



General Sales and Design Conditions of the private limited company **Bergh Hybrid Circuits B.V.** further named "**BHC**", having its registered office and principal place of business in 's-Heerenberg.

#### **Article 1 - Preamble**

These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific agreement, modifications of or deviations from them must be agreed in writing.

The objects to be supplied under these conditions are hereinafter referred to as the "Products".

#### **Article 2 - Product information**

All information and data contained in brochures and price lists are binding only to the extent that they are by reference expressly included in the agreement.

#### **Article 3- Patterns, tools and equipment**

- 3.1 Unless otherwise agreed, patterns, special tools and equipment provided by BHC to be used exclusively in fulfilment of the agreement, shall be paid by the Purchaser and shall, when fully paid, become his property.  
BHC shall clearly mark patterns, special tools and equipment belonging to the Purchaser.  
Patterns, special tools and equipment provided by the Purchaser, shall remain the Purchaser's property. The Purchaser shall pay BHC for any work necessary to adapt or supplement such patterns, special tools and equipment.
- 3.2 Where, according to the agreement, BHC shall provide patterns, special tools or equipment, the Purchaser shall reimburse BHC's costs for replacement or repair of these due to normal wear and tear or other causes for which BHC is not responsible.
- 3.3 BHC shall be entitled to retain patterns, special tools or equipment that he has provided under the agreement, when it can be reasonably concluded that his technical know-how will otherwise be disclosed and that the disclosure will cause significant loss to BHC. BHC shall in such case reimburse the Purchaser the value of that which he retains.
- 3.4 BHC shall store patterns, special tools and equipment until deliveries under the agreement have been completed. Patterns, special tools and equipment belonging to the Purchaser which remain in BHC's care after deliveries under the agreement have been completed, shall be stored by BHC at the Purchaser's risk and expense.
- 3.5 BHC shall, at the Purchaser's request, insure patterns, special tools and equipment in his care which are the Purchaser's property. The Purchaser shall reimburse BHC the cost of such insurance.
- 3.6 BHC shall not, without the Purchaser's consent, use the Purchaser's patterns, special tools or equipment for any other purpose than fulfilment of the agreement. Nor shall such patterns, special tools or equipment be handed over to or otherwise be brought to the knowledge of a third party.
- 3.7 The Purchaser shall bear the risk and expense of all transport of patterns, special tools and equipment to and from BHC.
- 3.8 The Purchaser shall indemnify and hold BHC harmless against all claims based on infringement of patents, design patents, trademarks or other property rights, where such claims result from the manufacture of the Products by using a specification, drawing, sample, pattern, special tool or other equipment provided by the Purchaser.
- 3.9 All BHC's obligations regarding patterns, special tools and equipment shall finally cease three years after the deliveries under the agreement have been completed. Where practicable, BHC shall inform the Purchaser before disposing of patterns, special tools and equipment.

#### **Article 4 - Drawings and descriptions**

- 4.1 All drawings and technical documents relating to the Products or their manufacture submitted by one party to the other, prior or subsequent to the formation of the agreement, shall remain the property of the submitting party.  
BHC shall not be obliged to provide manufacturing drawings for the Products or spare parts.

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Drawings, technical documents or other technical information received by one party shall not without the consent of the other party, be



used for any other purposes than those for which they were handed over, such as assembly, installation and maintenance of the Products. Without the consent of the party submitting the information, they shall not otherwise be used or copied, reproduced, transmitted or communicated to a third party.

- 4.2 If either party wants a modification of the technical specifications of the Products he shall submit his proposals in writing to the other party who shall respond in writing within 30 calendar days.

#### **Article 5 - Price**

Prices for the Products are those stipulated in the agreement. Unless otherwise stated they are exclusive of sales, excise duties, VAT or similar taxes.

#### **Article 6 - Inspection**

The Purchaser may during normal working hours inspect BHC's final test facilities to be used in the performance of the agreement, and inspect and test the Products in respect of materials and workmanship. The Purchaser shall give BHC one week's notice of the inspection. Inspections and tests shall not unduly interfere with the performance of work.

#### **Article 7 - Production sample**

Products manufactured in series shall be in conformity with the production sample approved by the Purchaser, and production shall not start before BHC has received the Purchaser's written approval of such sample.

#### **Article 8 - Acceptance tests**

- 8.1 Unless otherwise agreed, acceptance tests provided for in the agreement shall be carried out at the place of manufacture during normal working hours. If not otherwise specified in the agreement, the tests shall be carried out in accordance with general practice in the relevant branch of industry in the country of manufacture.
- 8.2 BHC shall notify the Purchaser of any agreed acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.
- 8.3 If the acceptance tests show that the Products deviate from the requirements of the agreement, BHC shall, unless the Purchaser accepts the deviation, without delay ensure that the Products comply with the agreement. New tests shall then be carried out at the Purchaser's request, unless the deviations were insignificant.
- 8.4 BHC shall bear all costs for any agreed acceptance tests carried out at the place of manufacture. All travelling and living expenses for the Purchaser's representatives in connection with such tests shall be borne by the Purchaser.

#### **Article 9 - Delivery / passing of risk**

Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the agreement.

If no trade term is specifically agreed the delivery shall be Ex Works (EXW).

If, in the case of delivery Ex Works, BHC, at the request of the Purchaser, undertakes to send the Products to their destination, the risk shall pass no later than at the time when the Products are handed over to the first carrier.

Unless otherwise agreed, partial shipments shall be permitted.

#### **Article 10 - Packaging and transport**

- 10.1 Within 30 days after delivery the Purchaser shall at his own expense return containers, crates, pallets and other reusable packaging materials belonging to BHC. If the Purchaser fails to do so, BHC is entitled to be reimbursed for the value of such packaging materials. If, under the agreement, the Purchaser shall provide packaging materials, he shall provide them in good condition to BHC at the time and the site specified by BHC.
- 10.2 The Purchaser shall on arrival of the Products examine whether the Products' time of arrival, condition and quantity conform to the dispatch note. The Purchaser shall immediately inform BHC of any discrepancies or possible claims against the transporter.
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**Article 11 - Time for delivery / delay**

- 11.1 If, instead of specifying the date for delivery, the parties have specified a period of time on the expiry of which delivery shall take place, such period shall start to run on the date when BHC receives the Purchaser's order or the date of formation of the agreement, whichever is the later.
- 11.2 If BHC anticipates that he will not be able to deliver the Products at the time for delivery, he shall forthwith notify the Purchaser thereof in writing, stating the reason and, if possible, the time when delivery can be expected.
- 11.3 If delay in delivery is caused by any of the circumstances mentioned in Article 16 or by an act or omission on the part of the Purchaser, including suspension under article 12.3 or 17, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.
- 11.4 If the Products are not delivered at the time for delivery (as defined in Articles 11.1 and 11.3), the Purchaser is entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.5 per cent of the purchase price for each completed week of delay. The liquidated damages shall not exceed 7.5 per cent of the purchase price.  
If, in the case of partial deliveries, only part of the Products is delayed, the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Products as can not, in consequence of the delay, be used as intended by the parties.

The liquidated damages become due at the Purchaser's written demand but not before delivery has been completed or the agreement is terminated under article 11.5.

The Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim for such damages within six months after the time when delivery should have taken place.

- 11.5 If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Article 11.4 and if the Products are still not delivered, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than one week.

If BHC does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible, then the Purchaser may by notice in writing to BHC terminate the agreement in respect of such part of the Products as can not, in consequence of BHC's failure to deliver, be used as intended by the parties.

If the Purchaser terminates the agreement he shall be entitled to compensation for the loss he has suffered as a result of BHC's delay. The total compensation, including the liquidated damages which are payable under Article 11.4, shall not exceed 15 per cent of that part of the purchase price which is attributable to the part of the Products in respect of which the agreement is terminated.

- 11.6 Liquidated damages under Article 11.4 and termination of the agreement with limited compensation under Article 11.5 are the only remedies available to the Purchaser in case of delay on the part of BHC. All other claims against BHC based on such delay shall be excluded, except where BHC has been guilty of gross negligence.

In these conditions, gross negligence shall mean an act or omission implying either a failure to pay due regard to serious consequences which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

- 11.7 If the Purchaser anticipates that he will be unable to accept delivery of the Products at the delivery time, he shall forthwith notify BHC thereof stating the reason and, if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery at the delivery time he shall nevertheless pay any part of the purchase price which becomes due on delivery as if delivery had taken place. BHC shall arrange for storage of the Products at the risk and expense of the Purchaser. BHC shall also, if the Purchaser so requires, insure the Products at the Purchaser's expense.

- 11.8 Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Article 16, BHC may by notice in writing require the Purchaser to accept delivery within a final reasonable period.  
If, for any reason for which BHC is not responsible, the Purchaser fails to accept delivery within such period, BHC may by notice in writing terminate the agreement in whole or in part. BHC shall then be entitled to compensation for the loss he has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase price which is attributable to that part of the



Products in respect of which the agreement is terminated.

#### **Article 12 - Payment**

12.1 Unless otherwise agreed, the purchase price shall be paid 30 days after date of invoice.

12.2 Whatever the means of payment used, payment shall not be deemed to have been effected before BHC's account has been fully and irrevocably credited.

12.3 If the Purchaser fails to pay by the stipulated date, BHC shall be entitled to interest from the day on which payment was due. The rata of interest shall be as agreed between the parties. If the parties fail to agree on the rata of interest, it shall be 12 per cent per annum.

In case of late payment BHC may, after having notified the Purchaser in writing, suspend his performance of the agreement until he receives payment.

If the Purchaser has not paid the amount due within three months BHC shall be entitled to terminate the agreement by notice in writing to the Purchaser and to claim compensation for the loss incurred. The compensation shall not exceed the agreed purchase price.

#### **Article 13 – Reservation of title**

The Products shall remain the property of BHC until paid for in full to the extent that such reservation of title is valid under the applicable law.

The Purchaser shall at the request of BHC assist him in taking any measures necessary to protect BHC's title to the Products in the country concerned.

The reservation of title shall not affect the passing of risk under Article 9.

#### **Article 14 – Liability for defects**

14.1 Pursuant to the provisions of Article 14.2-14.15 inclusive, BHC shall remedy any defect resulting from faulty materials or workmanship. To the extent BHC is responsible for design, the same obligation applies to any defect resulting from faulty design.

14.2 BHC's liability is limited to defects which appear within a period of one year from delivery.

14.3 When a defect in the Products or a part thereof has been remedied, BHC shall be liable for defects in what has been remedied under the same terms and conditions as those applicable to the original Products during a period of one year.

14.4 The Purchaser shall without undue delay notify BHC of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Article 14.2 as extended by Article 14.3.

Where the defect is such that it may cause damage, the notice shall be given immediately.

The notice shall contain a description of the defect.

If the Purchaser does not notify BHC of a defect within the time-limits set forth in this Clause, he shall lose his right to have the defect remedied.

14.5 On receipt of the notice in writing under Article 14.3 BHC shall remedy the defect without undue delay and at his own cost as stipulated in article 14.1-14.15 inclusive.

Repair shall be carried out at BHC's premises unless he finds it appropriate to have the repair carried out where the Products are located. The Purchaser shall at the request of BHC arrange for transport of the Products to BHC. The Purchaser shall follow BHC's instructions regarding such transport. BHC has fulfilled his obligations in respect of the defect when he delivers to the Purchaser duly repaired or replaced Products.



- 14.6 If the Purchaser has given such notice as mentioned in Article 14.4, and no defect is found for which BHC is liable, BHC shall be entitled to compensation for the costs he has incurred as a result of the notice.
- 14.7 The Purchaser shall at his own expense arrange for any dismantling and reassemble of equipment other than the Products, to the extent that this is necessary to remedy the defect.
- 14.8 Unless otherwise agreed, necessary transport of the Products to and from BHC in connection with the remedying of defects for which BHC is liable shall be at the risk and expense of BHC.
- 14.9 Unless otherwise agreed, the Purchaser shall bear any additional costs which BHC incurs for repair and transport as a result of the Products being located in a place other than the destination stated in the agreement or - if no destination is stated - the place of delivery.
- 14.10 Defective Products which have been replaced shall be made available to BHC and shall be his property.
- 14.11 If, within a reasonable time, BHC does not fulfil his obligations under Clause 40, the Purchaser may, by written notice, fix a final time for completion of BHC's obligations.

If BHC fails to fulfil his obligations within such final time, the Purchaser may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of BHC.

Where successful remedial works have been undertaken by the Purchaser or a third party, reimbursement by BHC of reasonable costs incurred by the Purchaser shall be in full settlement of BHC's liabilities for the said defect.

Where the defect has not been successfully remedied,

- a) the Purchaser is entitled to a reduction of the purchase price in proportion to the reduced value of the Products, provided that under no circumstances shall such reduction exceed 15 per cent of the purchase price, or
- b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the agreement, the Purchaser may terminate the agreement by written notice to BHC. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 15 per cent of the purchase price.

- 14.12 BHC is not liable for defects arising out of materials provided or specified by the Purchaser.
- 14.13 BHC is liable only for defects which appear under the conditions of operation provided for in the agreement and under proper use of the Products.

BHC's liability does not cover defects which are caused by faulty maintenance, incorrect assembly or installation or faulty repair by the Purchaser, or by alterations carried out without BHC's consent in writing. Finally BHC's liability does not cover normal wear and tear or deterioration.

- 14.14 Notwithstanding the provisions of articles 14.1-14.15 BHC shall not be liable for defects in any part of the Products for more than two years from the beginning of the period given in Article 14.2.
- 14.15 Save as stipulated in Articles 14.1-14.14, BHC shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of BHC's liability shall not apply if he has been guilty of gross negligence as defined in Article 11.6.

#### **Article 15- Division of liability for damage caused by the transport**

BHC shall not be liable for any damage to property caused by the Products after their delivery and whilst they are in the possession of the Purchaser. Nor shall BHC be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part.

If BHC incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold BHC harmless.

If a claim for damages as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.

BHC and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims



for damages lodged against one of them on the basis of damage allegedly caused by the Products.

The limitation of BHC's liability in the first paragraph of this Clause shall not apply where BHC has been guilty of gross negligence as defined in Article 11.6.

#### **Article 16 – Force majeure**

16.1 Either party shall be entitled to suspend performance of his obligations under the agreement to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances : industrial disputes and any other circumstance beyond the control of the parties such as fire, war (whether declared or not), extensive military mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-suppliers caused by any such circumstances referred to in this Clause.

A circumstance referred to in this Clause which had occurred prior to the formation of the agreement shall give a right to suspension only if its effect on the performance of the agreement could not be foreseen at the time of the formation of the agreement.

16.2 The party claiming to be affected by force majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If force majeure prevents the Purchaser from fulfilling his obligations, he shall compensate BHC for expenses incurred in securing and protecting the Products.

16.3 Regardless of what might otherwise follow from these general conditions, either party shall be entitled to terminate the agreement by notice in writing to the other party if performance of the agreement is suspended under Article 16 for more than six months.

#### **Article 17 - Anticipated non-performance**

Notwithstanding other provisions in these conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the agreement, where it is clear from the circumstances that the other party will not be able to perform his obligations. A party suspending his performance of the agreement shall forthwith notify the other party thereof in writing.

#### **Article 18 - Consequential losses**

Save as elsewhere stated in these conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of agreements or for any consequential, economic or indirect loss whatsoever.

#### **Article 19 - Disputes and applicable law**

19.1 All disputes arising in connection with the agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules, supplemented as necessary by the procedural rules of the law of BHC's country.

19.2 The agreement shall be governed by the substantive law of BHC's country.

#### **Article 20 - Registration**

These conditions are registered with the Chamber of Commerce of Arnhem number 09127805.