# GENERAL TERMS & CONDITIONS

## for Foundry Services

### 1. Scope of Terms and Conditions

1.1 These General Terms and Conditions for Foundry Services (" Foundry Terms") set forth the obligations of X-FAB Semiconductor Foundries GmbH, Haarbergstraße 67, 99097 Erfurt, Germany; X-FAB Global Services GmbH, Haarbergstraße 67, 99097 Erfurt, Germany; X-FAB Sarawak Sdn. Bhd., 1 Silicon Drive, Sama Jaya Free Industrial Zone, 93350 Kuching, Sarawak, Malaysia; X-FAB Dresden GmbH & Co. KG, Grenzstraße 28, 01109 Dresden, Germany; X-FAB France SAS, 224, Boulevard John Kennedy, 91105 Corbeil-Essonnes, France; X-FAB Texas Inc., 2301 N. University Ave, Lubbock, Texas 79415, USA; X-FAB MEMS Foundry GmbH, Haarbergstraße 67, 99097 Erfurt, Germany; X-FAB MEMS Foundry Itzehoe GmbH, Fraunhoferstraße 1, 25524 Itzehoe, Germany hereinafter individual or jointly "X-FAB" - and the customer identified in X-FAB's written acceptance of the applicable purchase order ("Customer") with respect to X-FAB's supply of semiconductor wafers ("Wafers"). The Foundry Terms, as amended from time to time, shall be applicable to all current and future transactions between X-FAB and Customer. The most current version of the Foundry Terms, as generally published by X-FAB from time to time shall govern whether or not Customer has been specifically notified of any amendment to the Foundry Terms.

1.2 X-FAB's acceptance of any purchase order is contingent upon Customer's consent to the Foundry Terms set forth herein. The receipt without specific written objection of the Wafers supplied by X-FAB or any other act or conduct of Customer in confirmation of the purchase shall constitute an unqualified acceptance by Customer of these Foundry Terms.

1.3. X-FAB hereby objects to any additional or conflicting terms or conditions on any documents issued by Customer, whether before or after issuance of X-FAB's acceptance, and any such terms and conditions shall not be binding in any way on X-FAB.

1.4 If and to the extent that the Foundry Terms are inconsistent with the specific terms of X-FAB's written acceptance or of any other express written agreement between X-FAB and Customer, the terms of such acceptance or agreement shall override these Foundry Terms. No change of or other amendment to the Foundry Terms shall be binding on X-FAB unless made in a written confirmation stating that it is such a change or amendment and signed by an authorized representative of X-FAB.

1.5 All commercial terms used in the Foundry Terms shall be interpreted in accordance with the INCOTERMS 2020.

### 2. Quotations and Purchase Orders

2.1 Unless expressly stated otherwise on a quotation, all quotations made by X-FAB are non-binding solicitations of purchase orders. Wafer production cycle times and delivery periods quoted by X-FAB are best estimates as of the date of the quotations, only. They are contingent upon the timely receipt by X-FAB of fully-approved mask sets and are subject to change. The Wafer prices quoted by X-FAB are for unprobed Wafers manufactured by the concerning X-FAB. X-FAB reserves the right to change its prices, in particular if from the time of quotation: (1) raw material prices have changed, (2) the actual volume is less than the forecast volume, or (3) there is any significant change in economic circumstances.

2.2 Customer shall place purchase orders directly to the X-FAB entity which means to supply the Wafer. The order confirmation shall be provided by the respective X-FAB entity. Therefore, a Purchase Agreement or Supply Agreement in each case shall be affected only between Customer and the concerning X-FAB entity. Any other X-FAB entity shall not have any obligations arising out of this agreement.

2.3 All purchase orders placed by Customer shall be in writing. They shall include at a minimum the following information: (1) Type of Wafers (Device), by part number as agreed upon between the parties; (2) quantity of Wafers to be supplied; (3) desired delivery date; (4) per unit purchase price(s); (5) shipping instructions; (6) billing information, if different; (7) reference to supply or wafer foundry agreement, if any; and (8) customer ID number.

2.4 X-FAB shall have no obligation to accept any Wafer purchase order placed by Customer. X-FAB will use its best efforts to notify Customers of its acceptance or rejection of any purchase order within ten (10) business days after receipt. In cases of undercapacity, X-FAB will

in its sole discretion allocate its foundry capacity among its customers.

2.5 If, after the date of the order confirmation and before the shipping date, there is a significant change in X-FAB's production or purchase costs for the Wafers (including without limitation costs of raw material, energy, equipment, labor, or transportation) either party may, by written notice to the other party request a renegotiation of the price. In the event the Parties are not able to agree on a revised price within 10 business days after a request for renegotiation is given, then X-FAB may withdraw its order confirmation and cancel the purchase order.

2.6 Unless Customer's purchase order conspicuously states a different release date, the order is for immediate release to production. The acceptance by X-FAB of any purchase order for Wafers and X-FAB's supply obligations are contingent upon delivery by Customer to X-FAB of fully-approved mask sets or of accurate and complete database tapes in GDS II format and upon X-FAB's and Customer's prior completion of a qualification process in accordance with section 4. below.

**3. Prices and Payment**

3.1 All Wafer prices are EXW (X-FAB's premises) Incoterms® 2020 of the concerning X-FAB and do not include ancillary sales costs, such as packaging, transportation, insurance, customs tariffs, duties, import charges or sales, use, excise, value-added or other taxes. To the extent that X-FAB advances such ancillary sales costs for Customer's account, X-FAB will charge them separately, and Customer shall pay them as invoiced.

3.2 Wafer prices do not include one-time manufacturing expenses, if any, such as the costs of mask sets and tooling and set-up charges. Customer shall reimburse X-FAB for its out-of-pocket costs for any mask made for Customer and for its standard tooling and set-up charges that are specifically attributable to Customer's order.

3.3 Except for any visual inspection and electrical parameter testing of the Wafers, as part of X-FAB's normal manufacturing process, Wafer prices do not include the costs of testing or further processing. If ordered by Customer and accepted by X-FAB, testing, and other processing will be provided by X-FAB at its standard per Wafer rates.

3.4 Unless X-FAB's written acceptance of any purchase order states otherwise, the full purchase price for the Wafers is due and payable within thirty days after the date of X-FAB's invoice, and payment shall be made by foreign money draft or international wire transfer of funds into X-FAB's account.

3.5 If the purchase price is to be prepaid, Customer shall deliver to X-FAB a cashier's check or foreign money order or arrange for an (international) wire transfer of funds to be credited irrevocably to X-FAB's bank account before delivery of the Wafers.

3.6 If the purchase price is payable by letter of credit, Customer shall open, and X-FAB will accept only, an irrevocable letter of credit confirmed by a reputable bank in the United States of America or in Germany, and payable by draft at sight against delivery of bill of lading (which may be marked "freight collect" and which shall permit transshipments and partial shipments), commercial invoice and packing list.

3.7 Customer shall pay for each shipment of Wafers as invoiced, whether or not the shipment fills an entire order and whether or not other shipments conform. Customer shall have no right to offset any disputed claims against its payment obligations under any invoice for a Wafer shipment.

3.8 Invoices shall be deemed paid not earlier than on the first day on which X-FAB can freely dispose of the amounts received from Customer. Any amount not received when due and payable shall bear interest at a rate of 1 % per month, until the amount is paid in full. X-FAB reserves the right to claim additional damages, if any, caused by Customer's delay in payment and to suspend its obligations until Customer's account is current.

3.9 All fees, charges, and other amounts payable by the Customer under these Foundry Terms are exclusive of any and all applicable taxes, including but not limited to value-added tax (VAT), goods and services tax, sales tax, use tax, customs duties, excise taxes, and withholding taxes (collectively, "Taxes"), unless expressly stated otherwise.

3.10. The Customer shall be solely responsible for the payment of all such Taxes imposed, excluding any taxes imposed on X-FAB's net income by the jurisdiction in which the X-FAB entity is incorporated or otherwise subject to corporate income tax.

3.11 If the Customer is required by applicable law to withhold or deduct any Taxes from any payment due to X-FAB, the Customer shall increase the amount payable to X-FAB so

that, after such withholding or deduction, X-FAB receives an amount equal to the full amount it would have received had no such withholding or deduction been required. The Customer shall provide X-FAB with official documentation evidencing the payment of such withheld Taxes to the relevant tax authority.

3.12 Clauses 3.9 to 3.11 shall apply to the extent permitted by applicable law and shall not be construed to override any mandatory provisions of local tax legislation or applicable double taxation treaties.

## 4. Qualification of Foundry

4.1 X-FAB has implemented and will maintain a quality assurance system that is certified to meet the requirements of ISO 9001:2015 (Quality Management Systems-Requirements).

4.2 Upon the exchange by the parties of information concerning X-FAB's process parameters and Customer's technical requirements and desired Wafer specifications, the parties shall evaluate such information without delay and jointly determine the feasibility of X-FAB's producing Wafers for Customer. If Customer is satisfied with the compatibility and capacity of X-FAB's manufacturing process, Customer will place a purchase order for a pilot production run of not less than six Wafers.

4.3 Together with such a purchase order Customer will provide to X-FAB the mask sets (or GDS II database tapes required for the production of the mask sets at Customer's expense) and other materials and information required by X-FAB for the manufacture of the Wafers. If Customer and X-FAB agree on the probe testing by X-FAB, Customer shall also provide X-FAB with appropriate probe test tools (including source code patterns for the production of probe test tapes, patterned wafers replicating each tooling layer, finished wafers for process parameter confirmation, wafers with wafer maps for probe set up confirmation). Customer shall bear all costs of these materials.

4.4 Upon receipt of the required materials from Customer and before running the pilot production, X-FAB and Customer shall agree in writing on the qualification specifications. X-FAB shall have performed its pilot run obligations if two of six or four of twelve pilot Wafers comply with such qualification specifications. Customer shall promptly probe test (or if the parties have agreed that X-FAB shall perform such testing, verify X-FAB's probe testing) and, upon verification of the Wafers' compliance with the qualification specifications, give X-FAB formal written notice of qualification.

## 5. Wafer Manufacturing

5.1 Except for pilot runs in accordance with section 4. above, the minimum quantity of Wafers ordered by Customer shall be one or more lot(s) with twenty-five (25) Wafers (for Silicon Carbide Wafers, the lot size is twenty-four (24) Wafers) per lot. Any smaller quantities per run will be subject to additional charges.

5.2 X-FAB shall manufacture all Wafers (a) with the masks (or duplicates thereof) that were used for qualification purposes, and (b) within the tolerances stated in X-FAB's process parameters. Customer may not change the design or other Customer specifications of Wafers manufactured by X-FAB without X-FAB's prior consent. Any such changes may result in additional charges. Before making any material change in its manufacturing process or materials used by X-FAB for the manufacture of Wafers X-FAB shall give Customer an engineering change notice ("ECN") to Customer in accordance with X-FAB standard ECN procedures.

5.3 The manufacture by X-FAB of Wafers in any nonstandard procedure, such as manufacture under accelerated production schedules (QuickTurn Around), with staged Wafer runs, or under process split and/or holding conditions, will increase the purchase price otherwise payable to X-FAB. At Customer's request, X-FAB will quote the additional charges; provided, however, that X-FAB's' foundry capacity and scheduling may not allow X-FAB to employ such a nonstandard procedure and X-FAB shall have no obligation to employ such procedure unless expressly requested in Customer's purchase order and accepted by X-FAB in writing.

5.4 In order to permit X-FAB to allocate its foundry capacity, Customer shall give to X-FAB twelve (12) months rolling forecasts for its monthly Wafer requirements. Such forecasts shall be updated and given no later than ten business days before the end of the applicable calendar month. X-FAB shall accept or reject such forecasts within ten business days after receipt from Customer. All such forecasts shall be non-binding, except that to the extent that such forecasts have been accepted by X-FAB in writing, Customer shall place a purchase order for one hundred percent of its Wafer foundry requirements forecast for the first six months the following the date of the forecast. With respect to the seventh through twelfth months following the date of the forecast, Customer commits to place purchase orders equal to minus twenty, thirty, forty, fifty, sixty and seventy percent, respectively,

of the Wafer foundry requirements forecast. If the Customer does order lower volumes as the committed minimum volumes, X-FAB may invoice liquidated damages of 20 % of the price of the not ordered Wafer.

**6. Time and Manner of Delivery**

6.1 X-FAB's obligation to deliver Wafers within an expressly guaranteed period is contingent upon Customer providing X-FAB by the specified date with all necessary mask sets, database tapes, and other materials and information required by X-FAB to produce the Wafers and upon Customer satisfying all other conditions precedent to X-FAB's performance.

6.2 X-FAB will package, label, mark and otherwise prepare the Wafers for shipment in a manner consistent with good commercial practices and in accordance with international regulations.

6.3 All risks of loss or deterioration of the Wafers shall pass to Customer upon X-FAB's delivery of the Wafers to the carrier. Title shall not pass until the time specified in section 8. below. X-FAB will not obtain any insurance for the Wafers, unless otherwise requested by Customer and agreed in writing.

6.4 X-FAB shall have the right to make partial shipments. X-FAB shall be deemed to have performed its supply obligations even if the volume of Wafers actually supplied deviates from the agreed upon quantity by up to ten percent. In such case, Customer shall be obligated to pay only for the volume actually received.

**7. Acceptance by Customer**

7.1 Customer shall inspect all shipments of Wafers promptly after receipt. Unless Customer notifies X-FAB in writing of any shortage or non-conformance of the Wafers within ten calendar days after receipt, all such claims will be barred, and Customer's remedies shall be limited to the warranty rights specified in section 9 below. Customer shall not reject delivered Wafers even in the case of minor deficiencies unless the Wafers substantially fail to conform to the mutually agreed specifications. Unless otherwise agreed in writing, all accept/reject criteria shall be X-FAB Standard Acceptance and Visual Inspection Specifications, and all critical dimensions and process tolerances shall be X-FAB Standard Tolerances. Any Wafer that meets the specifications of the qualification device under section 4. above, shall be deemed accepted.

7.2 Unless X-FAB expressly guarantees the delivery date in its written acceptance, Customer shall have no right to reject any Wafers tendered for delivery within a reasonable time after such date, and X-FAB shall not be liable for any loss caused by such a delay.

7.3 If Customer fails to accept the Wafers when tendered by X-FAB, the entire amount of the invoice shall become due and payable. In addition, X-FAB may, at its option, store the Wafers at Customer's risk and expense, without prejudice to any other rights it may have against Customer.

**8. Retention of Title**

8.1 X-FAB hereby reserves title to all Wafers delivered to Customer, and ownership of all Wafers shall remain with X-FAB, until Customer has fully paid all amounts due to X-FAB under these Foundry Terms. At X-FAB's request, Customer shall execute, deliver to X-FAB, or file such additional instruments and take such additional action as may be necessary to perfect a security interest in favor of X-FAB in all Wafers, title to which remains with X-FAB (" Collateral").

8.2 Subject to the following provisions, Customer may not pledge or convey Collateral. If the Collateral is seized or levied on by a third party, X-FAB shall be promptly notified in writing.

8.3 So long as Customer is in full compliance with these Foundry Terms (and the provisions of any additional supply or foundry agreement between the parties), Customer shall have the right to process, combine, commingle, or resell the Collateral in the normal course of business. Any resale of Collateral shall explicitly be contingent upon the reservation of title by X-FAB. To the extent of the value of the Collateral, Customer assigns to X-FAB in advance all his rights and claims against the purchaser of the Collateral.
X-FAB hereby accepts the assignment.

8.4. When the Collateral has been processed, combined, commingled, or remanufactured, the resulting products shall be jointly owned by the parties. X-FAB's ownership interest in the resulting products shall be determined by the ratio between the market value of the Collateral and the market value of the finished or new product.

8.5 If Customer fails to comply with the payment terms set forth in section 3. above, Customer shall allow X-FAB's representatives to enter Customer's storage facilities during regular business hours, in order to inspect the Collateral and to arrange for its removal. If Customer (1)

files for protection under the applicable bankruptcy code or under any other statute for the protection of debtors, or (2) fails to pay the full amount of the purchase price within sixty days after the original due date, X-FAB shall be deemed licensed and shall have the right to retain, recover, further process and sell the Collateral for its own account.

**9. Warranty, Disclaimers and Limitation of Liability**

9.1 X-FAB warrants that the Wafers when delivered to Customer will meet the specifications agreed upon between X-FAB and Customer in writing. If during a period of six months from the date of delivery, (a) Customer gives X-FAB written notice of any such defect in the Wafers promptly after its detection (including a detailed description of the alleged defect, a copy of Customer's failure analysis and sufficient information to track and evaluate the lots involved); (b) Customer returns the Wafers to X-FAB after obtaining a return material authorization ("RMA") in accordance with X-FAB's standard procedures, and (c) X-FAB's inspection of such Wafers discloses to X-FAB's satisfaction that such Wafers are defective, then X-FAB shall at its sole option either repair, replace or credit Customer for such Wafers within a reasonable time.

9.2 X-FAB does not give any warranty with respect to defects that after delivery to the carrier are caused by accident, abuse, misuse, unreasonable use, neglect, alteration, improper installation, exposure to harmful chemical substances or electromagnetic or electrical elements, further processing, assembly, repair or alteration by someone other than X-FAB. Customer shall reimburse X-FAB for all costs and expenses reasonably incurred by X-FAB as a result of unfounded warranty claims.

9.3 X-FAB does not warrant that the capacity, compatibility, functionality, performance or reliability of the Wafers will meet Customer's requirements or expectations, except as stated in the specifications agreed to in writing between Customer and X-FAB. X-FAB does not warrant that the delivered Wafers will comply with the technical standards and legal or regulatory requirements of any particular jurisdiction. Customer acknowledges that it is not relying on any superior technical expertise or experience of X-FAB or on any statements, whether oral or written, made by X-FAB other than the specifications agreed to in writing between Customer and X-FAB.

9.4 TO THE FULL EXTENT PERMITTED BY LAW, APART FROM THE FOREGOING WARRANTIES, X-FAB HEREBY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, LIABILITIES AND OBLIGATIONS, WETHER EXPRESS OR IMPLIED AND WHETHER BASED ON CONTRACT, QUASI-CONTRACTUAL RELATIONS, TORT, STATUE OR OTHERWISE, CONCERNING THE WAFERS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTIBILITY, FITNESS FOR A PARTICULAR PURPOSE, CORRESPONDENCE WITH DESCRITPION OR NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, AS DEFINED IN SECTION 10.2.

9.5 IN NO EVENT WILL X-FAB BE LIABLE FOR COSTS OF SUBSTITUTE GOODS, LOSS OF PROFIT OR REVENUE, CUSTOMER PROCESSING COSTS, PRODUCT RECALLS, OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES EVEN IF X-FAB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.6 X-FAB'S LIABILITY FOR DIRECT DAMAGES SHALL NOT EXCEED THE PURCHASE PRICE PAID BY CUSTOMER FOR THE WAFERS GIVING RISE TO X-FAB'S LIABILITY.

9.7 ANY CLAIM AGAINST X-FAB WILL BE BARRED UNLESS MADE BY CUSTOMER IN WRITING, WITHOUT UNDUE DELAY, LATEST WITHIN TEN BUSINESS DAYS AFTER THE OCCURRENCE OF THE DAMAGING EVENT.

**10. Customer's Warranties**

10.1 Customer warrants to X-FAB that the designs, materials, and information submitted to X-FAB for the manufacture of Wafers do not include any bug, defect or error, including any computer virus, that (a) is harmful to X-FAB information processing systems or manufacturing operations; or (b) results in defective integrated circuits.

10.2 Customer further warrants to X-FAB that any work Customer requests X-FAB perform and any Wafers Customer requests X-FAB supply will not infringe or violate any third-party Intellectual Property Rights. As used herein, Intellectual Property Rights includes, without limitation, rights to patents, copyrights, mask works, trade secrets, trademarks (including, but not limited to, trade names and service marks), and know-how, in each case whether registered or unregistered, and any application(s) or registration(s) for any of these.

10.3 Customer shall pay for and at its own expense defend, indemnify, protect and hold harmless X-FAB and its directors, officers, employees and agents from and against any claim, loss, damage or expense (including reasonable counsel fees and court costs) arising from the breach of any of the warranties under 10.1 and 10.2, including without limitation any claims related to

product liability or third party Intellectual Property Rights; provided however, that X-FAB shall give notice to Customer of any claims without undue delay, and reasonably assist Customer, at Customer's expense, in defending against any such claims.

**11. Export Controls. No re-export to Russian Federation**

11.1 Customer is aware that X-FAB is subject to the EU and US Export Control Regulations whereby the delivery of several products to certain countries is banned. Customer declares that it shall not export, neither directly nor indirectly, any such products or documentation relating thereto without first having obtained all necessary approvals from the US Department of Commerce or from other US authorities, together with all required permits from the corresponding authorities of the EU and its member states. If Customer should violate any laws relating to Export and/or Trade and/or by any Governmental body, then X-FAB shall be entitled to terminate this Service and Wafer Supply Agreement. Upon such occurrence, Customer shall have no further rights, especially X-FAB shall not be held liable for any consequential, incidental, special, punitive or other kind of damages.

11.2 Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.

11.3 Customer shall undertake its best efforts to ensure that the purpose of paragraph 11.2 is not frustrated by any third parties further down the commercial chain, including by possible resellers.

11.4 Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph 11.2.

11.5 Any violation of paragraphs 11.2-11.4 shall constitute a material breach of an essential element of this Agreement, and X-FAB shall be entitled to seek appropriate remedies, including, but not limited to, termination of this Agreement and penalties.

11.6 Customer shall immediately inform X-FAB about any problems in applying paragraphs 11.2-11.4, including any relevant activities by third parties that could frustrate the purpose of paragraph 2. The Customer shall make available to X-FAB information concerning compliance with the obligations under paragraph 1 to 3 within two weeks of the simple request of such information.

**12. General Provisions**

12.1 Customer and X-FAB have entered into a Confidentiality Agreement and agree that the terms of that agreement shall be incorporated by reference into these Foundry Terms and shall apply to all proprietary information exchanged between the parties hereunder. Except as provided for in that agreement, X-FAB shall have no obligations to protect the confidentiality of any materials or information received from Customer.

12.2 Provided that the party involved acts reasonably to avoid, mitigate, and overcome any such event and its impact, that party's performance will be suspended or excused in the case of technical breakdowns, any other interruptions of the operational process, fire, delay of subcontractors in delivering necessary materials, transportation difficulties, war, natural disasters, or any other event beyond its reasonable control which delays performance or makes it impossible or commercially impracticable.

12.3 Customer may not assign its rights or delegate its obligations under these Foundry Terms without the prior written consent of X-FAB and any purported assignment or delegation without such consent shall have no force or effect.

12.4 All disputes arising out or in connection with the transaction to which these Foundry Terms pertain shall be governed by the substantive law of the country of the supplying X-FAB entity without regard to its conflicts of laws provisions and to the exclusion of the UN Conventions of the International Sale of Goods (CISG).

12.5 The competent courts shall be the courts in the country in which the registered office of the supplying X-FAB is located. However, if X-FAB is plaintiff, X-FAB shall also be entitled to sue the Customer before the court having jurisdiction over the registered office of the latter.

12.6 In the event that any provision contained in these Foundry Terms is unenforceable under any law governing its construction, performance or enforcement, such provision shall be ineffective to the extent of such prohibition, without invalidating thereby any of the remaining provisions of the Foundry Terms.