

**TERMS AND CONDITIONS FOR THE SUPPLY OF WAFERS AND/OR FOUNDRY SERVICES**  
**Newport Wafer Fab Limited (company number 04338966)**

**1 SCOPE OF TERMS AND CONDITIONS**

- 1.1 These Conditions set out the terms that will apply between NWF and the Customer in relation to each Contract that is created between the Parties when an Order becomes an Accepted Order.
- 1.2 These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and the Customer waives any right it might otherwise have to rely on any such terms.
- 1.3 If and to the extent that the Conditions are inconsistent with the specific terms set out in an Accepted Order or of any other express written agreement between NWF and Customer in relation to the Order (**Special Conditions**), the Special Conditions shall override these Conditions. No change of or other amendment to the Conditions shall be binding on NWF unless such change is agreed between the Customer and NWF in writing.
- 1.4 All commercial terms used in these Conditions shall be interpreted in accordance with the INCOTERMS 2010 (ICC Publication No. 560).

**2 QUOTATIONS AND PURCHASER ORDERS**

- 2.1 Unless expressly stated otherwise on a quotation:
  - 2.1.1 all quotations made by or issued by NWF are non-binding solicitations of purchase orders and shall not constitute an offer;
  - 2.1.2 a quotation shall only be valid for a period of 30 days from its date of issue (or such longer period as may be agreed between NWF and the Customer); and
  - 2.1.3 any production cycle times and delivery periods quoted by NWF in quotations are best estimates as of the date of the quotations, only.
- 2.2 An Order constitutes an offer by the Customer to purchase the Wafers and / or Foundry Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 An Order shall only be deemed to be accepted when NWF issues a written acceptance of the Order, at which point the Order shall be an Accepted Order and the Contract shall come into existence.
- 2.4 NWF shall have no obligation to accept any Order placed by the Customer.

**3 SUPPLY OF WAFERS AND / OR FOUNDRY SERVICES**

- 3.1 NWF shall manufacture all Wafers and provide the Foundry Services in accordance with the Specification in all material respects. The Customer may not change the Specification without NWF's prior consent in writing. Any such changes may result in additional charges.
- 3.2 NWF reserves the right to amend the Specification if necessary to comply with any Applicable Law, or if the amendment will not materially affect the nature or quality of the Wafers and / or Foundry Services, and NWF shall notify the Customer in any such event.
- 3.3 NWF warrants to the Customer that the Foundry Services will be provided using reasonable care and skill.

**4 CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
  - 4.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
  - 4.1.2 co-operate with NWF in all matters relating to the Foundry Services;
  - 4.1.3 provide NWF with such information and materials as NWF may reasonably require in order to supply the Foundry Services, and ensure that such information is complete and accurate in all material respects;
  - 4.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Foundry Services and the import and export of any Wafers into any country into which the Wafers are to be imported / exported / delivered pursuant to an Order before the date on which the Foundry Services are to start; and
  - 4.1.5 comply with all Applicable Law.
- 4.2 If NWF's performance of any of its obligations under a Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
  - 4.2.1 without limiting or affecting any other right or remedy available to it, NWF shall have the right to suspend performance of the Foundry Services and /or manufacture of any Wafers until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays NWF's performance of any of its obligations; and
  - 4.2.2 NWF shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from NWF's failure or delay to perform any of its obligations as set out in this clause 4.2.

**5 PRICE AND PAYMENT**

- 5.1 The price payable by the Customer for Wafers and Foundry Services shall be as set out in an Accepted Order.
- 5.2 Unless otherwise agreed between the Parties in an Accepted Order, Prices do not include one-time manufacturing expenses, if any, such as the costs of mask sets and equipment and tooling and set-up costs. The Customer shall reimburse NWF for its out-of-pocket costs for any mask

made for the Customer and for any equipment, tooling and set-up costs that are specifically attributable to an Accepted Order.

- 5.3 Unless otherwise agreed Prices do not include ancillary sales costs, such as, transportation, insurance, customs, tariffs, duties, import charges or sales, use, excise, value-added or other taxes. To the extent that NWF (in its sole discretion) incurs any such costs on behalf of the Customer then, NWF will be entitled to charge the Customer and the Customer shall pay them as invoiced within thirty days of the date of the invoice.
- 5.4 Unless otherwise stated in an Accepted Order, the full purchase price for the Foundry Services and / or Wafers shall be due and payable within thirty days after the date of NWF's invoice.
- 5.5 The Customer shall pay for all Wafers delivered as invoiced, whether or not the delivery fills an entire order and whether or not other deliveries are conforming. The Customer shall have no right to offset any disputed claims against its payment obligations under any invoice for a Wafer delivery.
- 5.6 Any amount not received when due and payable shall bear interest at a rate of 4 % per month above the base rate of HSBC plc, until the amount is paid in full. NWF reserves the right to claim additional damages, if any, caused by the Customer's delay in payment and to suspend its obligations until the Customer's account is current.

**6 TIME AND MANNER OF DELIVERY**

- 6.1 NWF shall deliver the Wafers to the Delivery Location or make the Wafers available for collection by the Customer from the Delivery Location.
- 6.2 NWF's obligation to deliver Wafers within an expressly guaranteed period is contingent upon the Customer satisfying any conditions precedent to NWF's performance, as set out in the Accepted Order.
- 6.3 NWF will package, label, mark and otherwise prepare the Wafers for shipment in a manner consistent with good commercial practices and in accordance with Applicable Law.
- 6.4 All risks in the Wafers shall pass to the Customer upon NWF's delivery of the Wafers to the Customer's carrier at the Delivery Location.
- 6.5 NWF shall have the right to make partial shipments. NWF shall be deemed to have performed its supply obligations even if the volume of:
  - 6.5.1 Wafers actually supplied deviates from the agreed upon quantity by up to ten percent; and/or
  - 6.5.2 dies of a Wafer actually supplied deviates from the agreed upon quantity by up to 20%.

In such case, the Customer shall be obligated to pay only for the volume actually received.

**7 RETENTION OF TITLE**

- 7.1 NWF hereby reserves title to all Wafers delivered to the Customer, and ownership of all Wafers shall remain with NWF, until the Customer has fully paid all amounts due to NWF under these Conditions at which point title to the Wafers shall pass to the Customer.
- 7.2 If the Customer fails to comply with the payment terms set out in Condition 5, above, the Customer shall allow NWF and / or its representatives to enter the Customer's storage facilities during regular business hours, in order to inspect the Wafers to which it has title and to arrange for their removal.

**8 ACCEPTANCE BY CUSTOMER**

- 8.1 The Customer shall inspect all deliveries of Wafers promptly after receipt. Unless the Customer notifies NWF in writing of any shortage or non-conformance of the Wafers within 30 days after receipt, all such claims will be barred and the Customer's remedies shall be limited to the warranty rights specified in Condition 10, below.
- 8.2 The Customer shall not reject delivered Wafers unless the Wafers substantially fail to conform to the Specification.
- 8.3 Any Wafer that meets the Specification shall be deemed accepted by the Customer.
- 8.4 Unless NWF expressly guarantees the delivery date in an Accepted Order, the Customer shall have no right to reject any Wafers tendered for delivery within a reasonable time of the estimated date for delivery set out in the Accepted Order, and NWF shall not be liable for any loss caused by such a delay.
- 8.5 If the Customer fails to accept the Wafers when delivered in accordance with Condition 6 by NWF, the Wafers shall be deemed delivered and the Customer shall be liable to pay for 100% of the Wafers as though they had been delivered to the Customer and accepted by the Customer and NWF may, at its sole discretion, store the Wafers at the Customer's risk and expense, without prejudice to any other rights it may have against the Customer.

**9 INTELLECTUAL PROPERTY**

- 9.1 NWF acknowledges that the Customer IPRs are and remain the exclusive property of the Customer or, where applicable, the third party licensor from whom the Customer derives the right to use them.
- 9.2 The Customer acknowledges that all Intellectual Property Rights used by NWF to manufacture of Wafers and provide the Foundry Services shall remain the exclusive property of NWF (or, where applicable, the third-party licensor from whom the Manufacturer derives the right to use them).
- 9.3 The Customer hereby grants to NWF a non-exclusive, non-transferable, royalty-free licence to use the Customer IPRs solely for the purpose of performing its obligations under the Contract.

**TERMS AND CONDITIONS FOR THE SUPPLY OF WAFERS AND/OR FOUNDRY SERVICES**  
**Newport Wafer Fab Limited (company number 04338966)**

- 9.4 Except as expressly provided in this agreement, no rights or obligations in respect of a Party's Intellectual Property Rights are granted to the other Party or to be implied from this agreement.
- 9.5 Each Party (**the Indemnifying Party**):
- 9.5.1 warrants to the other Party (**Indemnified Party**) that receipt and use of the Indemnifying Party's Intellectual Property Rights in connection with a Contract shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 9.5.2 shall indemnify the Indemnified Party in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Indemnified Party as a result of or in connection with any claim brought against the Indemnified Party, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of a Contract of the Indemnifying Party's Intellectual Property Rights.
- 9.6 If the Indemnifying Party is required to indemnify the Indemnified Party under this Condition 9, the Indemnified Party shall:
- 9.6.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at Condition 9.5.2 (as applicable) (IPRs Claim);
- 9.6.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- 9.6.3 provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- 9.6.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

**10 NWF WARRANTIES AND EXCLUSIONS**

- 10.1 Subject to the remaining provisions of this Condition 10, NWF warrants that the Wafers when delivered to the Customer will meet the Agreed Screening Criteria in all material respects. If a Wafer fails to meet the Agreed Screening Criteria in all material respects it shall be deemed defective (such Wafer, being a **Defective Wafer**).
- 10.2 If during a period of six months commencing on the date that the Wafers are delivered in accordance with Condition 6 or deemed delivered in accordance with Condition 8.5:
- 10.2.1 the Customer gives NWF written notice of any alleged Defective Wafer (such notice to include a detailed description of the reason why the Customer is alleging that the Wafer is a Defective Wafer, a copy of the Customer's failure analysis and sufficient information to track and evaluate the lots involved); and
- 10.2.2 NWF agree (acting reasonably) that the Wafer in question is a Defective Wafer,
- NWF shall at its sole discretion either replace such Defective Wafer within a reasonable time of being notified of such Defective Wafer or credit the Price paid by the Customer for that Defective Wafer to the Customer.
- 10.3 NWF shall not be liable under Condition 10.2 for any Defective Wafer arising out of or in connection with any designs, information, technology, materials or other input provided by the Customer.
- 10.4 For the avoidance of doubt NWF does not give any warranty with respect to defects that after delivery to the carrier are caused by accident, abuse, misuse, use, neglect, alteration, improper installation, exposure to harmful chemical substances or electromagnetic or electrical elements, further processing, assembly, repair or alteration by someone other than NWF. The Customer shall reimburse NWF for all costs and expenses reasonably incurred by NWF as a result of unfounded warranty claims.
- 10.5 NWF does not warrant that the capacity, compatibility, functionality, performance or reliability of the Wafers will meet the Customer's requirements or expectations.
- 10.6 NWF does not warrant that the delivered Wafers will comply with the technical standards and legal or regulatory requirements of any particular jurisdiction. The Customer acknowledges that it is not relying on any superior technical expertise or experience of NWF or on any statements, whether oral or written, made by NWF other than the Specifications agreed to in writing between the Customer and NWF.
- 10.7 To the fullest extent permitted by law, except as expressly set out in these Conditions, all warranties, representations, liabilities and obligations, whether express or implied and whether based on contract, course of dealings, tort, statute or otherwise concerning the Wafers and / or Foundry Services are excluded from and shall not apply to the Wafers and / or Foundry Services provided and / or performed under any Contract.

**11 CUSTOMER WARRANTIES**

- 11.1 The Customer hereby warrants that the designs, materials, technology and information submitted to NWF for the manufacture of Wafers do not include any bug, defect or error, including any computer virus, that is:

- 11.1.1 harmful to NWF information processing systems or manufacturing operations; or
- 11.1.2 that would result in defective integrated circuits.

**12 LIMITATION OF LIABILITY**

- 12.1 No term of any Contract shall limit or exclude NWF's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 12.1.2 fraud or fraudulent misrepresentation;
- 12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 12.1.4 any matter in respect of which it would be unlawful for NWF to exclude or restrict liability.
- 12.2 Subject to Condition 12.1
- 12.2.1 NWF shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any Contract; and
- 12.2.2 subject to Condition 10.2 of these Conditions, NWF's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to one hundred per cent (100%) of the total sums paid by the Customer for Wafers under any Contract.

**13 GENERAL**

- 13.1 NWF shall not be in breach of any Contract nor liable for delay in performing, or failure to perform, any of its obligations under any Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for twelve weeks, the party not affected may terminate the applicable Contract by giving four weeks' written notice to the affected party.
- 13.2 Each Contract represents the entire understanding and the whole agreement between NWF and the Customer relating to the Order the subject of the Contract and replaces and extinguishes any other statement or representation between the Parties in relation to the subject matter of the Order.
- 13.3 No delay or failure by either of NWF or the Customer in exercising any right or remedy under a Contract will operate as a waiver of such right or remedy. Any single or partial exercise will not prevent any further exercise of the same right or remedy, or the exercise of any other right or remedy.
- 13.4 The Customer may not assign its rights or delegate its obligations under any Contract without the prior written consent of NWF and any purported assignment or delegation without such consent shall have no force or effect.
- 13.5 NWF may not subcontract all or part of its obligations under a Contract without the prior consent of the Customer.
- 13.6 If a provision of any Contract is declared invalid or illegal or unenforceable, that provision will be deemed omitted from the Contract, and the other provisions will continue to apply.
- 13.7 If any of the provisions of any industry code are amended or varied or cease to apply, the Customer will, at NWF's request, agree to amend a Contract to accommodate any such amendment, variation or cessation in such manner as we reasonably require.
- 13.8 No provision of any Contract shall be enforceable by any third party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.9 Where more than one person is deemed the Customer under a Contract, each person shall be jointly and severally liable for the Customer's obligations under that Contract.
- 13.10 Each Contract shall be governed by and interpreted in accordance with the laws of England and Wales.
- 13.11 Each Party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

**14 DEFINITIONS AND RULES OF INTERPRETATION**

- 14.1 Singular words in these Conditions shall be construed as including words of the plural and vice versa.
- 14.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 14.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 14.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 14.5 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 14.6 A reference to writing or written includes fax and email.
- 14.7 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 14.8 The following defined terms shall have the following meanings in these Terms:

**Accepted Order** shall have the meaning given to it in Condition 2.3 of these Conditions;

**Agreed Screening Criteria** means the screening criteria agreed in writing between NWF and the Customer for testing the Wafers;

**Applicable Law** means all applicable laws, statutes, regulations and codes from time to time in force;

**TERMS AND CONDITIONS FOR THE SUPPLY OF WAFERS AND/OR FOUNDRY SERVICES**  
**Newport Wafer Fab Limited (company number 04338966)**

**Business Days** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Conditions** means these terms and conditions;

**Contract** means the contract between NWF and the Customer for the provision by NWF of Wafers and /or Foundry Services in relation to an Accepted Order;

**Customer** means the person who places the order for Wafers and / or Foundry Services from NWF;

**Customer IPRs** means all Intellectual Property Rights of which the Customer is the owner or licensee and which are disclosed, licensed or provided to NWF pursuant to or in connection with a Contract;

**Defective Wafer** shall have the meaning given to it in Condition 10.1;

**Delivery Location** means premises agreed between the Parties as part of an Accepted Order;

**Force Majeure Event** means an event or circumstance beyond NWF's reasonable control and shall include (without limitation):

- (i) acts of God, flood, drought, earthquake or other natural disaster;
- (ii) epidemic or pandemic;
- (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations;
- (iv) nuclear, chemical or biological contamination, or sonic boom;
- (v) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (vi) collapse of buildings, fire, explosion or accident;
- (vii) any labour or trade dispute, strikes, industrial action or lockouts; and
- (viii) interruption or failure of utility service.

**Foundry Services** means the services set out in an Accepted Order to be provided by NWF;

**Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**NWF** means Newport Wafer Fab Limited (company number 04338966) whose registered address is at Cardiff Road, Newport, NP10 8YJ;

**Order** means the Customer's order for the Wafers and / or Foundry Services, as set out in the Customer's purchaser order form;

**Party** means each of the Customer and NWF and together the Customer and NWF shall be the **Parties**;

**Price(s)** means the price(s) proposed by NWF (or accepted by it) in relation to an Accepted Order;

**Process** means the process for the manufacture of the Wafers as agreed between the Parties;

**Special Conditions** shall have the meaning given to it in Condition 1.3;

**Specification** means the:-

- (i) technology, reliability and quality specification;
- (ii) Process; and
- (ii) Test Program,

in each case as agreed in writing between the Parties in relation to the Wafers and / or Foundry Services;

**Test Program** means any test programs agreed between the Parties as part of the Specification;

**Wafers** means any products(s) (including wafers) to be manufactured and / or processed by NWF under a Contract.