



## GENERAL TERMS OF SALE

### 1. Scope

These General Terms of Sale are applicable to all sales and deliveries made by EM Microelectronic Marin S.A. (herein referred to as "EM") as well as to its projects, subject to modifications or additions in written form agreed to and duly signed by the parties. The customer explicitly acknowledges the present General Terms of Sale and expressly waives assertion of its own general contractual conditions, if any.

### 2. Quotations

Quotations of EM containing no indications as to the period of validity are not binding for EM. All EM quotations and related documents are confidential and may neither be disclosed to any third party nor any person who does not have a need to know.

### 3. Industrial Property / Special Requirements

All plans, drawings, drafts, sketches, schematics, cost estimates and other technical documents are and remain the sole property of EM. Any form of reproduction, communication to third parties and/or use of such documents in design, development and/or production of any product or its components is prohibited. If a quotation does not lead to an order, all documents received by the prospective customer must be returned to EM immediately upon request.

Without the express written approval of EM, EM products are not authorized for use as components in safety and life supporting systems, where malfunction of such EM products might result in damage to and/or injury or death of persons. The unauthorized use of EM products in such systems/applications/equipment is solely at the risk of the customer and such customer agrees to defend and hold EM harmless from and against any and all claims, suits, damages, cost, and expenses resulting from any unauthorized use of EM products.

Special customer requirements: EM carries out all developments, qualifications and production steps according to its internal processes and specifications. Any special requirements (e.g. automotive quality procedures) regarding the product, the process or the system need to be communicated by the customer to EM in writing and in form of product specifications or other technical documents. EM analyses these special requirements and considers them in its quotation to the customer.

### 4. Orders and Order Confirmations

An order must contain the correct and complete product denomination and any specifications necessary to be valid. An order is accepted only after EM has issued a written order confirmation to the customer. EM reserves the right to make the acceptance of an order subject to pre-payment or other payment guarantees.

Once an order has been confirmed, no changes in the delivery schedule can be made within 6 weeks for standard products and 12 weeks for custom products before the confirmed delivery date. Any delivery

schedule changes become valid only after written confirmation by EM.

Orders confirmed by EM cannot be cancelled by the customer. The delivery schedule of any order confirmed by EM, including any delivery schedule changes confirmed by EM, cannot be extended beyond 12 months from the date of the initial order confirmation. At the end of such 12 month period, any quantity confirmed but not yet shipped and invoiced will be shipped and invoiced to the customer immediately.

### 5. Prices

Prices quoted in EM price lists, leaflets, press releases and websites are indicative and not binding. If not clearly marked differently, all prices are in Swiss Francs excluding Value Added Tax (VAT) and EXW (Incoterms 2000). Costs for freight and insurance are offered and charged separately.

For all orders and/or quantities not confirmed by EM to the customer in writing, EM expressly reserves the right to adapt the offered prices in connection with possible increases in production costs (salaries, employers' national insurance contributions, taxes, components, material, equipment, etc.).

For all offers issued by EM in currencies other than Swiss Francs (CHF), EM reserves the right to adjust the prices indicated on an offer should exchange rate fluctuations exceeding 3% occur between the date of the offer and the date of any confirmation based on such offer (basis: Interbanking exchange rate, last working day of the month, 14:00 CET).

### 6. Payment Terms

All invoices are payable net within 30 days of the invoice date. EM reserves the right to charge a late payment interest charge of 1% per month (or up to the legally permitted maximum rate) starting at the due date for any invoiced and undisputed amounts.

For new customers and in special cases, payment in advance or by letter of credit may be requested. Possible defects or any other reasons which are not accepted by EM do not authorise the customer to reduce the invoiced amount or to refuse payment. In any case, payment of the undisputed part of the invoiced amount has to be remitted in time.

Any banking fees that apply for the settlement of invoices are at the expense of the customer. EM is allowed to charge any unjustified deductions made by the customer. In the event of any invoiced amounts overdue, EM reserves the right to stop deliveries until the customer has settled all invoiced amounts overdue.

### 7. Reservation of Property Rights

EM reserves their property rights on all their products until receipt of the full sales price. In addition, EM reserves the right, if necessary, to enter their respective title in the respective reservation of property register.



## 8. Warranty

EM warrants that its products fulfil their specifications. The period of warranty starts on the day of the delivery and covers two years. The warranty covers all defects that can be traced to faulty material or defects in production. The warranty is in any case limited to either the replacement or repair of the defective products or parts or to the reimbursement of the amount invoiced for the defective products or parts or a mix of both, at the sole discretion of EM.

EM cannot be held liable for any costs due to disassembling or reassembling or for damages that occurred directly or indirectly through the products supplied, through their use or through their possible defects. In particular EM declines all liability for consequential or any other subsequent damages such as lost profit.

Furthermore, EM does not undertake any liability for damages caused by improper operations by the customer, by wrong use in assembling, incorrect fitting of parts or inadequate storage. Customer must give immediate notice of identifiable defects to EM. The same is true during the period of warranty for possible hidden defects.

RMA (Return Material Authorisation) procedure:

Before returning any goods, the customer must contact EM's customer service department in order to get a RMA number for any return. This number must be indicated on the customer's return delivery note to allow EM to identify and treat the return according to their internal guidelines. In addition, each return must contain a description of the alleged defect. In the event that the customer returns the goods without the RMA number and/or without a description of the alleged defect, EM reserves the right to refuse the shipment. Any damages resulting from inadequate packaging will be at the customer's expense.

## 9. Exportation

Any re-export prohibition for products or parts due to an obligation of EM towards its suppliers or the Section for Import and Export are specifically marked on the delivery note or on the invoice. The export of such products by the customer is prohibited. The prohibition also applies to any and all subsequent customers and must be transferred by the customer to any such subsequent customer.

## 10. Delivery Scope and Execution

The scope and execution of the delivery are defined in the order confirmation. Services not mentioned therein will be billed separately.

For customer specific products, due to technical reasons which cannot be avoided, EM has the right to vary the supplied product quantity up to  $\pm 10\%$  of the confirmed order quantity.

## 11. Terms of Delivery

The order confirmation contains the date on which EM expects the goods to be shipped to the customer. EM endeavours to set delivery dates as precisely as

possible and to observe them even in case of unforeseen difficulties in procurement and/or production. However, lead times are purely indicative and are targets only. Non-observation of confirmed delivery dates does neither give the customer the right to cancel an order or any part thereof nor to claim any damages. EM reserves the right to make partial deliveries.

Meeting confirmed delivery dates requires that the customer fulfils its obligations by timely providing all necessary information and specifications. If the customer does not fulfil its obligations, EM may stop or postpone confirmed deliveries.

Should deliveries be delayed or temporarily made impossible for reasons which EM cannot be held responsible for, EM is authorised to store the goods at the charge and risk of the customer. In case of obstacles beyond reasonable control of EM or in cases where delivery date changes by the customer cause delays, the delivery dates shall be adequately adjusted.

## 12. Delivery

Delivery is considered to have taken place when the goods have left EM's facilities. The risk of transport and transit is borne by the customer (EXW Incoterms 2000).

The customer has to notify EM of any obvious defects within 30 days after receipt of the goods. If no claim is filed in due time, the delivery is considered accepted. Hidden defects detected during the warranty period have to be reported without delay.

Shipments damaged in transit have to be accepted under reserve by the customer. Simultaneously, the carrier must be notified in order to assess the damage and to secure the customer's rights.

## 13. Applicable Law and Place of Jurisdiction

The present General Conditions and all contracts between EM and the Customer shall be exclusively governed by and construed in accordance with **Swiss law**, without giving effect to Switzerland's rules on conflict of law and regardless of the place or places of their physical execution and performance. Furthermore, the application of the United Nations Convention on Contracts for the International Sale of Goods (11 April 1980) shall be explicitly excluded.

**Neuchâtel** shall be the exclusive forum for the settlement of all and any disputes out of or in connection with this Agreement and all contracts between EM and the Customer which cannot be resolved through friendly negotiation. EM reserves the right, however, to take legal action against the Customer before the authority of his legal domicile (principal place of business) or before any other competent authority, in which event exclusively Swiss law shall remain applicable.

These General Terms of Sale are issued in English, German and French. In case of doubt, the English wording takes precedence.