

# **General Term and Conditions**

## **of CrystAI-N GmbH, Dr.-Mack-Straße 77, D-90762 Fürth**

– as of 17. January 2012 –

### **I. GENERAL**

1. The scope of deliveries and/or services (hereinafter referred to as "Supplies") shall be determined by the written declarations of both Parties. General terms and conditions of the Customer shall apply only if and when expressly accepted by CrystAI-N GmbH, the supplier or the provider of services (hereinafter referred to as "CrystAI-N") in writing. CrystAI-N's General Terms and Conditions shall apply to and constitute the integral part of the sale and purchase agreement or service agreement between CrystAI-N and the Customer (hereinafter such agreement referred to as "Contract").
2. CrystAI-N herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without CrystAI-N's prior consent and shall, upon request, be returned without undue delay to CrystAI-N, if the contract is not awarded to CrystAI-N. Article I paragraphs 1 and 2 shall apply mutatis mutandis to documents of the Customer. However, these documents may be made accessible to third parties to whom CrystAI-N may rightfully transfer Supplies.
3. The Customer shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Customer may make one back-up copy without express agreement.
4. Partial Supplies shall be allowed, unless they are unreasonable to accept for the Customer.
5. "Material" herein means monocrystalline semiconductor material of any geometry as it is manufactured or distributed by CrystAI-N. The Customer herewith acknowledges that the process used for manufacturing material is the intellectual property of CrystAI-N.
6. The Customer is only entitled to use the Material for the purpose of manufacturing electronic components (i.e. diodes and transistors). Any other kind of use of the Material shall not be allowed, unless CrystAI-N has specifically granted prior permission to the Customer for this purpose in writing. The Customer particularly is not entitled to use the Material for the manufacturing of monocrystalline volume crystals, for the development of a manufacturing process for such monocrystalline volume crystals, or for any kind of research connected to crystal growth. Growth of one or more epitaxial layers on the Material having an aggregate epitaxial thickness of less than 150 micrometer will not be considered bulk growth for purposes of this Contract.
7. Unless CrystAI-N gives prior express consent in writing, the Customer shall not transfer or otherwise reveal the Material or any part thereof, regardless of whether it is in a processed or non-processed form. In case the Customer makes the Material available to a third party, the Customer shall bind the third parties by contract to comply with restrictions of use not less stringent than those set forth in Article I, paragraph 6.

### **II. PRICES AND TERMS OF PAYMENT**

1. Prices shall be EXW ("Ex Works", Incoterms® 2010) not including packaging, transport and/or insurance costs as well as taxes of any kind. Any amount paid by CrystAI-N, which falls within the responsibility of the Customer, will be charged to the customer.
2. Payments shall be made in EURO, without discount and free CrystAI-N's paying office.
3. The Customer may set off only those claims that are undisputed or against which no legal recourse is possible.
4. Payment shall be due no later than 30 days after the date of the invoice. The Customer shall be in default with payment if payment is not received in full within the above period, without any need for a further demand.

### **III. RETENTION OF TITLE**

1. Items pertaining to the Supplies shall remain the property of CrystAI-N until each and every claim CrystAI-N has against the Customer on account of the business connection has been fulfilled ("Retained Goods"). If the combined value of the Retained Goods exceeds the value of all secured claims by more than 20 %, CrystAI-N shall release a corresponding part of the Retained Goods if so requested by the Customer.
2. For the duration of the retention of title, the Customer may not pledge the Retained Goods or use them as security. Resale of the Retained Goods or sale of the Customer's products manufactured based on the Retained Materials shall be possible only in the ordinary course of the Customer's business and only on condition that the Customer receives payment from its customer or makes the transfer of the title of the Retained Goods or the products manufactured based on the Retained Materials to its customer dependent upon its customer fulfilling its obligation to effect payment.

3. The Customer shall inform CrystAI-N forthwith of any seizure or other act of intervention by third parties. In addition, the Customer shall, upon CrystAI-N's request, procure that the Retained Goods are insured against theft, fire and other natural hazards.
4. Where the Customer fails to fulfill its duties, including failure to make payments due, CrystAI-N shall be entitled to cancel the Contract and take back the Retained Goods and the Customer shall be obliged to surrender the Retained Goods in the case of continued failure following expiry of a reasonable time set by CrystAI-N. The statutory provisions that a time limit is not needed remain unaffected.

#### **IV. TIME FOR SUPPLIES; DELAY**

1. The relevant delivery date in terms of the performance of CrystAI-N shall be set out in the order confirmation. Any other delivery date must be agreed in writing between the parties. The delivery date can only be complied if all documents to be supplied by the Customer (including but not limited to necessary permits and releases, especially concerning plans) are received in time and if agreed terms of payment and other obligations of the Customer are fulfilled. Unless these conditions are fulfilled in time, the relevant delivery date shall be extended appropriately; this shall not apply where CrystAI-N is responsible for the delay.
2. If non-compliance of the delivery date is due to force majeure such as mobilization, war, rebellion or similar events, e.g. strike or lockout, such time shall be extended accordingly.
3. If CrystAI-N is responsible for the delay (hereinafter referred to as "Delay") and the Customer demonstrably suffered a loss therefrom, the Customer may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay. But in no case more than a total of 5 % of the price of that part of the Supplies which could not be put to the intended use because of the Delay.
4. The Customer's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in paragraph 3 above shall be excluded in all cases of delayed Supplies even upon expiry of a time set to CrystAI-N to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the Contract by the Customer based on statute law shall be limited to cases where CrystAI-N is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Customer.
5. Upon CrystAI-N's request, the Customer shall declare within a reasonable period of time whether the Customer cancels the Contract due to the delayed Supplies or insists on the delivery of the Supplies.
6. If dispatch or shipment is delayed at the Customer's request or for other reasons for which the Customer is responsible by more than one month after notice of the readiness for dispatch was given, the Customer may be charged, for every month commenced, storage costs of 0.5 % of the price of the items of the Supplies, but in no case more than a total of 5 %. The Contract parties may prove that higher or, as the case may be, lower storage costs have been incurred.
7. If, during the term of the contractual relationship, there is any reasonable doubt as to the creditworthiness of the Customer, CrystAI-N may unilaterally suspend delivery and/or demand appropriate security from the Customer.

#### **V. TRANSFER OF RISK**

1. The transfer of risk shall pass to the Customer at the time when the Supplies are shipped or picked up by the carrier. Upon request of the Customer, CrystAI-N shall insure the Supplies against the usual risks of transport at the expense of the Customer.
2. The transfer of risk shall pass to the Customer if dispatch, shipping, the start of the receipt in the Customer's own operations or a trial run is delayed for reasons for which the Customer is responsible or, if the Customer has otherwise failed to accept the Supplies. The same shall apply if the Customer fails to collect a delivery by the agreed time for reasons for which the Customer is responsible.

#### **VI. RECEIVING OF SUPPLIES**

The Customer shall not refuse to receive Supplies due to minor defects.

#### **VII. DEFECTS AS TO QUALITY**

CrystAI-N shall be liable for defects as to quality ("Sachmängel", hereinafter referred to as "Defects") as follows:

1. The Customer shall check the Supplies without undue delay after receipt with the due care of a prudent merchant and shall give notice without undue delay of any Defect. All parts or services where a Defect becomes apparent within the limitation period shall, at the discretion of CrystAI-N, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the Defect had already existed at the time when the risk passed.
2. Any claims based on Defects shall be subject to a limitation period of 12 months from the time of the transfer of risk. This provision shall not apply where longer periods are prescribed by law according to Section 438 paragraph 1 number 2

(buildings and things used for a building), Section 479 paragraph 1 (right of recourse), and Section 634a paragraph 1 number 2 (defects of a building) of the German Civil Code ("BGB"), as well as in cases of injury of life, body or health, or where CrystAI-N intentionally or grossly negligently fails to fulfill its obligation or fraudulently conceals a Defect. The legal provisions regarding suspension of expiration ("Ablaufhemmung"), suspension ("Hemmung") and recommencement of limitation periods remain unaffected.

3. The Customer shall notify Defects to CrystAI-N in writing and without undue delay.
4. In the case of notification of a Defect, the Customer may withhold payments to a reasonable extent taking into account the nature of Defect occurred. However, the Customer may withhold payments only if the subject matter of the notification of the Defect occurred is justified beyond doubt. The Customer shall reimburse any costs and expenses incurred by CrystAI-N in connection with unjustified notifications of Defect.
5. CrystAI-N shall first be given the opportunity to supplement its performance ("Nacherfüllung") within a reasonable period of time.
6. If supplementary performance is unsuccessful or does not take place within a deadline of six weeks, the Customer shall be entitled to cancel the Contract or to reasonably reduce the remuneration of the subject Supplies, if CrystAI-N does not provide performance beforehand.
7. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the Contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Customer or third parties and the consequences thereof shall be likewise excluded.
8. The Customer shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labor, and material, to the extent that expenses are increased because the subject Supplies were subsequently brought to another location than the Customer's branch office, unless doing so complies with the intended use of the Supplies.
9. The Customer's right of recourse against CrystAI-N pursuant to Section 478 BGB is limited to cases where the Customer has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, paragraph 8 above shall apply mutatis mutandis to the scope of the right of recourse the Customer has against CrystAI-N pursuant to Section 478 paragraph 2 BGB.
10. Furthermore, the provisions of Article X (Other Claims for Damages) shall apply in respect of claims of damages based on Defect. Any other claims of the Customer against CrystAI-N or its agents or any such claims exceeding the claims provided for in this Article VII, based on a Defect, shall be excluded.

#### **VIII. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT; DEFECTS IN TITLE**

1. Unless otherwise agreed, CrystAI-N shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the Customer based on an infringement of an IPR with respect to the Supplies made by CrystAI-N and then used in conformity with the Contract, CrystAI-N shall be liable to the Customer within the time period stipulated in Article VII paragraph 2 as follows:
  - a) CrystAI-N shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from CrystAI-N, the Customer may cancel the Contract or reduce the remuneration of the subject Supplies pursuant to the applicable statutory provisions.
  - b) CrystAI-N's liability to pay damages shall be governed by Article X.
  - c) The above obligations of CrystAI-N shall only apply if the Customer (i) immediately notifies CrystAI-N of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of CrystAI-N. If the Customer stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
2. Claims of the Customer shall be excluded, if the customer himself is responsible for the infringement of an IPR.
3. Claims of the Customer shall also be excluded, if the infringement of the IPR is caused by (i) specifications made by the Customer, (ii) a type of use not foreseeable by CrystAI-N or (iii) the Supplies being modified or processed by the Customer or being used together with products not provided by CrystAI-N.
4. In addition, with respect to claims by the Customer pursuant to paragraph 1.a) above, Article VII paragraphs 4, 5, and 9 shall apply mutatis mutandis to Claims of the Customer in the event of an infringement of an IPR caused by the Supplies.

5. Where other defects in title occur, Article **VIII** shall apply mutatis mutandis.
6. Any other claims of the Customer against CrystAI-N or its agents or any such claims exceeding the claims provided for in this Article **VIII** based on a defect in title, shall be excluded.

#### **IX. IMPOSSIBILITY OF PERFORMANCE; ADAPTATION OF CONTRACT**

1. To the extent that Supplies are impossible to be carried out, the Customer shall be entitled to claim damages, unless CrystAI-N is not responsible for the impossibility. However, the Customer's claim for damages shall be limited to an amount of 10 % of the value of the part of the Supplies that, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of life, body or health; this does not imply a change in the burden of proof to the detriment of the Customer. The right of the Customer to cancel the Contract shall remain unaffected.
2. Where unforeseeable events within the meaning of Article **IV** paragraph **2** substantially change the economic importance or the contents of the Supplies or considerably affect CrystAI-N's business, the Contract shall be amended taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, CrystAI-N shall have the right to cancel the Contract. If CrystAI-N intends to exercise its right to cancel the Contract, it shall notify the Customer thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Customer.

#### **X. OTHER CLAIMS FOR DAMAGES**

1. Except as expressly set forth herein to the contrary, any claims for damages and reimbursement of expenses the Customer may have (hereinafter referred to as "Claims for Damages"), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded. The same shall also apply to indirect damage including loss of production and loss or profit.
2. The above shall not apply in the case of mandatory liability, e.g. under the German Product Liability Act ("Produkthaftungsgesetz"), in the case of intent, gross negligence, injury of life, body or health, or breach of a condition which goes to the root of the contract ("wesentliche Vertragspflichten"). Any claim for damages in relation to a material breach shall be limited to 15 % of the total purchase price of the Supplies, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Customer.
3. To the extent that the Customer has a valid Claim for Damages according to this Article **X**, it shall be time-barred upon expiration of the limitation period applicable to Defects pursuant to Article **VII** paragraph **2**. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.
4. If any claims under foreign product liability laws are made against CrystAI-N in relation to the Supplies, such justified claims shall be satisfied by CrystAI-N by an amount up to the maximum level of the product liability insurance of CrystAI-N for each case of damage. The Customer shall bear any amount above that. Upon request, the Customer shall provide CrystAI-N with evidence of the existence of product liability insurance of the Customer.

#### **XI. VENUE AND APPLICABLE LAW**

1. If the Customer is a businessperson, sole venue for all disputes arising directly or indirectly out of the Contract shall be CrystAI-N's place of business. However, CrystAI-N may also bring an action at the Customer's place of business.
2. This Contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **XII. SEVERABILITY CLAUSE, MISCELLANEOUS**

1. In the event that any individual provisions of this Contract are or become ineffective, the parties hereby agree that such ineffective provisions shall be replaced with provisions reflecting those replaced most closely. In other respects the Contract shall remain binding. This shall not apply if the continuance of the Contract after the exclusion of an ineffective provision would result in unreasonable hardship for one party.
2. Any amendments or supplements to this Contract shall be in writing.
3. The rights and duties under this Contract are not transferable with the exception of the rights of CrystAI-N to the purchase price.
4. In case of inconsistency or discrepancy between the English version and the German version of this document, the German version shall prevail.