General Terms and Conditions of Purchase of Qioptiq Photonics GmbH & Co.KG

1. ACKNOWLEDGMENT AND ACCEPTANCE; SCOPE OF APPLICATION.

1.1 Acceptance of this order is expressly limited to the terms of this order and the terms hereof shall govern. The following terms and conditions shall govern the business relationship between Qioptiq Photonics GmbH & Co. KG (the "Buyer") and the seller from which the Buyer purchases goods and/or services (hereinafter referred to as the "Seller"), including any future contracts relating to the delivery of goods and/or the performance of any services without our being required to make reference to them again in each individual case; Buyer shall give notice of amendments to this terms and conditions to the Seller without undue delay.

1.2 Any additional or different terms proposed by Seller are objected to and are hereby rejected and excluded unless and to the extent Seller's terms are explicitly accepted in writing by an authorized representative of Buyer.

1.3 No proposal, oral agreement, order acknowledgement or other understanding shall in any way modify this order, or the terms or conditions hereof.

1.4 Seller's action in (a) accepting this order, (b) delivering materials, (c) performing service called for hereunder shall constitute an unqualified acceptance of the terms and conditions hereof despite any contrary or inconsistent terms in any other document exchanged by the parties.

2. PRICE AND DELIVERY.

2.1 Seller shall furnish the goods and/or services called for by this order in accordance with the prices and delivery schedule stated on the face of this order. If prices and/or delivery dates are not stated, Seller shall offer its lowest prices or best delivery dates both of which shall be subject to written acceptance by Buyer. All prices include all applicable taxes except sales taxes which are separately shown when applicable.

2.2 Seller warrants that the prices charged for the goods and/or services covered by this order will be as low as the lowest prices charged by the Seller to any customers purchasing similar goods and /or services in the same or similar quantities and under like circumstances.

2.3 Buyer may return or store at Seller's expense, any goods delivered more than three (3) days in advance of the delivery date specified for such goods unless early delivery has be approved in writing by the Buyer.

3. PACKING AND SHIPPING.

3.1 No charge shall be made by the Seller for packaging or storage.

3.2 All items shall be packaged, marked and otherwise prepared in accordance with good commercial practices to obtain the lowest shipping rates. Seller shall mark on containers handling and loading instructions, shipping information, order number, item and account number, shipment date and names and addresses of Seller and Buyer. An itemized packing list shall accompany each shipment.

3.3 Buyer reserves the right to return overshipments or shipments made in advance of the scheduled deliveries at Seller's expense.

3.4 Buyer's count and weight shall be accepted as final and conclusive if a packing slip is not enclosed with shipment.

3.5 Time is of the essence with respect to all shipping dates itemized on this order. Buyer reserves the right to cancel this order and reject the goods upon any late delivery by Seller in case of the lapse of a reasonable grace period notified by the Buyer to the Seller.

3.6 Upon demand of the Buyer, the Seller is obligated to take back packaging within the framework of the currently applicable German Ordinance on the Avoidance of Packaging Waste ("Verordnung über die Vermeidung von Verpackungsabfällen") at its cost and risk. Ownership title to the packaging shall not be transferred to the Buyer if not otherwise expressly agreed in writing.

4. PAYMENT.

4.1 All invoices shall be rendered in duplicate, and shall state the discount terms, purchase order number, item numbers, and any applicable taxes. Freight and similar charges shall be itemized separately. A bill of lading must accompany each invoice. Payment of invoice shall not constitute acceptance of goods or services and shall be subject to adjustment for errors, shortages, defects in goods or services or other failure of Seller to meet the requirements of this order.

4.2 Buyer may set off any amount owed by Seller or any of its affiliated companies to Buyer against any amount owed by Buyer to Seller under this order.

5. RISK OF LOSS.

Seller shall bear all risk of loss or damage to goods covered by this order until delivery of goods to the carrier, if transportation is FOB origin or until acceptance by the Buyer if transportation is FOB destination.

6. ASSIGNMENT.

(a) Seller shall not assign this order or any rights hereunder or any monies due or to become due hereunder without the prior written consent of Buyer, and no purported assignment by Seller shall be binding on Buyer without its written consent thereto. Seller shall require that no permitted assignee divulge any information concerning this order except to those persons necessarily concerned with the transaction. Payments to an assignee of any claim arising under this order shall be subject to reduction or set-off for any present or future claim or claims, which Buyer may have against the Seller. (b) Seller shall promptly notify Buyer in writing of any organizational changes made by Seller, including name or ownership changes, mergers or acquisitions.

7. COMPLIANCE.

(a) Seller is on notice that Buyer may utilize the goods specified in this order in the manufacture of products destined for sale to the U.S. Government. Seller is therefore deemed to have assumed the obligation of compliance with Executive Order 11246 and unless otherwise exempt under the rules, regulations and orders of the Secretary of Labor or pursuant to Federal Procurement Regulations (1-12.804) or the Armed Services Procurement Regulations (12-802). This order is subject to the requirements of the Equal Employment Opportunity clause as set forth in 1-12.803.2 and 12-802 (a), said clause being herewith incorporated into this order by reference. (b) Seller warrants that the goods to be furnished and the services to be rendered under this order shall be manufactured, sold, used and rendered in compliance with all relevant federal, state, local law, orders, rules, ordinances, and regulations, including but not limited to the Foreign Corrupt Practices Act, 15 U.S.C. § 78 et seq. (the "FCPA") and all laws and regulations of Seller's place of performance, and in compliance with applicable international prohibitions on child labor. Seller certifies that with respect to the production of the goods and/or the performance of the services covered by this order, it has fully complied with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof, if applicable. (c) Seller warrants that all goods delivered under this order are in conformance with the latest OSHA requirements (d) Seller warrants that in the performance of this order, it will comply with all applicable U.S. Department of Transportation regulations on hazardous materials and any other pertinent federal, state, or local statutes, laws, rules, or regulations. (e) Seller warrants that it has complied with the Anti-Kickback Act of 1986 and has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986. (f) Seller warrants that neither it nor any of its affiliates, officers, directors, or employees, have been previously or are currently, included in any list of sanctioned or restricted entities, groups, organizations or individuals, as such lists may be maintained and updated by any "Governmental Authority" (including without limitation any agency or department of the United States government, the European Union, any member state of the European Union and the United Nations, and any other jurisdiction where Buyer is currently established and/or engaged in business operations). Buyer may periodically screen the name of the Seller and its known affiliates, officers, directors, or employees against the above-mentioned lists, and (g) Seller warrants and covenants that no materials which are used in the manufacture of goods will contain any minerals or materials restricted or required to be disclosed under Section 1502 of the Dodd-Frank Act or other law, rule or regulation. Any breach of this warranty shall be a material breach of each and every order between Buyer and Seller.

For orders placed in support of a U.S. Government prime contract the Buyer and Seller shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

INTERNATIONAL TRADE COMPLIANCE. Seller shall comply with all applicable legal and regulatory requirements relating to the importation and/or exportation of the goods identified in this order, including with all applicable European and U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; and the requirement for obtaining any export license or agreement, if applicable. Seller shall also provide Buyer with all required and/or requested information and documentation, including but not limited to, the country of origin, the applicable Harmonized System Code and the Export Control Classification Number. In the event of any change in the above-mentioned information, Seller shall immediately notify Buyer of such change in writing and provide Buyer with revised and updated information and documentation.

The obligation of the Seller to supply goods hereunder shall be at all times subject to all applicable export control laws and regulations of the countries where the goods are manufactured and the import control laws of the countries into which the goods are shipped. To the extent that such laws and regulations are applicable, Seller agrees to perform its obligations hereunder in compliance with such laws and regulations.

The goods supplied by Seller to Buyer under this order may be subject to export controls under the laws and regulations of the country from which they are shipped. To the extent applicable, the Seller shall comply with all such laws and regulations governing the export, re-export, transfer and use of the goods and related technology and information, and will obtain all required local authorizations, permits, or licenses. Seller agrees to notify Buyer if any deliverable under this order is restricted by export control laws or regulations. Seller and Buyer each agree to provide the other with information, support documents, and assistance as may reasonably be required by the other in connection with securing any applicable authorizations or licenses. Seller shall immediately provide notice to the Buyer's procurement representative if Seller is, or becomes, listed on any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency. Seller's obligations under this clause shall survive the expiration or termination of this order.

Seller shall obtain at its own risk and expense all required import and export licenses or other official authorizations necessary to perform under this order. Seller shall provide to Buyer, upon request, all licenses or other approvals obtained by Seller in compliance with the requirements of this clause.

Seller shall comply with all applicable foreign and local laws governing the export, re-export, transfer and use of the goods within, into and out of the country or countries in which Seller operates.

If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

8. WARRANTY.

8.1 In addition to any other express or implied warranties the Seller warrants that all goods or services delivered under this order shall be (i) free from defects in workmanship and materials (ii) free from defects in design except to the extent that such goods comply with the detailed designs provided by the Buyer; (iii) suitable for the purposes, if any, which are stated on the face of this order, and (iv) in conformity with all other requirements of this order and the specifications for such goods and/or services that have been provided to Buyer. Goods and/or services that are found to fail to meet the requirements set forth in this Section 8.1 shall be considered to be defective goods and/or services.

8.2 The warranty period for any claims of the Buyer for defective goods and/or services shall be twenty-four (24) months from the date of receipt of the goods by Buyer.

8.3 In addition to any other express or implied warranties the Seller warrants that all goods or services delivered under this order shall for twenty-four (24) months from the date of receipt of the goods and/or services by Buyer fulfil the conditions set forth in Section 8.1.

8.4 If any goods covered by this order are defective or otherwise not in conformity with the requirements of this order, Buyer may, by written notice to Seller, (a) following the lapse of an appropriate grace period and provided that the Seller has not remedied the respective defective goods (either by rectification or replacement delivery) during such grace period, (i) rescind this order, or (ii) accept such goods at an equitable reduction in price, (b) reject such goods and require the delivery of replacements or (c) request rectification of any defects in the affected goods. Deliveries of replacements shall be accompanied by a written notice specifying that such goods are replacements. If Seller fails to deliver required replacement goods within a reasonable period, Buyer may make the repairs necessary to correct said goods and charge Seller with the costs to repair.

8.5 If Buyer returns defective goods to Seller, such return shall be at Seller's expense (with an administration fee of EUR 100) as Buyer may direct.

8.6 All shipping costs incurred in connection with goods to be replaced or repaired or faulty work to be corrected, shall be borne by Seller. The same shall apply to any reasonable travel, removal, and installation costs.

8.7 Seller may not limit the remedies available to Buyer or the damages recoverable by Buyer arising out of breach of warranty.

8.8 The warranty period for all replaced or repaired or faulty work corrected shall be twenty-four (24) months from the date of receipt of the replaced or repaired goods are received by Buyer or from the date any other faulty work is corrected.

8.9 Moreover, all replaced or repaired or faulty work corrected shall conform with all other requirements of this order (in particular fulfil the conditions under Section 8.1) for twenty-four (24) months from the date of receipt of the replaced or repaired goods are received by Buyer or from the date any other faulty work is corrected.

9. INSPECTION.

All goods sent by the Seller must be inspected to confirm that all such goods conform to the Buyer's specifications. All goods delivered under this order shall also be subject to inspection and test by Buyer, to the extent practicable, at all times and places, and in any event prior to acceptance. Buyer may inspect the premises of the Seller or any of its subcontractors engaged in the performance of this order except in those areas as determined by the Seller to be restricted proprietary areas. Seller shall not be relieved of its obligations to replace any defective goods or work by reason of any failure on the part of Buyer to direct Seller's attention to any defect.

a) Buyer incoming goods inspections may be limited to checking goods delivered for identity and volumes, as well as for externally visible transport damage and externally detectable faults. Seller's liability for meeting delivery quality shall remain unaffected by Buyer's incoming inspection.

b) Buyer reserves the right to check conformance with the specifications by taking random samples.

c) Cases of non-conformance detected by Seller must be promptly reported to Buyer, with at least the following detail:
i. Quantity of goods affected;
ii. Type of and reason for non-compliance;
iii. Measures planned or already taken to eliminate the fault and its repetition; Seller shall be required to demonstrate such actions have been taken through non-conforming product management records and corrective and preventive action process and the records shall be retained per ISO9001, AS9100C or ISO13485 (under whichever ISO standards Seller is certified).
iv. Effects on the delivery deadline.
d) Seller shall provide technical support to Buyer to determine if goods can be used conditionally. All goods that are conditionally accepted by Buyer will be subject to a 25% price reduction. For all conditionally accepted goods, the full warranty period of twenty-four (24) months shall apply.
e) Returns to Seller will be made with a return slip and a debit note.
f) Seller shall notify Buyer of the cause of and corrective measures for each defect. For the systematic analysis, remediation and exclusion of repeat faults, Buyer reserves the right to request a nonconformance report or an 8D report for each defect, in particular, in case of cumulative faults. If necessary, Buyer may monitor the measures to remedy the nonconformance, if applicable, by auditing Seller's facilities.
g) If requested, Seller must provide a completed 8D report within 10 working days, in case of a failure based on negligence or willful misconduct attributable to the Seller Buyer will impose an additional 10% price reduction penalty on the defective lot(s) of goods.
h) If Seller discovers that there is systemic process or production failure(s) which resulted in defective goods being shipped to Buyer, Seller must disclose this information to Buyer immediately with all supporting documentation including technical data and statistical process control trends.
i) Buyer shall initiate a product recall, upon appropriate technical evaluation, at Buyer's sole discretion, if Buyer detects any systemic quality failure or defect in the goods.
j) If a recall is initiated, Seller is solely responsible for all financial costs and liabilities which impact Buyer, including all the costs and liabilities imposed on Buyer by Buyer's customers.

For orders placed in support of a German or U.S. Government prime contract, all goods covered by this order may be inspected and tested by Buyer, its customers, higher tier contractors and the U.S. Government at all reasonable times and places. Seller shall provide without additional charge all reasonable facilities and assistance for such inspections and tests. In its internal inspection and testing of goods covered by this order, Seller shall use an inspection system accepted by Buyer in writing. All inspection records relating to such goods shall be available to Buyer during the performance of this order, and such longer periods specified by Buyer in its acceptance of the inspection system. Final inspection and acceptance by Buyer shall be at destination unless otherwise specified in this order. No inspection (including source inspection) tests, approval (including design approval) or acceptance of goods ordered shall relieve Seller from responsibility for defects or other failure to meet the requirements of this order or for latent defects, fraud, gross mistakes, and Seller's warranty obligations. Rights granted to Buyer under this Section are in addition to any other rights or remedies provided elsewhere in this order or in law.

10. INDEPENDENT CONTRACTOR.
The Seller shall perform hereunder as an independent contractor and not an employee or agent of the Buyer.

11. INSURANCE.
Seller agrees at its own expense to procure and maintain during the term of this order, insurance policies with the following minimum coverages:
Commercial General Liability Insurance. Combined single limit for bodily and property damage of not less than $1,000,000 for each occurrence and $2,000,000 annual aggregate providing:
-Broad form property damage coverage,
-Broad form contractual liability coverage, and
-Goods and completed operations coverage.
Seller upon written request from Buyer shall furnish Buyer a Certificate of Insurance evidencing such coverage and naming Buyer as loss payee and an additional insured. Nothing in this section shall be deemed to limit Seller's responsibility to the amount stated above or to any limits of Seller's insurance policies.

12. INDEMNIFICATION.
Seller shall defend and indemnify the Buyer and hold it harmless from and against all liabilities, losses, claims, expenses or damages, including reasonable attorney's fees, which may result in any way from accident, injury, or damage either to person or property or from death of any persons arising out of the design, manufacture, use or distribution of the goods or by reason of any act or omission on the part of the Seller, its agents, employees, or subcontractors except to the extent that the accident, injury, damage, or death is due solely and directly to the negligence of the Buyer. Seller shall also defend and indemnify Buyer and hold it harmless from and against all liability, loss, claims, expenses and damages, including reasonable counsel fees, resulting from any actual or claimed trademark, patent or copyright infringement or trade secret misappropriation, or any litigation based thereon, with respect to any part of the goods covered by this order or their intended use, and such obligation shall survive acceptance of the goods and payment therefore by the Buyer.

13. CHANGES.
13.1 Buyer may at any time by written change order suspend performance in whole or in part, make changes in drawings, designs, specifications; make changes in method of shipment or time or place of delivery; or require additional or diminished work.
13.2 If any such change causes an increase or decrease in the cost of or the time required for performance of this order, then equitable adjustment shall be made in the purchase order price or delivery dates or both, and this order shall be modified in writing accordingly. Any claim for adjustment under this Section 13 shall conclusively be deemed to be waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within thirty (30) days of receipt by Seller of the change order.
13.3 If the cost of property made obsolete or excess as a result of a change is paid by Buyer, then Buyer may prescribe the manner of disposition of such property. No change order shall be binding on Buyer unless issued by an authorized representative. Buyer's engineering and technical personnel are not authorized to change this order. Nothing in this Section 13 shall excuse Seller from proceeding with this order as changed.
Change Management. Seller shall notify Buyer in writing and in a timely manner of all relevant changes in the manufacture of its goods (including but not limited to changes in the form, fit or function of the goods) before implementation of such changes is scheduled (at a minimum 3 months prior to a change, except for a change of the manufacturing site, in which case notification must be at least 6 month in advance). Such changes shall include, but not be limited to, changes in manufacturing processes, materials, purchased parts, tooling, switching subcontractors, moving production sites or facilities for product testing, or changing quality assurance measures. Any and all changes shall require Buyer's prior written approval.

Seller shall submit a qualification plan to Buyer for review and obtain written approval from Buyer prior to making the change(s) and shall bear all financial cost for Buyer to qualify and evaluate the change(s). Seller shall explain the type of change on the cover for the sampling documentation. Seller shall bear the costs of subsequent sampling inspections.

Seller shall inform Buyer immediately if their ISO certification(s) is being revoked or Seller's facility is subject to any regulatory scrutiny or actions by government agency.

If Seller neglects to inform and obtain written approval from Buyer prior to making any of the above changes, Seller will be responsible for all financial and liability impact to Buyer as a result of quality issues, delivery lead time and ultimately any impact to Buyer's customers.

14. THE RIGHT TO AUDIT.
a) Buyer is entitled to perform quality audits at Seller's facility with timely prior notice. In addition, in case of quality problems or complaints, Buyer is entitled to analyze Seller's manufacturing process on-site to a practical degree at any reasonable time. Seller shall ensure that the same right to an analysis shall also be provided to Buyer at Seller's subcontractors. The Seller's sole responsibility for the quality of the products manufactured or supplied is not in any way impacted by the fact that audits have been performed.
b) If it turns out that the quality assurance measures taken by Seller are incomplete or inefficient so that product quality and competitiveness are impaired, Seller agrees to amend its quality assurance procedures such that their effectiveness is ensured.
c) All findings resulting from the audit will have to be addressed within 10 business days. This must include at a minimum, root cause analysis, corrective and preventive action and effectiveness, verification of corrective and preventive actions taken. Before closure of such findings, Buyer must be satisfied and approved with all the actions taken.
d) If the Seller requires more than 10 business days to address the findings, a formal request for extension must be sent to Buyer for review and approval with proper justification of the extension.

15. DRAWING REVIEWS / TECHNICAL FEASIBILITY.
a) Before accepting this order, Seller has:
i) Determined that it can meet the quality requirements defined in the technical documents; including all regulatory and statutory requirements.
ii) Reviewed whether the technical documents are complete and unambiguous to Seller;
iii) Determined that the production of the goods according to the technical documentation is feasible and ensured.
iv) Ensured that any existing questions are answered.
b) Seller has analyzed the suitability of the manufacturing systems, processes and testing equipment it intends to use including, if necessary, by means of process capability studies through statistical process control, which shall be documented. All such quality records shall be retained for verification by Buyer.
c) Test measurements, safety-relevant dimensions and other specific characteristics are specifically marked in the Buyer drawings. When reviewing the drawings, Seller shall also review the markings for comprehensibility.
d) All of the above in this Section 15 must be resolved and accepted by Seller and Buyer before Seller shall proceed to accept this order from Buyer. Upon acceptance, If Seller fails to deliver goods to Buyer per agreed specifications and hence affect Buyer's production schedule, Buyer shall charge Seller for all the losses and liabilities attributable to the Seller that Buyer might incur as a result of impacting Buyer's customers.

16. QUALITY MONITORING.
a) Seller must ensure quality by means of
i) Proper incoming goods inspections using statistical techniques;
ii) Process monitoring through statistical techniques;
iii) Systematic inspection during production;
iv) 100% final out-going and pre-shipment testing and inspection.
b) Unless otherwise stipulated by Buyer, Seller shall define the scope of testing taking into account process capability, the significance of each characteristic, and the potential effects of defects. Special characteristics shall be specifically taken into account and documented in Seller's test schedule.

17. FIRST ARTICLE.
a) For all goods destined for series production at Buyer, Seller shall provide first articles and a first article inspection report as soon as such first articles are manufactured. First articles are goods completely manufactured using series manufacturing equipment under series conditions. For economic reasons and at Seller's risk, first articles may be manufactured together with the manufacture of the first series lot. However, the acceptance of the first series lot will be contingent upon the acceptance of the first article.
b) The first article inspection report shall include the documentation agreed on with Buyer. If the content of the first article inspection report has not been explicitly agreed on, complete information for verifying the quality of the product and manufacturing processes shall be enclosed, e.g., measuring reports, material certificates, results of functional or reliability tests, capability analyses of processes and measuring equipment.
c) As a rule, all statements in drawings and specifications must be verified and agreed upon by both parties. Such agreement shall be documented.
d) First articles shall be packaged separately from series goods and clearly marked and identified with as "first article."

18. DESIGN SURFACES / VISIBLE SURFACES.
a) Design surfaces or visible surfaces shall be marked as such in the drawings. For these surfaces, there is a strict requirement for cleanliness. Quality requirements and monitoring measures shall be explicitly agreed on between Seller and Buyer.
b) During the initial production runs and the manufacturing of initial samples, boundary samples shall be defined. Boundary samples shall be saved and used as reference samples for monitoring manufacturing efficiency and effectiveness.
c) Seller is solely responsible to ensure that all packaging methodology and/or design shall meet and comply to industrial packaging requirements including IATA and DOT regulatory requirements. Seller shall bear the cost of all damages as a result of transportation damage, including packaging inadequacy or defect attributable to the Seller. In the event the packaging design is a joint effort between Seller and Buyer, it is Seller's responsibility to ensure that the final packaging design is adequate to prevent any shipping and handling damages. Seller will be held responsible for all liabilities as a result of the damage attributable to the Seller.

19. FORCE MAJEURE.
Neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In the event that performance of this order is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the Party whose performance is so affected shall so notify the other Party's authorized representative in writing and, at Buyer's option, this order shall be completed with such adjustments to delivery schedule as are reasonably required by the existence of Force Majeure or this order may be terminated for convenience pursuant to Section 23.

20. DELAYS.
20.1 Seller shall promptly notify Buyer if circumstances have arisen that make it reasonably clear Seller will not be able to meet the delivery deadline specified in this order, and in such notice, Seller shall also state the reasons for and duration of the delay. In the event the Seller fails to supply any item of goods or complete the provision of services by the date(s) specified in this order, other than as caused by Force Majeure and unless and to the extent the Seller can prove that such failure is not attributable to the Seller, the Buyer shall have the right to require the Seller, after a warning notice by the Buyer and an appropriate grace period, to pay or to deduct from the order price, as liquidated damages (and not as a penalty) a sum calculated at the rate of ten percent (10%) of the price of the goods and/or services, or part thereof, so delayed, for each week of delay between the date of delivery specified in this order and the

actual date of delivery. The Buyer shall be free to claim any actually occurred further damages.
20.2 However, if the Seller for any reason not provided for above fails to proceed with the performance of this order or to make deliveries within the time specified in this order, or if the Buyer shall have reasonable doubt as to Seller's ability to perform its obligations, Buyer in addition to its remedies at law may at its option approve a revised delivery schedule or, following the lapse of the aforementioned grace period, terminate this order or such part or parts hereof as to which there has been delay or any doubt, without liability to Buyer. The Seller due to the delay in delivering the order on time, shall use any means possible to expedite the delivery using the fastest transportation method available at the time of shipping at the Seller's cost.

21. COUNTERFEIT GOODS.
"Counterfeit Goods" are defined as goods or separately identifiable items, materials, parts or components of goods that are;
a) an unauthorized copy or substitute of an Original Equipment Manufacturer ("OEM") item;
b) not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture;
c) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design;
d) have been re-worked, re-marked, re-labelled, repaired, refurbished, re-manufactured, or otherwise modified from the OEM design but not disclosed as such or are represented as OEM authentic or new, or;
e) have not successfully passed all OEM required testing, verification, screening, and quality control processes
21.1 Seller warrants that Counterfeit Goods shall not be supplied to the Buyer or incorporated in the Buyer's products by the Seller or by any of the Seller's subcontractor's or suppliers operating on behalf of the Seller.
21.2 The Seller warrants that only new and non-counterfeit goods shall be delivered under the order to the Buyer.
21.3 Counterfeit Goods delivered or furnished to the Buyer under this order are deemed non-conforming. If the Seller becomes aware or suspects that it has supplied or furnished Counterfeit Goods to the Buyer, Seller shall promptly notify the Buyer and replace, at the Seller's expense, such Counterfeit Goods with OEM or other Buyer approved goods that conform to the requirements of this Contract. Seller shall be liable for all costs and expenses related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation and/or commissioning of authentic goods after Counterfeit Goods have been replaced. The remedies contained in this Section 21 are in addition to any remedies the Buyer may have at law, or under other provisions of this order.
21.4 The Seller shall flow down this Section 21 to its subcontractors and suppliers for any items that are intended for the Buyer. Any inability or unwillingness of a subcontractor or supplier of the Seller to comply with the provisions of this Section 21 shall be documented in writing and submitted immediately to the Buyer.

22. BUYER'S RIGHT TO SUSPEND PERFORMANCE.
22.1 Buyer shall have the right to require Seller at any time to suspend performance of all or part of this order for an indefinite period of time.
22.2 In no event shall such period exceed twelve (12) consecutive calendar months.
22.3 In the event Buyer exercises said right, Seller shall cease performance of this order, as directed by Buyer. Seller agrees to commence performance of the suspended order within a reasonable time after receiving Buyer's notice to commence the suspended order. An equitable adjustment in the price and/or in the delivery dates shall be made in the event Buyer requires a suspension of an order under this Section 22.

23. TERMINATION.
a) Without cause. The Buyer may terminate in whole or in part at any time for any reason by serving upon Seller a written notice. For purchase orders placed in support of U.S. Government Prime Contracts, such termination settlement shall be made in accordance with the principles contained in Federal Acquisition Regulation (FAR) 52.249-2 as in effect as of the dated of this order, except that any termination claim must be submitted to Buyer within ninety (90) day after the effective date of termination, and "Contractor" shall mean "Seller", "Contracting Officer" shall mean "Buyer Authorized Procurement Agent", and "Government" shall mean "Buyer" and the "Government". The current version of the Federal Acquisition Regulation (FAR) 52.249-2 is available under https://www.gpo.gov/fdsys/pkg/CFR-1998-title48-vol2/pdf/CFR-1998-title48-vol2-sec52-249-1.pdf.
b) With cause. If Seller fails to make delivery in accordance with the agreed delivery date or schedule, except as provided in Section 19, or otherwise fails to observe or comply with any of the other instructions, terms, conditions, or warranties applicable to this order or fails to make progress so as to endanger performance of this order , Buyer may, in addition to any other right or remedy provided by this order or by law, terminate all or any part of this order by written notice to Seller without liability by Buyer to Seller on account thereof.
c) Buyer shall be further entitled in addition to any other right or remedy provided by this order or by law, terminate all or any part of this order by written notice to Seller without liability by Buyer to Seller on account thereof, in the event of any proceeding by or against Seller in bankruptcy or insolvency or for appointment of a receiver or trustee or an assignment for the benefit of creditors.
If this order is terminated as provided in this Section 23 the Buyer in addition to any other rights provided in this clause, may require the Seller to transfer title and deliver to the Buyer (i) any completed goods and (ii) such partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights as the Seller has specifically produced or specifically acquired for the performance of this order. If after notice of the termination of this order "with cause", it is determined that the failure to perform is due to causes totally beyond the control and totally without the fault or negligence of the Seller, such notice of default shall be deemed to have been issued pursuant to Section 19 hereof and the rights and obligations of the parties hereto shall be governed by such Section 19.

24. DISPUTES.
(a) Buyer and Seller shall attempt to resolve any disputes arising out of or in relation to this order by good faith discussions. In the event of the occurrence of such a dispute, either party may, by written notice to the other party, have such dispute referred to the individuals designated below or their respective successors, for attempted resolution by good faith negotiations within thirty (30) calendar days after such notice is received. The initial designated individuals are as follows:
For Seller: Managing Director or equivalent position
For Buyer: Excelitas Global Strategic Sourcing Leader
(b) If the parties are unable to resolve any dispute pursuant to Section 24(a) within the time period set forth therein, either party may thereafter initiate an arbitration hereunder to resolve that dispute and any directly related matters. Any claim or controversy arising out of or relating to this order, or the transactions between Seller and Buyer contemplated thereby, or their respective validity, which cannot be resolved by good faith negotiation shall be finally and exclusively settled by arbitration in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law, except as otherwise agreed herein. The arbitration shall be held in Munich. The arbitration shall be conducted before an arbitration panel consisting of three arbitrators, appointed in accordance with said Arbitration Rules Language of the Arbitration proceedings shall be the English language. Each party shall pay its own costs incurred in connection with such arbitration, and fifty percent (50%) of the fees assessed by the arbitrators. Notwithstanding such agreement regarding arbitration of disputes, either party may at any time seek injunctive or other similar relief from a court with appropriate jurisdiction in order to enjoin any breach of this order or otherwise maintain the status quo, provided that such procedure shall only be available for such limited purpose pending the final resolution of any such dispute pursuant to arbitration in accordance herewith.

25. BUYER'S EQUIPMENT.
Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Seller by Buyer or specifically purchased by Seller and paid for by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall remain the personal property of Buyer. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as "Property of Qioptiq/Excelitas" and shall be safely stored and properly maintained by Seller. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders. Such property shall be available for inspection by Buyer at any and all times, and shall be subject to removal at Buyer's written request, in which event Seller shall prepare for shipment and shall redeliver such property to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted.

26. USE OF BUYER'S DATA.
Seller shall not, without Buyer's written consent, disclose any drawings, plans, specifications, confidential information, know-how, discoveries, production methods and the like (herein referred to as "technical information") furnished to Seller by Buyer, or on Buyer's behalf, for the performance of this order to any person other than personnel of Seller directly concerned with the manufacture of said goods or otherwise required by Seller in the performance of this order; and Seller shall require any of its suppliers under this order to enter into a similar agreement. Seller shall take reasonable precautions against any such technical information being acquired by unauthorized persons and shall not employ any such technical information for its own use or for any purpose whatsoever except in the performance of this order. The Buyer shall retain title to all such technical information and Seller shall, at Buyer's request or upon completion of this order, return or deliver all such tangible technical information to Buyer. The term "technical information" as used herein shall not include information which is generally published or lawfully available to Seller from other sources or which was known to Seller prior to disclosure thereof to Seller by Buyer or on Buyer's behalf. The obligations under this Section 26 shall remain valid for a period of three years following termination of the business relationship between the parties.

27. CESSATION OF PRODUCTION.
If production of goods covered by this order is to be permanently discontinued at any time within one (1) year after final delivery under this order, Seller shall give Buyer a least 180 days prior written notice of such discontinuance during which time Seller shall accept order from Buyer for a quantity of goods up to a maximum of 200% of the quantity of goods purchased in the previous twelve (12) months.

28. WAIVER.
Failure of Buyer to insist upon strict performance of any terms and conditions of this order, or to exercise any right or privilege contained in this order, or the waiver of any breach of the terms or conditions of this order shall not be construed as thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred. All rights and remedies reserved under the terms and conditions hereof shall be cumulative and in addition to any further rights and remedies provided in law or equity.

29. COMPLETE AGREEMENT.
This order contains the complete and entire agreement between the parties hereto, and supersedes any previous communications, representations or agreements, whether verbal or written, with respect to the subject hereof. NO CHANGE, ADDITION, OR MODIFICATION OF ANY OF THE TERMS OR CONDITIONS HEREOF SHALL BE VALID OR BINDING ON EITHER PARTY UNLESS IN WRITING SIGNED BY AN OFFICER OR DESIGNATED PURCHASING AGENT OF BUYER.The electronic submission (in particular e-mail) shall not be sufficient to comply with such form requirement.

30. HAZARDOUS MATERIAL.
In the event that any part of the material to be supplied hereunder identified as "Hazardous" by the OSHA Hazard Communication Standard (29 CFR Part 191D), or any corresponding state law or public act, Seller shall provide Buyer Material Safety Data Sheets (MSDS, OSHA Form 20) or equivalent, and shall comply with all other related rules and regulations governing that portion of the material deemed hazardous pursuant to the OSHA Hazardous Communication Standard. Seller agrees to ensure compliance with all other applicable federal, state, local or other statutes, laws, rules, or regulations relating to hazardous materials in particular EU Regulation 1907/2006 (REACH-Regulation) when performing its obligations hereunder.

31. "RoHS and WEEE".
Seller agrees that Seller and the goods, as defined herein, are in compliance with all terms and conditions of the RoHS and WEEE directives. Supplier shall maintain traceability records for a period of no less than 7 years and records shall at a minimum reflect part number, quantity & revision status of material supplied to each order. Seller shall provide to Buyer, Letter of Declaration of Conformance upon request.

32. EICC BUSINESS CODE OF CONDUCT.
From our executive leadership team to our employees at all levels, we strive to conduct our business worldwide in a socially responsible and ethical manner.
To enhance our existing social responsibility efforts, Buyer has become an EICC-ON Member of the Electronic Industry Citizenship Coalition (EICC). The EICC is the largest non-profit coalition devoted to supporting the rights and well-being of employees and communities affected by the global electronics supply chain.
Buyer has committed to aligning with the principles of the EICC Code of Conduct and we are taking steps and prioritizing our implementation of the social responsibility standards across all our facilities globally. Buyer is committed to sourcing responsibly and has recently begun taking measures to comply with the EICC code. As a result we have recently revised our Supplier Code of Conduct. Please review the updated code. Moving forward you may see requests come through for your participation to make this effort successful.
http://www.eiccoalition.org/standards/code-of-conduct/

33. NOTICE OF LABOR DISUTES.
Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order Seller shall immediately notify Buyer in writing of all relevant information with respect to such dispute.

34. PROPRIETARY INFORMATION.
All written information obtained by Seller from Buyer in accordance with this order and which is identified as proprietary by the Buyer shall be received in confidence and shall remain the property of Buyer and shall be used and disclosed by Seller only to the extent necessary for the performance of this order.

35. PUBLICITY.
Seller shall not make or authorize any news release, advertisement or any other disclosure which shall deny or confirm the existence of this order without the prior written consent of Buyer except as may be required to perform this order.

36. SUBCONTRACTORS.
Seller shall not subcontract for any tasks it is obligated to perform under this order without Buyer's prior written approval.

37. CHOICE OF LAW.
Irrespective of the place of performance, this purchase order shall be governed and construed and all disputes arising under or related to this purchase order shall be resolved in accordance with the laws of the Federal Republic of Germany without regard to its conflict of laws principles and excluding the application of the UN Convention on the International Sale of Goods.

38. LIMITATION OF LIABILITY.
BUYER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, SERVICE OR USE OF THE GOODS. IN NO EVENT WILL BUYER'S AGGREGATE LIABILITY UNDER, OR IN ANY WAY RELATED TO THIS ORDER OR ANY FURTHER PURCHASE ORDER, RESULTING FROM ANY CAUSE OR ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, EXCEED THE FACE VALUE OF THE PURCHASE ORDER WHICH GIVES RISE TO THE CLAIM.

39. SEVERABILITY CLAUSE
Should a provision of these Standard Purchase Order Terms be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. An ineffective provision shall be replaced by one which is legally possible and which comes closest to the ineffective content and most closely corresponds to the well-informed economic interests of the parties in the ineffective provision. The same applies to any regulatory gaps.

version dated 12/2016