

# **Renesas Electronics Europe GmbH**

## **General Terms and Conditions of Business**

### **§ 1 Scope**

1.1 All deliveries, services and quotations of Renesas Electronics Europe GmbH - hereinafter: "Renesas" are provided exclusively on the basis of these General Terms and Conditions of Business. Confirmations to the contrary on the part of the Purchaser with reference to its own general terms and conditions of purchase or business are herewith expressly rejected. Nor shall they apply if Renesas performs without reservation contracts in the knowledge of contrary terms and conditions on the part of the Purchaser.

1.2 No ancillary agreements are in existence. All amendments to these terms and conditions require written confirmation by Renesas. This applies equally to the waiver of this written form clause. E-mails do not meet this written form requirement.

### **§ 2 Quotation and Conclusion of the Contract**

2.1 Renesas quotations are in all cases subject to confirmation and are non-binding. By placing an order the Purchaser submits an offer to which it is bound 3 weeks from receipt by Renesas. A contract only comes into existence on written confirmation of order by Renesas and shall be in accordance with the contents of such order confirmation and these General Terms and Conditions of Business. Verbal agreements or commitments must be confirmed by Renesas in writing in order to take effect.

2.2 Drawings, illustrations, weights or other performance data contained in catalogues, pricelists or other promotional material of Renesas do not constitute any guaranteed features or quality specifications ("Beschaffenheit") unless expressly indicated as such.

### **§ 3 Execution of deliveries and services/acceptance**

3.1 Delivery dates and periods are non-binding in the absence of agreement to the contrary.

3.2. Events due to *force majeure* such as war, natural disasters, earthquakes or industrial disputes which are unforeseeable, unavoidable and beyond the sphere of influence of Renesas and for which Renesas is not responsible shall release Renesas for the duration of their effects from the duty of timely delivery of goods or services. Agreed delivery times shall be extended for the duration of the event and the effects thereof; the Purchaser shall be informed in an appropriate manner of the

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occurrence of such event and with regard to its repercussions. If the end of the event and its repercussions are not foreseeable or should it last longer than three months either party shall be entitled to withdraw from the contract.

3.3. Should the quantity of goods available to Renesas in cases covered by Clause 3.2 be insufficient to satisfy all Purchasers Renesas shall be entitled to curtail all supply obligations in accordance with its own best judgement; beyond that Renesas shall be released from all further supply obligations.

3.4 Renesas is entitled to provide partial deliveries and partial performances if this is reasonable for the Purchaser. Renesas shall be entitled to deviate from the agreed delivery or performance if this is reasonable for the Purchaser.

3.5 The Purchaser shall cooperate in respect of receipt or acceptance of goods and notify Renesas in a timely manner regarding difficult delivery circumstances.

3.6 Should dispatch of goods be delayed for reasons for which the Purchaser is responsible Renesas shall be entitled to demand damages from the Purchaser for storage and the costs incurred thereby. If storage takes place in Renesas warehouse facilities, after a period of grace of five working days Renesas shall be entitled to liquidated damages equal to a minimum of 1% of the value of the invoiced sum stated in respect of the delayed delivery for each commenced month of warehousing subject to evidence produced by the Purchaser that damages were not incurred at all or not in the aforesaid amount. Renesas reserves the right to claim further damages.

**§ 4 Transfer of risk, dispatch and insurance**

4.1 If Renesas assumes responsibility for shipment of the goods risk shall transfer to the Purchaser upon handover of the subject of supply to the carrier company or to the Purchaser itself. Should handover or shipment be delayed for reasons for which the Purchaser is responsible risk shall transfer to the Purchaser on the date of notification of readiness for shipment of the subject of supply.

4.2 If Renesas complies with any shipment stipulation on the part of the Purchaser, this shall be at the Purchaser's risk. Renesas shall only be liable in this regard subject to Sections 5 and 6 of these General Terms and Conditions of Business.

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4.3 In the absence of any instructions on the part of the Purchaser shipment shall be by an appropriate shipment method in the customary packaging and at the Purchaser's cost.

4.4 If goods are shipped by Renesas, Renesas shall insure the shipment against transportation, breakage, fire and accidental damage at the Purchaser's request and at the latter's cost. Any agreements regarding transportation and insurance costs do not affect transfer of risk.

4.5 If Incoterms are agreed by the parties the Incoterms 2010 version shall apply.

**§ 5 Defect claims**

5.1 Goods delivered by Renesas are free from defects as to quality or title. This does not cover such defects as are caused by improper use, incorrect assembly (unless the assembly instructions are incorrect), unauthorized modification or like circumstances in the Purchaser's domain or as a result of natural wear and tear.

5.2 If any goods are defective Renesas shall be entitled at its discretion to rectify (repair) the defect or supply a defect-free replacement (jointly referred to as "Supplementary Performance") at no cost for the Purchaser. If Renesas is not prepared or in a position to provide Supplementary Performance, if Renesas refuses the latter or if it is delayed beyond reasonable periods of time for reasons for which Renesas is responsible or if Supplementary Performance otherwise fails, the Purchaser shall be entitled at its own discretion and in accordance with the applicable statutory provisions to withdraw from the contract, to reduce the purchase price and/or to demand damages pursuant to Section 6 or refund of his expenses.

5.3 Transportation, travel, labour and material costs incurred for the purpose of Supplementary Performance shall be borne by Renesas.

5.4 Any defect claims of the Purchaser require that the Purchaser has duly met its duty of immediate inspection and immediate notification of defects in the goods on receipt of the goods, in particular with regard to underdelivery. The Purchaser shall allow inspection of the defect by Renesas in an appropriate manner.

5.5 The limitation period for claims for defects shall be one year from the delivery of the goods. Claims in tort arising from a defect in the goods shall be time-barred within one year from statutory

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commencement of the statutory limitation period. In the event of any liability for breach of secondary or pre-contractual obligations in tort but not due to any defect in the goods, Purchaser's claims shall be time-barred two years from the point of knowledge or grossly negligent lack of knowledge of the circumstances giving rise to the claim and of the party liable to pay the claim. Claims of damages for personal injury, property damage or injury to health, for the intentional or grossly negligent breach of obligations, and also for maliciously concealed ("arglistig verschwiegen") defects shall be time-barred contrary to sentences 1 to 3 in accordance with statutory provisions.

5.6 If the Purchaser is entitled to return the goods this shall take place following consultation with Renesas in accordance with Renesas instructions.

5.7 Defect claims against Renesas are due to the Purchaser only and are non-transferable.

**§ 6 Liability**

6.1 The statutory liability of Renesas for damages is limited subject to Clause 6.2 as follows:

(i) For slightly negligent breach of material contractual obligations - or "cardinal obligations" - Renesas' liability shall be limited in the amount to the damage typically foreseeable at the time of the conclusion of the contract. Material contractual obligations (or "cardinal obligations") are those obligations which put the Purchaser into exactly this legal position to which he shall be entitled pursuant to contents and purpose of the contractual terms as well as such obligations, whose performance only will make possible proper performance of the contract and on whose full compliance the Purchaser regularly relies and is entitled to rely.

(ii) Renesas accepts no liability for the slightly negligent breach of obligations other than those listed under (i) above.

Otherwise the Purchaser's statutory claims for damages remain unaffected unless they are limited by a contractual provision individually agreed by the parties.

6.2 The aforesaid limitation of liability in Sections 6.1 (i) and (ii) shall not apply in cases of mandatory statutory liability (in particular under the terms of the Product Liability Act (Produkthaftungsgesetz)), malicious concealment of a defect, on assumption of a guarantee or culpable personal injury by Renesas.

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6.3 Should Renesas be liable under Sections 6.1 and/or 6.2 contrary to Section 5.5 the statutory limitation period shall apply.

6.4 The Purchaser undertakes to take appropriate steps to prevent and mitigate damage.

**§ 7 Product Liability**

7.1 If the Purchaser sells the goods supplied, he shall indemnify Renesas from product liability claims of third parties if he is responsible for the defect giving rise to liability.

7.2 If the Purchaser sells the goods supplied or products which were manufactured using the goods such sales shall be so documented that customers can be identified. The Purchaser hereby undertakes to obligate his customers accordingly provided documentation is possible and reasonable for them.

7.3 In the defence of any product liability claims the Purchaser shall support Renesas in any reasonable manner. In particular, the Purchaser shall provide Renesas upon request with necessary information regarding the nature and manner of processing the goods of Renesas and regarding the proportion of goods supplied by Renesas in the products manufactured by the Purchaser.

7.4 The Purchaser shall inform Renesas immediately regarding any incidents of damage or other conspicuous features in connection with the Renesas goods.

**§ 8 Intellectual property and trade mark rights**

8.1 Should the Purchaser be the subject of claims as a result of infringement of intellectual property rights or copy rights or applications thereof (herein referred to as "Rights") on the basis of goods supplied by Renesas he shall inform Renesas both immediately and on an ongoing basis regarding all matters relating to any such claim and in particular shall provide Renesas with necessary information and documentation.

8.2 Renesas is not obliged to examine specifications stipulated by the Purchaser with regard to infringement of Rights. Should any infringement of third party rights occur due to compliance with such specifications the Purchaser shall indemnify Renesas in the relationship *inter se*.

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8.3 Renesas shall be entitled to destroy customer-specific templates designed for the Purchaser one year from the date of the last delivery to the Purchaser with no obligation to inform the latter once more in advance.

**§ 9 Prices and payment**

9.1 In the absence of any agreement to the contrary prices are stated as net prices ex works. These shall be paid by the Purchaser without deduction plus the statutory rate of VAT and plus packaging costs (as are customary with Renesas), transportation costs, customs duties and any other ancillary import duties.

9.2 Renesas shall be entitled to adjust agreed prices if and to the extent that costs of materials and raw materials needed for manufacture of the products have increased or decreased by at least 5 % or if wage costs (salaries) have increased or decreased by at least 5% or if import duties and taxes have increased or decreased by at least 3%. The extent of the adjustment shall be in line with the actual costs change. Renesas shall notify the Purchaser of the price adjustment, in the event of a price increase at least three (3) months prior to the new prices taking effect. In the event of a price increase the Purchaser may withdraw from the contract by written declaration within two (2) weeks from receipt of the price increase notification.

9.3 All Renesas invoices shall be due for payment without deduction within 30 days from the date of invoice.

9.4 Even in the event of stipulation by the Purchaser to the contrary, Renesas shall be entitled to initially apply payments to older debts. If costs and interest have been incurred Renesas shall be entitled to apply the payment initially against costs and subsequently against the interest and finally against the main debt. In the case of cheques or bills of exchange payment shall be deemed to be received when the said cheque/bill of exchange has been honoured. All costs incurred for collection of cheques and bills of exchange shall be borne by the Purchaser. Renesas accepts no liability for timely and proper presentation, protest and notification.

9.5 If Renesas becomes aware of any risk of Purchaser's inability to perform the contract after conclusion of the contract, Renesas shall be entitled to fulfil outstanding deliveries only in return for payment in advance or provision of security. If advance payments or provision of security have not

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been provided even after expiry of a reasonable period of grace, Renesas may withdraw from individual agreements or all agreements concerned either wholly or in part. Renesas shall remain entitled to assert any further rights.

9.6 If the Purchaser is in default of payment Renesas shall be entitled to invoice interest of 8% above base rate from the relevant start of the default onward. The right to enforce any further damages caused by default remains reserved.

9.7 The Purchaser only has a right of offset if the counterclaim is undisputed or has been finally adjudicated.

**§ 10 Retention of title**

10.1 Goods shall remain the property of Renesas until all Renesas claims against the Purchaser arising from the business connection, irrespective of legal grounds and including future claims arising, have been settled ("Retention Goods"). This also applies if individual or all Renesas claims have been included in a current account and if the balance has been struck and acknowledged.

10.2 Any processing or transformation of Retention Goods by the Purchaser shall always be for Renesas. If Retention Goods are processed with other goods Renesas shall acquire joint ownership of the new goods in the ratio of the value of the Retention Goods to the other processed goods at the time of processing. To the new goods created by way of processing, the same provisions applicable to the Retention Goods shall apply incidentally.

10.3 Should the Retention Goods be joint, mixed or blended with other goods, Renesas shall acquire joint ownership of the new goods in the ratio of the value of the Retention Goods to the other goods at the date of joining, mixing or blending. Should the joining, mixing or blending of the goods occur in such manner that the Purchaser's goods have to be viewed as the main goods it shall be deemed to have been agreed that the Purchaser shall assign proportionate joint ownership to Renesas. Purchaser shall hold the joint ownership created in such manner in custody for Renesas; Purchaser shall not be entitled to raise any claims with regard to such custody.

10.4 Purchaser may only sell and otherwise use Renesas property in the normal course of business on customary trade terms and conditions or undertake obligations to that effect – always provided,

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however, that the Purchaser is not in default and if no circumstances are apparent on the basis of which any claims of Renesas may be jeopardised.

Purchaser hereby assigns to Renesas all claims including all ancillary rights accruing to it as a result of resale to customers or third parties, irrespective whether the Retention Goods are sold without processing or following processing. Should the Purchaser sell the Retention Goods after joining, processing or transformation with other goods not the property of Renesas, the assignment of any claims for the proceeds shall only be agreed in the amount of the portion equivalent to the value of the Retention Goods. Purchaser is granted the revocable authorization to collect in trust the claims assigned to Renesas in its own name. Renesas' authority to collect the claims itself remains unaffected; however, Renesas hereby undertakes not to collect the claims itself as long as the Purchaser properly meets its payment obligations (in particular is not in payment default) respectively as long as no application to open insolvency proceedings has been submitted or payment is discontinued. In such instances Renesas shall be entitled to revoke the collection authorisation and to collect the respective claims itself. Renesas may require that the Purchaser provides information concerning the assigned claims and the debtors, provides all information necessary for collection, surrenders documentation associated therewith and notifies assignment to the debtors. If Purchaser has assigned such rights to third parties it is only entitled to use of the Retention Goods after the third party has effectively relinquished the said rights in favour of Renesas.

10.5 Should the value of the securities furnished for Renesas - taking into account customary bank valuation deductions - exceed Renesas claims by more than 10% Renesas hereby undertakes to release securities as selected by Renesas but at the Purchaser's request. As regards goods the relevant basis shall be their purchase prices and as regards claims the nominal value shall form the relevant basis.

10.6 Purchaser is obliged to treat the Retention Goods with care; in particular Purchaser is obliged to adequately insure the Retention Goods at its own costs at new for old value against damage by fire, water and theft. Should the Retention Goods be seized or should Renesas' rights be endangered in any other way Purchaser shall inform Renesas immediately and in consultation with Renesas Purchaser shall take all necessary steps to avert endangerment. At Renesas' request Purchaser shall assign claims to Renesas if this is deemed prudent for protection of the Retention Goods.



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10.7 Should Purchaser be in default of any payment obligation or any obligation arising from this Clause 10, should insolvency proceedings be opened in respect of Purchaser's assets or should its asset situation deteriorate to any significant degree Renesas shall be entitled to withdraw from the contract and to take back the Retention Goods. Costs associated therewith shall be borne by the Purchaser.

10.8 If the retention of title in a foreign country of destination is not valid or not to the extent envisaged, upon request the Purchaser shall cooperate in provision of such securities which by virtue of their effect nearest approach this retention of title provision.

**§ 11 Cancellation**

11.1 Cancellations of orders issued by the Purchaser require the express prior consent of Renesas which is only granted in exceptional circumstances.

**§ 12 Governing Law, Legal Venue, Export Restrictions and Customs Handling**

12.1 In respect of legal relationships between Renesas and the Purchaser the laws of the Federal Republic of Germany apply with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

12.2 Legal venue for all legal disputes arising directly or indirectly from this contract is Düsseldorf. Renesas is also entitled to file claims against the Purchaser at the latter's general legal venue.

12.3 If the goods supplied are subject to German, European and/or US export controls the Purchaser shall comply with the relevant export control regulations in the event of exportation or re-exportation of the goods. If deliveries are made customs duty unpaid at the request of the Purchaser the Purchaser shall be liable to Renesas in the event of any subsequent customs authority claims.

12.4 Should individual clauses contained in these General Terms and Conditions of Business be or become invalid under the applicable German law or the law of any individual country in the Purchaser's domicile and which cannot be effectively nullified the effectiveness of the remaining clauses shall not be thereby affected. The invalid clause shall be replaced by a clause coming closest to the purpose which Renesas and the Purchaser would have intended commercially.

Renesas EE 20DE – 07/2018