterclaims have been determined in a final and conclusive manner, are undisputed, or have been acknowledged by the Supplier in writing. The Customer's retention rights are limited to claims under this contractual relationship.
- 4.4 Cheques are only accepted as payment subject to such cheques actually being cleared. Payment by bill of exchange requires a separate agreement. Acceptance of a bill of exchange shall always take place under the condition that the state central bank of North-Rhine Westphalia purchases such bill of exchange. Acceptance of a bill of exchange does not constitute a deferment of our claims. The Supplier shall at all times continue to have the right to request cash payment when the claim is due, concurrently against surrender of the bill of exchange. Stamp duties on bills of exchange shall be borne by the Customer. The same shall apply to discount charges from the due date of the invoices onwards.
- 4.5 The Supplier shall be entitled to charge default interest at a rate of 8 % above the basic interest rate pursuant to sec. 347 BGB. The right to provide proof of default damages going beyond this is hereby expressly reserved.
- 4.6 Claims which the Customer may hold against the Supplier under the contractual relationship cannot be assigned.

## **V. Delivery, delivery time and default in delivery**

- 5.1 The delivery time specified by the Supplier in the order confirmation is non-binding - except if agreed otherwise in writing. Delivery dates are expressly subject to correct and timely receipt of deliveries from our suppliers. Delivery periods shall commence on the date of dispatch of the order confirmation, but not before all technical issues have been fully clarified.
- 5.2 Delivery periods shall be deemed to have

been complied with if the product has left the Supplier's factory by the end of the period, or if the Supplier has notified the Customer of the readiness for shipment by that time.

- 5.3 If the Customer makes subsequent requests for changes, the Supplier shall no longer be obligated to comply with the delivery date or delivery period.
- 5.4 In the event of unforeseeable and/or unavoidable and/or unusual events, in particular all types of strikes and if our suppliers fail to deliver in good time, even if such events only occur when default in delivery has already commenced, the delivery period shall be extended. The Customer shall be informed thereof without undue delay and in writing.
- 5.5 In the event of a default in delivery for which the Supplier is responsible - the commencement of which always requires a written notification of default - the Supplier shall be liable in accordance with the statutory provisions, provided that the default in delivery is due to a intentional or grossly negligent breach of contract for which the Supplier is responsible; fault on the part of the Supplier's representatives or vicarious agents is to be attributed to the Supplier. Should the default in delivery be due to a grossly negligent breach of contract for which the Supplier is responsible, the Supplier's liability for damages shall be limited to the foreseeable damage which typically occurs in this type of contract. The Supplier shall not be liable in the event of slight negligence.
- 5.6 The Supplier shall not be bound by the delivery date and/or delivery period if the Customer fails to properly and in a timely manner comply with his obligations (payment of advance instalments, provision of necessary documents etc.). We reserve the right to invoke the defence of non-performance of the contract.
- 5.7 Should the Customer be in default of acceptance, or should he breach other cooperation obligations, the Supplier shall have the right to request compensation for any damage incurred in this context, including additional expenses, if any. Furthermore, the Supplier shall have the right to set the Customer a reasonable deadline for acceptance, and, should this deadline expire unsuccessfully, to withdraw from the contract and to request damages in lieu of performance.
- 5.8 Should shipment be delayed due to a corresponding request by the Customer or due to other

reasons for which the Supplier is not responsible, the Customer shall bear any additional costs incurred (e.g. storage costs) as well as the risk of accidental destruction and accidental deterioration of the goods, from the notification of the readiness for shipment onwards.

- 5.9 We reserve the right to always effect partial shipments and shipments ahead of schedule.
- 5.10 In all other respects, delivery shall be effected pursuant to INCOTERMS 2010.

## **VI. Force majeure**

If a delay in delivery or a non-performance is caused by special circumstances such as force majeure, war, violent acts, court orders, labour disputes, accidents, fire, explosions, storms or other natural phenomena, lack of raw materials, disruption of operations, non-delivery of supply material or withdrawal of licenses, the Supplier shall not be responsible. In this event, the Parties may dissolve the contract in mutual agreement.

## **VII. Reservation of title**

- 7.1 The Supplier reserves title to the goods up until all payments due under this delivery contract, including all other contracts concluded between the Customer and the Seller up until the time of the conclusion of this contract, have been received. The Customer may re-sell the reserved-title goods within the framework of his ordinary business operations. However, he hereby assigns to the Supplier all claims which he obtains against the client or a third party from the re-sale of the goods, up to the sum of the relevant invoice. The Customer shall continue to be entitled to collect such claims, even after they have been assigned. The Supplier's right to collect the claim himself shall remain unaffected. The Supplier may in particular request that the Customer notify him of the assigned claim, its existence and its debtor, provide him with all information required for the collection of the claim, promptly hand over all associated documents, and inform the debtor in writing of the assignment.
- 7.2 The Customer shall not have the right to pledge the reserved-title goods, or to transfer them to third parties by way of security.
- 7.3 In the event of a breach of contract on the part of the Customer, in particular default of payment, the Supplier shall have the right to take back the goods. If the goods are taken back or seized by

the Supplier, this shall not constitute a declaration that the Supplier wishes to withdraw from the contract; rather, this shall only be the case if the Supplier issues a corresponding expressed written declaration.

- 7.4 In the event of a seizure or other encroachments by third parties, the Customer shall promptly inform the Supplier.
- 7.5 If the goods are sold with other goods which are not owned by the Supplier, the Customer's claim against his client shall be deemed to have been assigned upon conclusion of the contract, to the sum of the delivery price agreed between the Supplier and the Customer.
- 7.6 Should the Supplier lose his title rights due to assembly with other goods, the Customer assigns the compensation claims which he obtains.
- 7.7 Processing of the reserved-title goods by the Customer shall always be carried out on behalf of the Supplier.
- 7.8 Upon a corresponding request by the Customer, the Seller shall be obligated to release collateral of his own choice, in as far as the recoverable value of the collateral exceeds the Supplier's claim by more than 10 % .

## **VIII. Defects in quality and product liability**

- 8.1 The Supplier shall not be liable for damage incurred due to improper handling, wear-and-tear, storage or other acts by the Customer or a third party.
- 8.2 The statutory claims on account of defects in quality shall become time-barred after expiry of one year from the handing over of the goods. This does not constitute a warranty for durability.
- 8.3 The Supplier's liability for a defect requires that the Customer has reported apparent defects pursuant to sec. 377 of the Commercial Code (HGB) within 5 days from receipt of the goods, in writing and specifically describing the defect. Defects which appear later must be reported, in writing and specifically describing the defect, within the same period, calculated from the detection of such defects. The Customer shall be obligated to comply with his obligation to examine the goods pursuant to sec. 377 HGB, even if he re-sells the goods.
- 8.4 The Supplier shall have the right to choose whether to rectify the defect or provide a replacement delivery. Should replacement or rectification fail,

the Customer shall only be entitled to withdraw from the contract or reduce the purchase price if the defects are material.

- 8.5 The expenses required to replace the goods or rectify the defect shall not be borne by the Supplier in as far as such expenses are increased by the goods having been transported after delivery to a location other than the Customer's commercial establishment. The above shall not apply if the relocation corresponds to the intended use of the goods. Costs for installation and removal shall not be borne by the Supplier. Such costs shall be borne by the Customer.
- 8.6 The Customer's right to take recourse against the Supplier on account of claims based on defects in title which are asserted against the Customer by his clients shall be excluded if the Customer has not complied with his examination and reporting obligations, or has not done so in good time, or if the goods have been modified by processing.
- 8.7 The Supplier's liability for damages under the statutory provisions shall apply without restrictions if a breach of duty which is attributable to the Supplier is based on intent or gross negligence. In as far as the breach of duty which is attributable to the Supplier is based on ordinary negligence and an essential contractual obligation has been culpably breached, the liability for damages shall be limited to the foreseeable damage which typically occurs in similar cases. In all other cases, liability shall be excluded.
- 8.8 Liability under the provisions of the Product Liability Act (ProdHaftG) shall not be affected. Furthermore, liability due to loss of life, bodily injuries or adverse health effects shall not be affected either.
- 8.9 The Customer may only use the goods as intended, and must ensure that the goods are only sold to persons who are familiar with the dangers and risks associated with the product.
- 8.10 The Customer is obligated to comply with his warning obligations when placing final products on the market in which he uses the goods as a raw material and part of his own products, also with regard to the goods delivered by the Supplier. Within their mutual relationship, the Customer indemnifies the Supplier on first demand from and against any and all claims if this obligation is breached.

## **IX. Returning goods**

- 9.1 When returning goods, the Customer shall comply with the following provisions:
  - a) every return shipment of goods must be notified to the Supplier in advance and in writing.
  - b) the Supplier shall provide the Customer with a return check list and shall submit a return number. This must be used when returning the goods.
  - c) return shipments must be made in accordance with the return check list.
- 9.2 The Customer shall compensate the Supplier for all damage incurred by the Supplier due to a breach by the Customer of the above provisions.

## **X. Confidentiality, place of performance, place of jurisdiction and governing law**

- 10.1 The Parties undertake to maintain strict confidentiality with regard to all information disclosed by one of them to the other Party under the condition and/or with the marking of the need to keep such information confidential. This confidentiality obligation shall survive the termination and expiry of the contract.
- 10.2 The place of performance for all obligations under this contract, including the rectification and replacement obligations, shall be Aachen, Germany.
- 10.3 The place of jurisdiction for all disputes arising from this contract shall be Aachen, Germany. However, the Supplier shall have the right to file action against the Customer with the court with jurisdiction for the Customer's general place of jurisdiction or place of establishment.
- 10.4 This contract shall exclusively be governed by German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 10.5 Should individual provisions in this contract be invalid, this shall not affect the validity of the remaining provisions. The Parties shall endeavour to replace an invalid provision with a valid provision which comes as close as possible to the economic purpose of the contract.