

# TERMS AND CONDITIONS OF PURCHASE AGREEMENT (MEMC SpA- Italy site)

## 1. DEFINITIONS

- A. "Equipment" means systems, including upgrade and conversion kits thereto, that produce the required output per the applicable Equipment configuration and system performance Specifications set forth in the Equipment Specification for each Equipment model or as otherwise agreed to in writing by both parties.
- B. "Item(s)" means any goods provided by Supplier, including Equipment.
- C. "Hazardous Materials" means materials that are or contain dangerous goods, chemicals, contaminants, substances, pollutants, or any other materials that are defined as hazardous by relevant local, state, national, or international law, regulations, and standards
- D. "Purchase Order" means a MEMC's document setting forth specific Items to be delivered and Release information.
- E. "Release" means MEMC's authorization for Supplier to provide the Items. The Release is contained in the Purchase Order sent to Supplier.
- F. "Spare Part(s)" means any consumable and/or non-consumable parts, whether procured by MEMC from Supplier or a third party.
- G. "Specification(s)" means any agreed to purchase Specification(s) for Items to be purchased.

## 2. TERMS & CONDITIONS.

These terms and conditions control the purchase of the goods and services set forth in the accompanying Purchase Order. In the event of any conflict between the Order's specific terms and provisions, including any exhibits or documents attached hereto or incorporated by reference therein, and the standard terms and conditions set forth here, these terms and conditions shall control. These terms and conditions may not be waived or modified except as specifically set forth in writing by MEMC.

## 3. PRICING AND AUDITS

- A. The prices set forth in the Purchase Order shall be fixed or declining for the duration of delivery of Items and shall be inclusive of all goods and service taxes, (excluding value-added taxes), and other forms of government direct and indirect taxes levied on the provision of or transfer of goods and services.
- B. The price charged MEMC for any Item shall always be Supplier's lowest price charged any customer for that Item or equivalent. If Supplier sells any Item to any customer at a price less than that set forth herein, Supplier shall adjust its price to the lower price for any un-invoiced Item and for all future invoices for such Item. For Items designated as custom Items, for purposes of comparing price under this Section, the price of the Item shall include those Supplier cost components which are generic to the Item as compared to other similar items generally sold by Supplier. Such comparison shall be made to the extent Items have similar characteristics, such as form, fit, function, manufacturing process, or other specific comparison criteria agreed upon by the parties.
- C. All applicable taxes, including but not limited to sales/use taxes, transaction privilege taxes, gross receipts taxes, and other charges such as duties, customs, tariffs, imposts, and government-imposed surcharges, shall be stated separately on Supplier's invoice. Supplier shall remit all such charges to the appropriate tax authority unless MEMC provides sufficient proof of tax exemption. In the event that MEMC is prohibited by law from making payments to the Supplier

unless MEMC deducts or withholds taxes therefrom and remits such taxes to the local taxing jurisdiction, then MEMC shall duly withhold such taxes and shall pay to the Supplier the remaining net amount after the taxes have been withheld. MEMC shall not reimburse Supplier for the amount of such taxes withheld. When Items are delivered within jurisdictions in which Supplier collection and remittance of taxes is required by law, Supplier shall have sole responsibility for payment of said taxes to the appropriate tax authorities. In the event Supplier does not collect tax from MEMC, and is subsequently audited by any tax authority, liability of MEMC will be limited to the tax assessment, with no reimbursement for penalty or interest charges. Each party is responsible for its own respective income taxes or taxes based upon gross revenues, including but not limited to business and occupation taxes.

- D. Additional costs, except those described in the Purchase Order, will not be reimbursed without MEMC's prior written approval.
- E. MEMC reserves the right to have Supplier's records inspected and audited to ensure compliance with these provisions. At MEMC's option or upon Supplier's written demand, such audit will be performed by an independent third party at MEMC's expense. However, if Supplier is found to be in non-compliance in any way, Supplier shall reimburse MEMC for all costs associated with the audit, along with any discrepancies discovered, within thirty (30) days after completion of the audit. The results of such audit shall be kept confidential by the auditor and if conducted by a third party, only Supplier's failures to abide by these Terms and Conditions shall be reported to MEMC.
- F. MEMC reserves the right to carry out qualitative Audit at Supplier organization. MEMC reserves the right to access for supplier training records about Supplier's personnel.

## 4. INVOICING AND PAYMENT

- A. Prompt payment discounts will be computed from the latest of: (i) the date of delivery of any Items; or (ii) the date a properly filled out original invoice is received by MEMC. Payment is made when MEMC's check is mailed or EDI funds transfer initiated. MEMC shall at its option make payment within sixty (60) days and receive a 2% discount from the total invoice, or within one hundred twenty (120) days of receipt of the proper original invoice or delivery of any Items, whichever is later.
- B. Original invoices shall be submitted and shall include: Purchase Order number, line-Item number, listing of and dates of Items delivered, complete bill to address, description of incidental Items, quantities, unit price, extended totals, and any applicable taxes or other charges. MEMC's payment shall not constitute acceptance.
- C. Supplier shall be responsible for and hold MEMC harmless for any and all payments to Supplier's vendors or subcontractors utilized in the performance of any services related to the Items.
- D. Supplier agrees to invoice MEMC no later than thirty (30) days after shipment of Items or anyway as per Laws terms. MEMC will not be obliged to make payment against any invoices submitted after such period.

## 5. TERMINATION

- A. MEMC may terminate any Purchase Order or Release issued, or any part thereof, at any time by giving thirty (30) days' written notice of termination to Supplier. Upon Supplier's receipt of such notice, Supplier shall, unless otherwise specified in such notice, immediately stop all work previously authorized and give prompt written notice to, and cause all of, its suppliers or subcontractors to cease all related work.

- B. There shall be no termination charges for Items not yet provided. MEMC will be responsible for payment of authorized Items already provided by Supplier but not yet invoiced. Upon payment of Supplier's claims, MEMC shall be entitled to all work and materials paid for.
- C. Before assuming any payment obligation under this section, MEMC may inspect Supplier's work in process and audit all relevant documents prior to paying Supplier's invoice.

**6. SPECIFICATIONS, IDENTIFICATION AND ERRATA**

- A. Supplier shall not modify the Specification for any Item purchased by MEMC hereunder without the prior written approval of MEMC.
- B. Supplier shall cooperate with MEMC to provide configuration control and tracking systems for Items supplied hereunder.
- C. Supplier shall provide MEMC with an errata list for each Item and shall promptly notify MEMC in writing of any new errata with respect to the Items.

**7. SCHEDULING AND RELEASES**

- A. Supplier shall promptly deliver Items as defined by the Release.
- B. MEMC may place any portion of a Release on hold by written notice which shall take effect immediately upon receipt by Supplier. Releases placed on hold will be rescheduled or terminated by MEMC in accordance with Section 5 within a reasonable time.
- C. Any forecasts provided by MEMC are for planning purposes only and do not constitute a Release or other commitment by MEMC. MEMC shall have no obligation with respect to the purchase of Items until such Items are specified in an issued Purchase Order which contains specific Release information for specific Items.

**8. WARRANTY**

- A. Supplier represents and warrants that:
  - (i) All Items provided shall be free from defects in design, material and workmanship, shall be fit for their intended use and shall meet the descriptions, Specifications and performance standards provided in Purchase Order.
  - (ii) Supplier has the necessary right, title, and interest to provide said Items to MEMC; and said Items will be free of liens and encumbrances, and do not infringe any third-party intellectual property rights.
- B. All Items purchased by MEMC are subject to inspection and test "Source Inspection" before being allowed to ship from Supplier's factory. Source Inspection requirements will be described in the Specification unless agreed otherwise in writing by the parties. Supplier shall be responsible for Source Inspections and shall provide MEMC with written certification that Items tested have passed Source Inspection and comply in all respects with the requirements described in the Specification. MEMC may participate, as it deems necessary, in Source Inspections. If any inspection or test is made on Supplier's premises, Supplier shall provide MEMC with reasonable facilities and assistance at no additional charge.
  - (i) Notwithstanding any Source Inspection or testing at Supplier's premises, all Items purchased by MEMC are subject to MEMC's inspection and test (qualification) before final acceptance at MEMC's premises. Final acceptance requirements are described in the Specification unless agreed otherwise in writing by the parties. Items rejected by MEMC as not conforming to the Specification may be returned to Supplier at Supplier's risk and expense and, at MEMC's option, such Item shall be immediately repaired or replaced.
- C. Acceptance and/or inspection by MEMC shall in no event constitute a waiver of MEMC's rights and remedies with

regard about any subsequently discovered defect or nonconformity.

- (i) Supplier shall promptly correct any non-conforming or defective workmanship at no additional cost to MEMC; or (ii) at MEMC's option, Supplier shall promptly repair, replace, or refund the amount paid for such Items and (iii) shall pay to MEMC all incidental and consequential damages arising from breach of the foregoing warranties. Supplier shall bear the cost of shipping and risk of loss of all defective or non-conforming Items while in transit.

**9. CONFIDENTIALITY AND PUBLICITY**

- A. Either party may have or may be provided with access to the other's confidential information and materials. Additionally, Supplier may be engaged to develop new information and materials for MEMC or may develop such information in the course of providing Items to MEMC, which information will become, upon creation, MEMC's confidential information unless otherwise previously agreed in writing. Provided information and materials are marked in a manner reasonably intended to make the recipient aware, or the recipient is sent written notice within forty eight (48) hours of disclosure, that the information or materials are "Confidential", each party agrees to maintain such information in accordance with these terms and conditions, any Corporate Non-disclosure Agreement ("CNDA") between the parties, and any other applicable separate non-disclosure agreement between MEMC and Supplier. If the provisions of this Section 9 conflict with the CNDA, the terms of the CNDA shall control for all purposes. At a minimum each party agrees to maintain such information in confidence and limit disclosure on a need to know basis, to take all reasonable precautions to prevent unauthorized disclosure, and to treat such information as it treats its own information of a similar nature, until the information becomes rightfully available to the public through no fault of the non disclosing party. Supplier employees who access MEMC's facilities may be required to sign a separate access agreement prior to admittance to MEMC's facilities. Supplier shall not use any of the confidential information created for MEMC other than for MEMC.
- B. Neither party will disclose the existence of this Purchase Order, nor any of its details, or the existence of the relationship created by this Purchase Order, to any third party without the specific, written consent of the other. Neither party may use the other party's name or trademarks in advertisements, brochures, banners, letterhead, business cards, reference lists, or similar advertisements without the other's written consent.

**10. INTELLECTUAL PROPERTY INDEMNIFICATION:**

- A. Supplier shall indemnify and hold MEMC and its customers harmless from any costs, expenses (including reasonable attorneys' fees), losses, damages, or liabilities incurred because of actual or alleged infringement of any patent, copyright, trade secret, trademark, maskwork, or other intellectual property right arising out of the use or sale by MEMC or MEMC's customers of Items or MEMC's products manufactured using the Item(s) or containing the Item(s), irrespective of whether MEMC furnishes any specifications to Supplier, except as otherwise provided in this paragraph. MEMC shall notify Supplier of such claim or demand and shall permit Supplier to participate in the defense or settlement thereof. If an injunction issues as a result of any claim or action, Supplier agrees at its expense and MEMC's option to either: (i) procure for MEMC and MEMC's customers the right to continue using Items; (ii) replace them with non-infringing Items; (iii) modify them so they become non-infringing; or (iv) refund to MEMC the amount paid for

any Items returned to Supplier or destroyed. Regardless of which of the foregoing remedies is effected, Supplier shall pay to MEMC rework expenses and incremental costs incurred by MEMC to procure alternative products required to fill orders placed by MEMC and accepted by Supplier as of the effective date of the injunction. This indemnification shall not apply to the extent custom Items are manufactured to MEMC's detailed design, unless otherwise provided in an agreement between the parties.

- B. MEMC shall defend, indemnify, and hold Supplier harmless from any costs or expenses arising from a rightful claim of infringement by a third party, where MEMC furnishes and requires Supplier to use detailed specifications for the process of manufacturing the Item(s), and such infringement claim would not have occurred but for complying with such detailed specifications. Notwithstanding the foregoing, MEMC shall have no liability to Supplier hereunder, if Supplier knows, or through the exercise of reasonable due diligence should have known, that the required manufacturing specification(s) infringe or potentially infringe another party's intellectual property rights.
- C. The foregoing provides the entire set of obligations and remedies flowing between MEMC and Supplier arising from any intellectual property claim by a third party.

#### 11. HAZARDOUS MATERIALS

- A. If Items provided hereunder include or use Hazardous Materials, Supplier represents and warrants that Supplier and its personnel understand the nature of and hazards associated with the design and/or use of the Items including handling, transportation, and use of such Hazardous Materials, as applicable to Supplier. Prior to causing Hazardous Materials to be on MEMC's property, Supplier shall obtain written approval from MEMC's site Environmental/Health/Safety organization. Supplier will be fully responsible for and will indemnify MEMC from any liability resulting from the actions of Supplier or its contractors in connection with: (i) providing Items containing or comprising Hazardous Materials to MEMC; and/or (ii) the use of such Hazardous Materials in providing services related to the Items to MEMC.
- B. Supplier will timely provide MEMC with material safety data sheets and any other documentation reasonably necessary to enable MEMC to comply with applicable laws and regulations.
- C. Supplier warrants that Items supplied to MEMC comply with MEMC's environmental and safety policies and procedures, and do not contain and are not manufactured with any ozone depleting substances, as those terms are defined by law.

#### 12. INSURANCE

- A. Without limiting or qualifying Supplier's liabilities, obligations, or indemnities otherwise assumed by Supplier pursuant to these Terms & Conditions, Supplier shall maintain, at its sole cost and expense, with companies reasonably acceptable to MEMC, Commercial General Liability and Automobile Liability Insurance with limits of liability not less than USD\$1,000,000.00 per occurrence and including liability coverage for bodily injury or property damage (1) assumed in a contract or agreement pertaining to Supplier's business and (2) arising out of Supplier's Items or work. Supplier's insurance shall be primary, and any applicable insurance maintained by MEMC shall be excess and non-contributing.
- B. Supplier shall also maintain statutory Workers' Compensation coverage in the amount required by law, and Employers' Liability Insurance in the amount of USD\$1,000,000.00 per occurrence.
- C. If Supplier is providing any professional service to MEMC in connection with the Items, Supplier shall maintain Professional Liability Insurance (including errors and

omissions coverage) with liability limits not less than USD\$1,000,000.

#### 13. COMPLIANCE WITH LAWS AND RULES

- A. Supplier shall comply with RBA (Responsible Business Alliance) code and all national, state, and local laws and regulations governing the manufacture, transportation, export, and/or sale of Items.
- B. Supplier shall comply with all environmental, safety, health, labor and ethics laws and regulations at national, state and local levels.
- B1. For this purpose, reference is made to the *Code of Ethics* of MEMC Electronic Materials S.p.A., available on the [MEMC Electronic Materials Spa - purchasing - logistics - shipping](#), under the title "MEMC Code of Ethics (English)".
- C. Neither Supplier nor any of its subsidiaries will export/re-export any technical data, process, or product directly or indirectly (including the release of controlled technology to foreign nationals from controlled countries) to any country for which the United States government or any agency thereof requires an export license or other government approval without first obtaining such license.
- D. Supplier hereby represents and ensures that it does not and will not supply to MEMC any conflict minerals (material that directly or indirectly finance, or benefit armed groups in the Democratic Republic of Congo (DRC) and adjoining countries), including Tantalum (Ta), Tin (Sn), Tungsten (W) and Gold (Au). Supplier further agrees it will inform all of its own suppliers of this policy and undertake to ensure that such policy is complied with by its own suppliers. MEMC shall have the right to audit Supplier's compliance with this provision at any time.
- E. If Supplier performs any services or delivers any goods on MEMC's premises, Supplier agrees to comply with all of MEMC's safety and security relations and all other pertinent safety regulations imposed by law and (b) provide MEMC with evidence of insurance in accordance with the minimum limits required by MEMC.
- F. Supplier and its assigns, employees, representatives, subcontractors, and agents agree to comply with all directives of MEMC's supervisory personnel and further agree not to interfere with any of MEMC's operations. Non-compliance with the foregoing may, at MEMC's option, result in cancellation of this Order for cause.
- G. Supplier agrees to comply with the anti-bribery and books and records provisions of the Foreign Corrupt Practices Act ("FCPA"), the principles set out in the Organization for Economic Cooperation and Development Convention Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention"), and with all local laws prohibiting bribery and similar unethical business practices, and with MEMC's Foreign Anti-Corruption Policy Statement and Policy ("MEMC Policy"). Supplier represents and warrants that, in connection with the business project that is the subject of this agreement, it has not paid, offered, promised or authorized, directly or indirectly, a payment of anything of value in violation of the FCPA, the OECD Convention, local law, or MEMC Policy. Supplier certifies that it is not a foreign official (which includes being an officer, employee, or representative of any foreign government, department, state-owned, state-controlled, or state-operated entity, or a public international organization, of any political party, or being a foreign political candidate). A payment, offer, promise or authorization that is prohibited under this clause constitutes a material breach of the Agreement and MEMC may, in its sole discretion, terminate this Agreement immediately upon written notification to Supplier. Supplier agrees to hold MEMC harmless for any monetary harm or damages it suffers as a result of Supplier's actions in violation of the FCPA, the OECD Convention, or local law,

and further agrees to indemnify MEMC for any liability imposed as a result of Supplier's violation of the FCPA or local law. Supplier agrees to permit MEMC reasonable and timely access to its books and records as may be necessary to ensure compliance with the books and records provisions of the FCPA, the OECD Convention, or to monitor compliance with this clause.

- G1. For this purpose, reference is made to the *Organization, Management and Control Model – General Section and Special Section* of MEMC Electronic Materials S.p.A., as well as to the *GDPR Policy for Suppliers*.

These documents are available on the [MEMC Electronic Materials Spa - purchasing - logistics - shipping](#), under the following titles:

- “MEMC Organization, Management and Control Model (OMCM231) – General Section (English)”;
- “MEMC Organization, Management and Control Model (OMCM231) – Special Section (English)”;
- “MEMC GDPR Policy – Suppliers (English)”.

#### 14. GENERAL INDEMNIFICATION

Supplier shall, to the fullest extent permitted by law, protect, defend, indemnify, and hold MEMC harmless from and against any and all claims, liabilities, demands, penalties, forfeitures, suits, judgments, and the associated costs and expenses (including reasonable attorney's fees), which MEMC may hereafter incur, become responsible for, or pay out as a result of: death or personal injury (including bodily injury) to any person, destruction or damage to any property, contamination of or adverse effects on the environment, and any clean up costs in connection therewith, or any violation of law, governmental regulation or orders, to the extent caused any negligent or willful acts, errors, or omissions by Supplier, its employees, officers, agents, representatives, or subcontractors or dangerous defects in Items.

#### 15. RELATIONSHIP BETWEEN THE PARTIES

The relationship of the parties hereto is that of independent contractors. Nothing in any Purchase Orders issued hereunder shall be construed as creating any employment relationship, partnership, joint venture, or agency between the parties.

#### 16. OWNERSHIP AND BAILMENT RESPONSIBILITIES

- A. Any Specifications, drawings, schematics, technical information, data, tools, dies, patterns, masks, gauges, test equipment, and other materials furnished or paid for by MEMC shall: (i) be kept confidential; (ii) remain or become MEMC's property; (iii) be used by Supplier exclusively for MEMC's orders; (iv) be clearly marked as MEMC's property and segregated when not in use; (v) be kept in good working condition at Supplier's expense; and (vi) be shipped to MEMC promptly on demand.
- B. Supplier shall insure MEMC's property and be liable for loss or damage while in Supplier's possession or control, ordinary wear and tear excepted.

#### 17. DEVELOPMENTS AND INTELLECTUAL PROPERTY

- A. Supplier represents and warrants that Supplier has no outstanding agreement or obligation that is in conflict with any of the provisions of these Terms and Conditions, or that would adversely affect Supplier's performance hereunder or

MEMC's exclusive right to Developments (defined below), and Supplier agrees that Supplier shall not enter into any such conflicting agreement while supplying the Items.

- B. Supplier agrees that all works of authorship, inventions, improvements, developments, and discoveries conceived, made, or discovered by Supplier, solely or in collaboration with others, in the course of development of Items for MEMC hereunder as well as all patents, copyrights, trade secrets, trademarks, and other intellectual property rights therein and thereto (collectively, "Developments"), are the sole property of MEMC. Supplier agrees to assign (or cause to be assigned) and does hereby assign fully to MEMC all such Developments.
- C. Supplier agrees to assist MEMC, or its designee, at MEMC's expense, in every proper way to secure MEMC's rights in the Developments, including the disclosure to MEMC of all pertinent information and data with respect thereto and the execution of all applications, Specifications, oaths, assignments, and all other instruments which MEMC may deem necessary in order to apply for and obtain such rights and in order to assign and convey to MEMC, its successors, assigns, and nominees the sole and exclusive rights, title, and interest in and to such Developments. Supplier further agrees to assist MEMC in enforcing all patents, trademarks, copyrights, trade secrets, or other ownership rights to protect MEMC's exclusive interest in Developments.
- D. MEMC acknowledges and agrees that Supplier shall retain sole and exclusive ownership of, and/or unrestricted right to license, any invention, improvement, development, concept, discovery, or other proprietary information owned by Supplier. ("Supplier IP"). Notwithstanding the foregoing, Supplier agrees that if in the course of developing the Items, Supplier incorporates any Supplier IP into any Development developed hereunder, MEMC is hereby granted and shall have a nonexclusive, royalty free, perpetual, irrevocable, worldwide license, including the right to sublicense, under any such Supplier IP to make, have made, use, import, prepare derivative works of, reproduce, have reproduced, perform, display, offer to sell, sell, or otherwise distribute such invention, improvement, development, concept, discovery, or other proprietary information as part of or in connection with such Development.
- E. Supplier represents, warrants and agrees that it will not incorporate any third-party intellectual property into any Development or deliverable provided hereunder without notifying and obtaining the prior written approval of MEMC.
- F. Supplier hereby waives any and all moral rights, including the right to identification of authorship or limitation on subsequent modification, that Supplier (or its employees) has or may have in any invention, materials, or other deliverables assigned to MEMC hereunder.
- G. Supplier warrants that: (1) all of its employees or contractors who perform work for it hereunder will have entered into written agreements with Supplier which ensure that the work they do is subject to the terms and conditions of this Section 19; and (2) it will not incorporate any developments into deliverables to be provided to MEMC which contain intellectual property not assignable or licensable to MEMC as provided in this Section 19, without MEMC's prior written consent.