



**General Sale, Delivery and Payment Conditions of the ROHM Semiconductor GmbH, Willich**

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English Version of the „Allgemeine Verkaufsbedingungen der ROHM Semiconductor GmbH, Willich“ – regards the precedence of the latter (as the case may be) please explicitly see and confer below § 8 sec. 5

- Applicable for business-to-business relationships and business relationships with public legal entities / public fortunes (foundations) within the meaning of §§ 310 I, 14 of the German Civil Code (“BGB”) -

**§ 1 – General, scope of application, definitions**

- (1) All the business relationships between us and the customer are exclusively subject to these General Sale, Delivery and Payment Conditions (in the following: „AGB“). Contradicting, conflicting and / or deviating (general terms and) conditions of the customer only come into effect in relation to us by our explicit approval thereof in writing. Our AGB remain safe and prevail even then if we have knowledge of contradicting, conflicting and / or deviating (general terms and) conditions of the customer and execute delivery or perform other service to it without any caveat.
- (2) As far as compensation claims are mentioned in the following, this term shall mutually comprise claims for the refunding of expenses (*Aufwendungsersatzansprüche*) in the meaning of § 284 BGB.
- (3) „Essential contractual obligations“ (*vertragswesentliche Pflichten*) are those that protect major contractual rights of the customer, and such protection being a very objective of the contract. Belonging to such obligations are those that shall render possible at all the proper performance of the contract and on whose fulfilment the customer regularly relies and may rely according to sound business principles.
- (4) The assignment (including any mandate to collect) of any claim that may rise in the person of the customer, deriving from the business relationship with us is – safe monetary claims in accordance with provision § 354 HGB - conditional upon our explicit prior consent thereof in writing.

**§ 2 – Offers, ancillary documentation**

- (1) In case customer’s order qualifies for an offer to purchase in the meaning of § 145 BGB, we are entitled to accept this offer within a period of 2 weeks. Such acceptance can also be conveyed implicitly by executing shipment of the ordered products. An offer from our side is generally deemed to be non-binding as long as it has not explicitly been denoted as binding.
- (2) As to illustrations, drawings, calculations, specifications and any other documentation in regard of which we granted access to the customer (either in a physical or non-physical form or otherwise), we retain the unrestricted right of ownership and copyright. This is also valid for any kind of written data that has been marked as “confidential”. Prior to and for every kind of transfer, revelation etc. of such documents / information to any third party, the customer needs our explicit consent in writing.

**§ 3 – Prices, payment- and shipping conditions**

- (1) All orders will only be accepted on the basis of the then applicable / valid price list. Unless indicated otherwise in our confirmation of order, our prices are ex works, exclusive of packaging which will be charged separately. Upon request from the customer, we are willing to insure the delivery against the usual risks of shipment; the customer shall then bear the costs of such insurance. The customer is not entitled to any cash discounts without our explicit consent.
- (2) Our prices do not include value added tax (“VAT”). The VAT rate applicable at the date of invoicing will be separately charged and specified in the respective invoice.
- (3) (a) Provided that the period in time between closing of contract and corresponding delivery exceeds 6 weeks, we reserve the right to corresponding price adjustments in case company-external or similar factors beyond our direct control lead to an increase of costs (e.g. a price rise in raw materials, energy costs including such incurred by sub-contractors). The same shall apply – however

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ROHM Semiconductor GmbH	01.06.2009	1.0	AGB English 2009 05 22.doc

**General Sale, Delivery and Payment Conditions of the ROHM Semiconductor GmbH, Willich**

without any dependence on the 6 weeks period of the antecedent sentence – in case we are invoicing the customer in EUR (sale in EUR), whereas arranging our self-supply with respective products from the manufacturer in JPY (purchase in JPY), and such purchase costs rise on account of exchange rate fluctuations regards those two currencies between the relevant dates as above (closing of contract and corresponding delivery in relation to the customer). Such rights as stipulated in sentences 1 and 2 do not exist to the extent that a decrease takes place re other costs of production / self-supply, thus leading to a (partial) compensation of the afore mentioned increase factors.

(b) The customer is entitled to rescind the affected contract in case the new price exceeds the original one by 20 % or more. However, this right of the customer expires when it is not exerted immediately after being informed about the higher new price.

(c) In the event of public law based increase factors (e.g. product or shipment related taxes, duties etc.) we reserve the right for corresponding price adjustments without being bound to the 6 weeks-period as stated above under lit. (a) sentence 1; customer's rescission right as set out above under lit (b) remains safe.

- (4) As long as not otherwise indicated in the confirmation of the respective order, the purchase price falls due and has to be paid net cash (without any deductions) within 30 days from the date of the corresponding invoice. Regards the legal consequences of payments delays, the pertinent statutory provisions apply to their full extent.
- (5) The customer can only set off (own claims) against our claims if such claims of the customer are either validly ascertained (*rechtskräftig festgestellt*), uncontested or acknowledged by us or based on our breach of essential contractual obligations (cf. § 1 sec. 3 of the AGB). Furthermore, the customer can exert a right of retention only when it is based on the same contractual relationship.
- (6) Customer can effect payment otherwise than by cash or bank transfer only when such deviation is assented by us upfront and in writing (in particular – but not limited to – applicable for the endorsement of cheques and bills of exchange). Regards bank transfers, the relevant date for determining a payment as „in time“(or not) is the value date shown on our reference account.

**§ 4 – Time and scope of delivery, late deliveries**

- (1) The commencement of the delivery time as indicated by us is conditional upon clarification of all technical questions / issues. Our compliance with appointed delivery dates is further conditional upon customer's compliance with all of its then already due obligations; we reserve the right to draw on the defence of non-compliance with contractual duties (*Einrede des nicht erfüllten Vertrages*).
- (2) We will inform the customer without undue delay if the contractual relationship between it and us is affected by events of force majeure, e.g. – but not limited to – mobilization, war, riots or other circumstances beyond our reasonable control, e.g. – but not limited to – strikes or lock outs; delivery periods are then (automatically) prolonged adequately; same is valid if our own supply (through our [sub-]contractors; *Selbstbelieferung*) is delayed or deficient. If such events / conditions turn out to be of a longer lasting nature and not only temporarily anymore, we are entitled to rescind the (affected) contract. This provision (complete antecedent section (2)) does not apply when we have – towards the customer – taken over the exercise risk (*Beschaffungsrisiko*) in the meaning of § 276 I 1 a.E. BGB.
- (3) Without special agreement on the binding character of delivery dates, the delay-free fulfilment of them does not belong our essential contractual obligations (cf. for this term § 1 sec. 3 of these AGB).
- (4) Part-deliveries are admissible insofar as their acceptance is reasonable to the customer. With this prerequisite, the customer is (further) obliged to effect part-payments in amounts that correspond with the delivered quantities.
- (5) We are liable in accordance with the statutory provisions in case a delay occurs regards a just-in-time delivery contract (*Fixgeschäft*) within the meaning of § 286 II Nr. 4 BGB or § 376 HGB or we (otherwise) provided a guarantee or took over the exercise risk for a delay-free delivery. The same is valid in case the delay is based on an intentional or gross negligent breach of contractual duties or

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ROHM Semiconductor GmbH	01.06.2009	1.0	AGB English 2009 05 22.doc

**General Sale, Delivery and Payment Conditions of the ROHM Semiconductor GmbH, Willich**

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the culpable breach of an essential contractual obligation (cf. for this term § 1 sec. 3 of these AGB) from our side; corresponding action / omission conducted by one of our representatives or servants will (also) be attributed to us. Likewise, our statutory liability on account of culpable injury of life, body or health remains safe and unaffected. However, if the delay is not based on an intentional breach of contract from our side, the scope of our liability is – except for the cases of sentence 3 – restricted to the foreseeable, typically entailed damage / loss (*Schaden*). Apart from the afore standing, our liability for an incident of delay – if the customer can show a causal related damage / loss credibly – is limited to a flat sum of 0,5 % of the affected net delivery value (*Netto-Lieferwert*) per each completed week, but altogether never exceeding the maximum amount of 5 % of the affected net delivery value.

- (6) Customer's right to rescind the contract because of delay in the cases as outlined above under section 5 sentence 5 is conditional upon the fact that such delay is attributable to us; this clause does not – ex- or implicitly – imply a shifting of the burden of proof. In such cases, customer's further entitlement – alone or in addition to its rescission right – to claim damages for non-performance (*Schadenersatz statt der Leistung*) only exists in accordance with and under the restrictions of § 6 of these AGB.
- (7) Insofar as the antecedent provisions of this § 4 contain limitations or exclusions of our liability, this does not imply – ex- or implicitly – a shifting of the burden of proof to the disadvantage of the customer.

**§ 5 – Warranty claims, liability for deficiencies**

- (1) Warranty claims of the customer presuppose full compliance with its statutory obligations to examine and notify defects in accordance with § 377 HGB, whereas such notifications of defects have to be issued towards us in writing. They are further conditional upon adhering to the operating data contained in the related data sheets. Without special agreement thereof, product documentation, specifications etc. provided by us do not create (and cannot be deemed to do so) a guarantee for certain qualities, capacities or characteristics of the product (*Beschaffheitsgarantie*); same is valid for provided samples re their features. A potential advisory obligation on our side can only originate from an explicit and written agreement, concluded with the customer and featuring a corresponding content.
- (2) Under preservation of both reasonability for the customer and equivalency regards both parties' contractual rights and obligations, we reserve the right to effect changes to our products, especially technical innovations / improvements, if such change is sustained by a considerable interest on our side, e.g. – but not limited to – to keep them in line or restore compliance with statutory requirements or to adapt them to the state of the art.
- (3) In case of third party allegations re the infringement of intellectual property rights (IPR), customer is obliged to inform us immediately and comprehensively thereof, to not acknowledge the alleged infringement and to reserve all potential legal steps and composition / settlement negotiations for us. Insofar as actual IPR infringements are based on specific (product-) demands deriving from the customer or relate to an unforeseeable use / application of product, or such infringements being founded on the fact that customer changed our products or assembled them with third party products, all (potential) claims of the customer shall be excluded. Apart from that and without any special agreement, we are solely obliged to procure our products free of third party IP rights at the place of performance (*Erfüllungsort*).
- (4) Insofar as a product's defect exists already at the point in time when the risk of loss passes onto the customer, it is entitled to demand supplementary performance (*Nacherfüllung*) from us, whereas it is in our discretion if we satisfy this claim by a repair of product or a replacement delivery. In that respect we will bear all necessary costs involved in such remedial action, especially travel and transport expenses, costs of labour and material, only to the extent however that such costs / expenses are not increased on account of the fact that both the product has been dislocated from

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ROHM Semiconductor GmbH	01.06.2009	1.0	AGB English 2009 05 22.doc

**General Sale, Delivery and Payment Conditions of the ROHM Semiconductor GmbH, Willich**

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the place of performance to a different location and this dislocation is not in line with the conventional use of the product.

- (5) In case remedial action fails (*Fehlschlagen der Nacherfüllung*), customer is entitled – upon its choice – to demand rescission (*Rücktritt*) or abatement of the contract (price).
- (6) We are liable in accordance with the statutory provisions in case customer claims for damages / losses that are based on an intentional or gross negligent breach of contractual duties or the culpable breach of an essential contractual obligation (cf. for this term § 1 sec. 3 of these AGB) from our side; corresponding action / omission conducted by one of our representatives or servants will (also) be attributed to us. However, if the damage / loss is not based on an intentional breach of contract from our side, the scope of our liability is restricted to the foreseeable, typically entailed damage / loss.
- (7) Our statutory liability on account of culpable injury of life, body or health remains safe and unaffected; the same is valid for the compulsory liability as regulated in the German Product Liability Code (*Produkthaftungsgesetz*).
- (8) If not stipulated otherwise in the antecedent sections of this § 5, our liability is excluded.
- (9) Warranty claims (including related liability claims) become time-barred after a period of 12 months, calculated from and commencing with the date of transfer of the risk of loss. In the event(s) of section 7, in case of an intentional breach of duty or the use of our product for construction purposes (*Verwendung für ein Bauwerk*) – provided that such use is in line with the conventional use of the product and such use causes the defectiveness of the building –, the statutory provisions regards limitation of time remain safe and unaffected.
- (10) Safe and unaffected remains (as well) the limitation of time regards the supplier recourse (*Lieferregress*) as regulated in §§ 478, 479 BGB; the period of limitation here is 5 years, calculated from the date of delivery of product.
- (11) Insofar as the antecedent provisions of this § 5 contain limitations or exclusions of our liability, this does not imply – ex- or implicitly – a shifting of the burden of proof to the disadvantage of the customer.

**§ 6 – Other liabilities**

- (1) Any other liability for loss or damages, without regard to the nature of the pertinent claim or the legal theory on which it is based, is assumed only and equally within the limitations as set out in § 5 sec. 6 and 7 of these AGB. That is explicitly – but not limited to – valid for claims for damages on account of breach of pre-contractual duties / culpa in contrahendo (*Verschulden bei Vertragsabschluss*), other breach of duty, claims for indemnity not based on deficiency of product or tort with reference to damage to property in the meaning of § 823 BGB. Those claims – except for claims in tort for which the statutory limitation in time remains safe and unaffected – become time-barred after a period of 18 months, calculated from and commencing with the point in time on which the customer is aware of the damage and its originator. Any further liability for loss or damages is excluded.
- (2) In case and to the extent that our liability is excluded or restricted, this also applies in favour of our employees, co-operators, representatives and servants re their (potential) personal liability insofar.
- (3) Insofar as the antecedent provisions of this § 6 contain limitations or exclusions of our liability, this does not imply – ex- or implicitly – a shifting of the burden of proof to the disadvantage of the customer.

**§ 7 – Retention of ownership and other property protection**

- (1) We retain full ownership for all products delivered (or otherwise made available) to the customer until any and all payment claims out of the business relationship between us and the customer have been fulfilled by the latter. In case of customer’s non-compliance / non-performance, we are eligible for taking back possession of the products. Such repossession from our side implies a rescission of the contract, and we are (then) entitled to a realization of the products taken back. The proceeds deriving from the realization will be – after a suitable deduction for the costs related to such action – offset against the open payment claims we have towards the customer.

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ROHM Semiconductor GmbH	01.06.2009	1.0	AGB English 2009 05 22.doc

**General Sale, Delivery and Payment Conditions of the ROHM Semiconductor GmbH, Willich**

- (2) The customer is obliged to treat the products with good care; it is especially obliged to insure them sufficiently – at its own expenses – against the usual risks of fire, water and theft at replacement value.
- (3) The customer has to inform us immediately of acts of execution or other third party interference, thus enabling us to file for third party proceedings in the meaning of § 771 of the German Code of Civil Procedure (ZPO). Insofar as and to the extent the third party should not be able to reimburse us for the judicial and extrajudicial costs and fees for such legal action pursuant to § 771 ZPO, customer has to indemnify us for the shortfall incurred.
- (4) Customer is entitled to sell / resell the products within the regular course of business, whereas it already now assigns any and all claims against third parties deriving from the sale / resale of products to us, amount-wise to the tune of our claim(s) against customer as stated in the underlying invoice(s) (including VAT). The afore standing applies without regard if customer processed / worked up the products or not before sale / resale. However, customer remains entitled to collect those claims, irrespective of our right to collect the claims ourselves; re this right of self-collection, we covenant to abstain from drawing on it as long as customer is in full compliance with its payment obligations (especially by using the proceeds out of product sale / resale for that purpose), is not in arrears and particularly no filing for insolvency or composition proceedings or a cessation of payment has been made. In the event of such circumstances as described in the antecedent sentence, customer undertakes – upon our request – to disclose the claims assigned and the pertinent debtors, to render all information necessary for the collection of such claims (including handing over of all documents reasonably needed for asserting the claims) and to notify the assignment to its debtors. Furthermore and insofar, customer already now assigns its (potential) claims deriving from § 48 of the German Insolvency Code (InsO) to us.
- (5) Processing of and workmanship to products by the customer (“processing”) will always be effected on behalf of us. If product is – through the processing operations – assembled / combined with foreign property items, then we acquire co-ownership regards the new product in the ratio of the value (invoice value, including VAT) of our product(s) to such of the other item(s) at the time of processing. Apart from that, for goods emerging from processing, the same stipulations apply as set out above in this paragraph for our products delivered under retention of ownership.
- (6) If our product is inseparably commingled with or connected / fitted to foreign items, then we acquire co-ownership regards the new product / item in the ratio of the value (invoice value, including VAT) of our product(s) to such of the other item(s) at the time of commingling / connection / fitting (“connection”). Does this connection take place in a way that the item of the customer is regarded as the item of essence („*Hauptsache*“), then it is understood and agreed upon in advance between customer and us that the former transfers proportionate co-ownership to us. Customer keeps the new products(s) / item(s) whereof ownership or co-ownership has originated in custody on behalf of us.
- (7) We covenant – upon customer’s request – to release the securities vested to the benefit of us insofar and to the extent that the realization value of such securities exceeds the total amount of our claims to be secured towards the customer by more than 10 %; the choice between several securities coming into question for such release is to our discretion.
- (8) Regards lawsuits in connection with the retention of ownership, it stands to our discretion to sue a foreign customer at its domestic court, also under the corresponding domestic law. For the latter case, an agreement upon the retention of ownership is deemed to be in place that resembles the economic intent of the corresponding clauses stipulated in these AGB to the best possible extent.

**§ 8 – Place of jurisdiction and governing law, place of performance , miscellaneous**

- (1) The courts of Germany shall have exclusive national and international jurisdiction to settle all disputes which directly or indirectly arise out of - or in connection with - contracts between us and the customer which are (entirely or partially) subject to these AGB, with the further proviso that the court(s) in Willich shall be locally solely competent, provided however that insofar jurisdiction is not

Created by:	Valid as of:	Revision:	File name:
ROHM Semiconductor GmbH	01.06.2009	1.0	AGB English 2009 05 22.doc



**General Sale, Delivery and Payment Conditions of the ROHM Semiconductor GmbH, Willich**

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determined compulsory and exclusively to another place by a statutory provision (ausschließlicher Gerichtsstand). For the avoidance of doubt, the antecedent sentence shall also apply to cases between us and the customer that may lead to non-contractual claims in the meaning of EC Regulation No. 864 / 2007. Irrespective of the afore standing, we are also entitled to sue the customer at its place of business; § 7 sec. 8 of these AGB remains safe and unaffected as well.

- (2) The contractual relationship between us and the customer is governed by the laws of the Federal Republic of Germany, with the exclusion however of the Convention on the International Sale of Goods (CISG); § 7 sec. 8 of these AGB remains safe and unaffected. It is hereby explicitly clarified that this choice of law shall also be understood as a one in the meaning of Art. 14 sec. 1 lit. b) EC Regulation No. 864 / 2007 and shall therefore apply to non-contractual claims in the meaning of this Regulation as well. If in any particular case overriding provisions of foreign law apply, then these AGB shall be construed in a way that the economic intent of them can be preserved to the best possible extent.
- (3) If not indicated otherwise in our confirmation of order, our place of business is mutually the place of performance.
- (4) Should it occur that contracts – of which these AGB form a part through explicit or implicit inclusion – contain provisions or parts of provisions which are or become – outside these AGB – invalid, ineffective or unenforceable, in fact based on reasons other than such stated in §§ 305 – 310 BGB, then this shall not affect the effectiveness, enforceability or validity of any other provision (or parts thereof) of the contract; moreover, the parties to such contract are obliged to cooperate in finding and concluding a new provision that resembles / preserves the economic intent of the invalid, ineffective or unenforceable clause(s) or part(s) thereof to the best possible extent. The same applies in case of (a) contractual loophole(s). § 306 BGB remains safe and unaffected.
- (5) In case of any real or alleged inconsistency, contradiction, deviation or possibility to construe differently between respectively regards the “Allgemeine Verkaufsbedingungen der ROHM Semiconductor GmbH, Willich” and this present English version of them, the “Allgemeine Verkaufsbedingungen der ROHM Semiconductor GmbH, Willich” shall always prevail.

Created by:	Valid as of:	Revision:	File name:
ROHM Semiconductor GmbH	01.06.2009	1.0	AGB English 2009 05 22.doc