



PREMA Semiconductor GmbH

Robert-Bosch-Str. 6
55129 Mainz, Germany
T +49-(0)6131-5062-0
F +49-(0)6131-5062-220
E prema@prema.com
I www.prema.com

Terms of Sale and Delivery

1. Area of Application

1.1. The terms of sale and delivery of PREMA Semiconductor GmbH ("PREMA") apply as a supplement to its order confirmation and for all of PREMA's deliveries to companies, provided that the contract is part of the operation of their business, commerce and industry, to legal entities of public law and to separate assets under public law ("customer").

1.2. As the sole valid terms of contract, PREMA's terms of sale and delivery take precedence over all other regulations, particularly the customer's terms of purchasing. Should an order have been placed with reference made to terms of purchasing which contradict PREMA's terms of sale and delivery in part or their entirety, then, in this connection, PREMA expressly rejects any such terms of purchasing.

1.3. Deviations from the PREMA's terms of sale and delivery require an explicit written confirmation in any event.

1.4. In the event of individual regulations being void or validly amended, the remaining regulations of these terms of sale and delivery remain unaffected.

2. Order

2.1. For its legal acceptance, each and every order requires the written confirmation of PREMA. These terms of sale and delivery also apply if a deal is made without a written confirmation of PREMA.

2.2. Any additional agreements as well as subsequent supplements to and amendments of the order must be made in writing to be legally binding.

3. Confidentiality / Prices

3.1. The customer shall keep in confidence the purchase price under any order and all confidential information of PREMA with the same degree of care as they use with respect to their own confidential information. The secret technical know-how as well as other business secrets of PREMA, comprising the content of the contractual relationship with PREMA, are also subject to the confidentiality obligation. The customer will be responsible for all precautionary measures that shall prevent confidential information from being disclosed, copied or transferred. This obligation shall not be applicable for evidently non-confidential information.

3.2. PREMA prices are ex works (EXW / Incoterms 2010), but exclude any taxes like VAT or other taxes and transportation and insurance. All taxes as well as costs for transportation and insurance have to be borne by the customer, if applicable.

3.3. The prices which apply are those listed in the order confirmation in Euro (€). In cases of offers and order confirmations being made in a foreign currency, then the binding of the foreign currency shall only apply if the exchange rate of the foreign currency does not fluctuate in comparison to the Euro by more than +/- 5% between the date of the order confirmation and the date of the invoice. In the event of the exchange rate fluctuating by more than +/- 5%, PREMA reserves the right to redetermine the prices for the remaining deliveries in correspondence with the fluctuation of the exchange rate.

4. Deliveries

4.1. The delivery times stated in the order confirmation apply ex works (EXW / Incoterms 2010) Mainz, Germany. A failure to meet the delivery times stated in the order confirmation may only be considered as being a delay if the customer has settled all of the payments due to PREMA and given PREMA a written reminder. This is also applicable if the delivery time is determined according to the calendar. PREMA will only be liable for compensation of damage caused by delay in cases of gross negligence or intent.

4.2. Should the customer cancel the order, then he must pay in full all materials/ component parts/manufactures (products) which have already been manufactured or which are in production. For the products which are not yet in production, the customer has to pay 30% of the products value.

4.3. Should the annual demands outside of the sample and ramp-up phase fall below four batches of wafers, the terms of delivery and payment will be negotiated separately.

4.4. The risk will be transferred to the customer as soon as the products are handed over to the freight carrier. Should the customer pick up the products, then the risk will be transferred with the notification that the products are ready to be picked up.

4.5. The customer will carry the costs for the disposal of packaging. The customer and PREMA agree upon that a digital delivery of all product-related manuals in German or English language shall be sufficient.

4.6. Should the customer suffer a substantial deterioration of the pecuniary and/or liquidity situation after the conclusion of the contract, or should such circumstances, which already existed before the conclusion of the contract, only become known after the said conclusion, then PREMA is entitled to withdraw from the contract and/or request immediate payment of all outstanding invoices, even if the payments had been previously deferred in part or whole or settled with a draft. In particular the following events are to be regarded as being deteriorations of this nature: drafts and cheque protests, seizure, discontinuation of payments, the filing of insolvency or bankruptcy proceedings.

4.7. PREMA hereby notifies the customer of the fact that potentially all furnished products (comprising manuals, software etc.) are subject to an export license. If for the performance of the contract hereunder an export license is required for PREMA to legally export any kind of technical data or products, then the granting of a license to PREMA shall represent a condition precedent to PREMA's obligations hereunder. Customer agrees to comply with all applicable export laws, regulations and administrative orders. In particular, the customer agrees that it will not resell, re-export or ship, directly or indirectly, technical data or products in any form without obtaining appropriate export or re-export licenses.

5. Payments

5.1. PREMA invoices are due for payment without deduction within 30 days of the invoice date. For payments received later than 30 days from the invoice date, interest amounting to 5 percentage points above the base rate of the European Central Bank is due as of the date of maturity.

Furthermore, PREMA reserves the right to claim additional damages resulting from the delay.

5.2. In case of overdue payments, PREMA has the right to suspend all deliveries until complete payment for all outstanding invoices has been received and request advance payment, even if other terms of payment have been agreed.

5.3. The customer may only set off counter-demands against accounts receivable of PREMA if these are undisputed or have been legally determined. The same applies to the right of retention.

6. Warranty

6.1. PREMA warrants that the products are delivered in accordance with the agreed specification and that they will have successfully passed a test programme (if this was agreed) provided that PREMA shall not bear any responsibility for defects resulting from instructions, parts, software, design provided by the customer.

6.2. Products, defective in the sense of article 6.1 on the transfer of risk and sent back to PREMA within a period of 12 months, will – at the option of PREMA – be replaced by faultless products or reimbursed at the sales price by PREMA. A claim for damages is excluded, unless the products are lacking a characteristic which had previously been guaranteed explicitly in writing. The warranty laid down in this article 6 is exclusive and in lieu of all other warranties, no matter whether express or implied or by equity.

6.3. PREMA reserves the right to carry out changes at any time to the production process which do not affect the agreed specification of the product.

6.4. The customer is responsible for ensuring permanent traceability of the individual embedded PREMA products according to PREMA's project and batch numbers by means of appropriate archiving. Should a call back be necessary due to a malfunction in the customer's application, PREMA is only obliged to meet claims based on precisely traceable PREMA products. The customer will indemnify PREMA from any further claims.

7. IP-Rights and Copyright

7.1. The customer will be liable for any possible violation of property rights, copyrights or any competitive rights of third parties, caused by PREMA whilst using designs, specifications and instructions furnished by the customer provided that PREMA is not solely or partially liable as a result of gross negligence or intent. In these cases, the customer is obligated to exempt / indemnify PREMA from any demands or other claims which a third party raises against PREMA with the pretension that one of their rights has been violated by these said activities.

7.2. Should claims be raised against the customer as a result of the violation of copyrights, patent law, patterns and design, topography, trademark or similar rights and if PREMA is potentially responsible for this claimed violation of rights, then PREMA must be notified immediately. The further procedure is to be agreed upon with PREMA: On its request, PREMA is entitled to conduct the legal disputes. The customer and his respective customers are required to support PREMA in the legal disputes to the best of its ability.

7.3. No property rights or copyrights are transferred to the customer through purchasing one of the PREMA products.

8. Claims for damages

8.1. Regardless of the legal justification, the customer does not have any right to claim damages, except – notwithstanding the regulations in the articles 4.1. and 6.2. – in cases of intent or gross negligence. This regulation also applies in favour of the employees and vicarious agents of PREMA. The exclusion of liability of this article 8.1 shall not be applicable to damages resulting from the takeover of certain guarantees or risks of procurement, as well as from deadly injuries, bodily harm or other injuries to health, gross negligence by executives, employees or vicarious agents of PREMA. The exclusion of liability shall also not concern the mandatory liability laid down in the national statutes of liability for goods or any other coercive liability, as well as the infringement of essential contractual duties. The damages for a breach of material contractual duties are, however, limited to foreseeable damage typical for the type of contract except in the event of intent or gross negligence.

8.2. Any other liability, irrespective of the legal grounds, in particular for compensation for damages that do not occur to the delivered item, is excluded. PREMA shall not be liable to the customer for any loss of profits, loss of 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 the customer has advised PREMA of the possibility of such damages.

8.3. These regulations shall not result in an alteration to the burden of proof.

8.4. Claims for damages shall become time-barred after twelve months after delivery. This temporal limitation shall not be applicable in case of injuries, bodily harm or other injuries to health and willful intent or gross negligence of legal representatives or vicarious agents of PREMA.

8.5. Should the customer declare a rescission of the contract, it shall not be entitled to an additional claim for damages based on breach of duty. This shall also mutually apply for claims concerning compensation of expenses made in vain.

9. Extended and Prolonged Reservation of Property

9.1. Products which PREMA has delivered (reserved goods) remain the property of PREMA until all the customer's obligations arising from commercial transactions with PREMA have been paid off in full. Regarding receivables, which PREMA integrates into current invoicing, the reservation of property secures the actual balance (reservation of current account).

9.2. If PREMA accepts the return of products, then this may only be deemed as a rescission of the contract if PREMA confirms this explicitly in writing. However, the PREMA's seizure of delivered products has always to be considered as a rescission of the contract.

9.3. Up to the transfer of property to the customer the following rules are applicable: The processing or assembly of the PREMA products is exclusively done on behalf of PREMA. In the event of PREMA products being assembled with other products PREMA does not own, PREMA holds a co-ownership of the new reserved goods in a proportionate relationship of the invoice value of PREMA reserved goods to the purchasing price of the other products which were assembled at the moment of assembly. The regulations pertaining to reserved goods shall also apply to the new reserved goods, in particular the prolonged reservation of property in accordance with article 9.6. Should PREMA's reserved goods be mixed with other objects in a way which would not allow for a

subsequent separation, then PREMA holds a co-ownership of the new object in a proportionate relationship of the invoice value of the PREMAS' reserved goods to the purchasing price of the other objects which were mixed at the time of the mixture.

9.4. The customer will keep in custody the PREMA sole or co-ownership on behalf of PREMA.

9.5. In the course of normal business transactions, the customer has the right to sell the PREMAS' reserved goods or such which were created through processing or assembly or mixture. However, the customer automatically cedes all accounts receivable against third parties arising from this sale to PREMA in the amount of the respective value, including VAT (prolonged reservation of property). Regardless of this cession, the customer remains authorized to collect the accounts receivable. The PREMA entitlement to collect the accounts receivable is not affected by this. Nevertheless, PREMA will only make use of these rights if the customer fails to fulfill the obligations towards PREMA and payments become overdue. In this event, the customer is obliged to provide PREMA with all data and documents necessary for the collection of the accounts receivable. On the explicit request of PREMA, the customer will inform the third party debtors of this cession of accounts receivable.

9.6. On the request of the customer, PREMA is obliged to return to the customer all securities which the customer supplied to PREMA, provided that these are no longer necessary - this being not only on a temporary basis - for the securing of PREMA claims, in particular if they exceed the value of the PREMAS' claims, which remain to be secured and paid off, by more than 20%.

10. Place of Fulfilment, Court of Jurisdiction and applicable Law

10.1. The place of fulfillment for all obligations of both parties resulting from this order is Mainz, Germany.

10.2. If any provision herein is found to be invalid or unenforceable, the effectiveness of the remaining terms shall not be affected. In case of any discrepancies between the German and the English version, the German version shall prevail. The court of jurisdiction for all disputes is Mainz, Germany. PREMA reserves the right to file a suit against the customer at their local court.

10.3. The laws of the Federal Republic of Germany apply for the legal relationship between PREMA and the customer. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.