



Sales Conditions of Lantiq Deutschland GmbH

Lantiq Deutschland GmbH (hereinafter referred to as „Lantiq“) will supply goods and perform services of any nature (goods and services hereinafter collectively referred to as „the Deliverables“) towards the respective ordering party (hereinafter referred to as „the Buyer“) exclusively on the basis of the general terms and conditions contained in this document (hereinafter referred to as „GTCs“), save as from time to time agreed otherwise between Lantiq and the Buyer, e.g. by acceptance of an order (hereinafter referred to as „the Individual Sales Contract“).

I. Conclusion of the Individual Sales Contract

1. All contractual relationships between Lantiq and the Buyer with regard to the provision and delivery of Deliverables shall exclusively be governed by these GTCs. The GTCs shall also apply for any future Deliverable that may be provided and delivered by Lantiq to the Buyer, even in case Lantiq and Buyer fail to refer to these GTCs at any time during the ordering process.
2. General terms and conditions of the Buyer or deviations from these GTCs shall only be binding for Lantiq, if and to the extent Lantiq has given its written consent.
3. Lantiq's offers are not binding and subject to change, unless Lantiq explicitly specifies otherwise in its offers. Lantiq shall be entitled to accept the Buyer's offers within a time period of three weeks.
4. Any supplementary and additional agreement, any description of the Deliverables' specifications and properties and the granting of any warranties and guarantees on the Deliverables' performances which are given at any time before, upon or following the conclusion of the Individual Sales Contract must be made by Lantiq in writing to be valid.

II. Deliverables

1. The parties shall specify the Deliverables in the Individual Sales Contract. If and to the extent not specified by the Individual Sales Contract, the Deliverables will be determined by the following paragraphs of this section.
2. Lantiq reserves all rights, title and interest with regard to (i) its product data sheets, product manuals, tender specifications, quotations, drawings and any other documents that may be forwarded together with the Deliverables (hereinafter collectively referred to as „the Documentation“) and (ii) the text contained in such Documentation or parts thereof. The Buyer shall be entitled to use the Documentation and any text contained therein for the Buyer's internal purposes only. Any exceeding usage of the Documentation requires Lantiq's prior written consent. The Buyer shall treat the Documentation as Lantiq's confidential information, unless Lantiq itself has published the Documentation or the Documentation was forwarded to the Buyer from any third party not being subject to any confidentiality obligation.
3. In case soft- or firmware is included in or part of the Deliverables, the Buyer shall have the non-exclusive license to use the soft- or firmware only in accordance with the agreed specification and (ii) only on those devices that are specified in Individual Sales Contract or in the Documentation. Any exceeding usage requires Lantiq's prior written consent.
4. Lantiq reserves the right to modify and change the Deliverables before completing the delivery to the Buyer, provided any such modification or change does not constitute a major change in the sense of no. 46C of the JEDEC Standard.
5. Partial deliveries and delivery in advance shall be permitted if and to the extent this is commercially feasible to the Buyer.
6. Supply of Deliverables will occur „DDU“ for all deliveries to a Buyer having its seat in the European Union and „FCA“ for all deliveries to a Buyer having its seat outside the European Union, in any event to such location which is specified in the Individual Sales Contract. The terms „DDU“ and „FCA“ shall have the meaning ascribed to them by the Incoterms 2000, unless specified otherwise by these GTCs or the respective Individual Sales Contract.

III. Prices and Payment

1. Prices in Lantiq's offer or in the Individual Sales Contract are determined on the basis of the agreed Incoterms and do not include any applicable value added taxes.
2. The Buyer shall effect all payments within 30 days from the date of invoice, unless agreed otherwise in the Individual Sales Contract.
3. All payments shall be effected - without any deduction, unless permitted under the following paragraph 4 - on the bank account indicated by Lantiq. Any discount or bank charges shall be borne by the Buyer.
4. The Buyer shall be entitled to exercise its rights to retain any payment or to make a set-off only, if and to the extent the Buyer's claims are undisputed or finally awarded by a court of competent jurisdiction. In addition, any retention right of the Buyer permitted as per sentence 1 of this paragraph shall be limited as follows:
 - (i) the Buyer's retention rights may be exercised only in respect to those counterclaims of Lantiq that are resulting from the same Individual Sales Contract from which Buyer is deriving its retention right; and
 - (ii) in case of defects for which Lantiq is responsible for as per sect. VII. below, the Buyer may retain only such portion of the payment only that is reasonable in relation to the notified defect.
5. The Buyer is deemed to be in compliance with the payment term as per paragraph 2 above only if a credit entry of the full payment amount has occurred on the Lantiq account within such payment term of 30 days.
6. If and to the extent the Buyer is in delay with any payment, Lantiq reserves its right, to retain the supply of further Deliverables to the Buyer, whether any such Deliverable is related to the delayed payment or not. This shall not limit any other rights and remedies Lantiq may have under governing law.
7. Lantiq shall be entitled to charge in interest rate of either 10 percent p.a. above the then current ECB - base interest rate or 12 percent p.a. whichever rate is higher, unless the Buyer proves that Lantiq has incurred a damage which is below the higher rate. This shall not limit any other rights and remedies Lantiq may have under governing law.

IV. Delivery Dates and Delay in Delivery

1. Delivery dates or delivery periods shall be non-binding target dates or periods, unless explicitly agreed in writing as binding delivery or fix date/period (hereinafter referred to as „the Fix Date“). In any event (in case of target dates and/or Fix Dates), however, Lantiq will inform the Buyer as soon as possible of any foreseeable delay in delivery.
2. In case a Fix Date is defined by the parties as a specific date, Lantiq is deemed to be in compliance with such date, in case delivery occurs within a delivery window of three business days following such date.
3. Even in the context of Fix Dates Lantiq is not liable for any delay in delivery, if and to the extent such delay results from wrong or insufficient supply to Lantiq (e.g. of raw or basic material or commodities) or results from an event that is beyond the reasonable control of Lantiq including but not limited to war, events of terror, administrative acts, export/import restrictions, industrial action. In any such event the delivery date shall be postponed and a delivery period extended accordingly. Should any such postponement or extension of the delivery exceed in aggregate a period of two months, either party shall be entitled to rescind from the Individual Sales Contract.
4. Lantiq's compliance with Fix Dates requires that the Buyer completely and in due time fulfils each of its obligations under the Individual Sales Contract including but not limited to its obligation to pay and to co-operate. In case the Buyer fails to fulfil any of its obligation (with or without the Buyer's fault), delivery dates will be rescheduled, delivery periods extended accordingly. This shall, however, not apply in case the delay in delivery is solely caused by Lantiq. This paragraph shall not limit any other rights and remedies Lantiq may have under governing law.
5. Delay in delivery shall require that delivery is due as per this section, the Buyer has granted Lantiq a reasonable grace period for delivery by means of written notification and the delivery is at Lantiq's fault as per this section. This paragraph shall neither alter nor modify the distribution of the burden of proof as per governing law.
6. In case Lantiq is in delay of delivery for reasons Lantiq is responsible for and the Buyer has incurred a damage as a result hereof, the Buyer may claim from Lantiq per completed week of delay liquidated damages in the amount of 0.5 % of the net-value of the delayed Deliverables, in any event however, not more than 5 % of the net-value of delayed Deliverables. This paragraph shall neither alter nor modify the distribution of the burden of proof as per governing law. The Buyer shall upon Lantiq's request declare in due time whether the Buyer insists on the delivery or rescinds from the Individual Sales Contract affected by such delay. Any other rights and remedies of the Buyer in connection with Lantiq's delay in delivery shall be excluded.

V. Buyer's Obligation to Notify and Inspect

1. Promptly following completion of the delivery of the Deliverables the Buyer shall inspect each Deliverable with respect to
 - (i) the correctness of the type of the delivered Deliverables;
 - (ii) the correctness of the volume/numbers of the delivered Deliverables;
 - (iii) any damages to the outer packaging of the delivered Deliverables; and
 - (iv) any other damage to the delivered Deliverables resulting from the transport that is visible by means of an outer inspection.In case of item (i) and (ii) above it is deemed to be sufficient, if the Buyer performs the inspection on the basis of the information displayed on the packaging or on the bill of sale, provided the packaging for technical reasons does not permit any inspection of the content or the opening of the packaging is for other reasons not feasible to the Buyer.
2. In addition to the inspection obligations as per paragraph 1 above the Buyer shall verify the correct functionality of each Deliverable at the earliest possible stage within the Buyer's manufacturing and assembling process. If commercially feasible to the Buyer, such verification shall be done before any processing of the Deliverables, in any event and at the latest before dispatching those products of the Buyer which incorporate the Lantiq's Deliverables.
3. In regard to defects in the Deliverables which the Buyer with reasonable efforts should have detected prior to processing of the Deliverables, the rights and remedies granted under section VII shall be excluded with respect to such defects and shall not apply.
4. The Buyer shall notify in writing any defects that have been verified by the Buyer in accordance with paragraph 1 or 2 above promptly after becoming aware of any such defect and shall deliver a detailed description of the defect in such notification letter. Should the Buyer fail to deliver any such notification letter in time, in writing or in a sufficiently detailed way, the rights and remedies granted to the Buyer under section VI shall be excluded with respect to such defects.
5. Any Deliverables that have been notified to Lantiq as being defective shall, subject to Lantiq's request, be forwarded to Lantiq for the purpose of a quality analysis by Lantiq. The Buyer shall be obligated to request any such analysis from Lantiq before involving any third party in the analysis process.

VI. Liability of Lantiq for Defects in the Deliverables

1. Lantiq warrants that the Deliverables at the time of their delivery to the Buyer possess and demonstrate those characteristics and properties which are agreed in the Individual Sales Contract or contained in the Documentation. However, in such a case the Deliverables may only be considered as being defective, if and to the extent such non-compliance is materially affecting the Deliverables' actual usage by the Buyer.
2. The following properties shall be exempted from the warranty granted under paragraph 1 above:
 - (i) any information given in the Documentation according to which the Deliverable fits or suits a certain purpose or a certain application in a certain environment. Due to the disparate nature of the potential application of the Deliverables the Buyer is aware that any such proposal or recommendation given by Lantiq in the Documentation in no

way is anticipating any concrete form or application by the Buyer and in no way is replacing the thorough technical assessment of the Deliverable's concrete application through the Buyer and its technical departments.

- (ii) any defects to software that are no reproducible by a machine or a computing device.
3. Lantiq shall at Lantiq's cost and reasonable discretion either (i) correct defects in the sense of paragraph 1 above that have been notified by the Buyer in accordance with section VI or (ii) replace any such defective Deliverables. The Buyer shall grant Lantiq a reasonable period of time for any such correction or replacement. Should Lantiq fail in providing such correction or replacement or refuse doing so, since any correction or replacement is commercially not feasible to Lantiq, the Buyer shall be entitled at the Buyer's reasonable discretion to (i) either rescind from the Individual Sales Contract or (ii) proportionally reduce the price paid by the Buyer for the defective Deliverable.
4. Any potential claims of the Buyer for reimbursement of any costs and damages incurred by the Buyer in the course of the correction or replacement as per paragraph 3 above (e.g., assembly and disassembly costs, costs of transportation, analysing costs etc.) shall be excluded, if the affected Deliverable was forwarded by the Buyer in assembled or disassembled form to any place other than the initial place of delivery that has been agreed with Lantiq. In addition, any such claim shall be limited (i) per Deliverable to the price payable to Lantiq for such defective Deliverable and (ii) in aggregate for all Deliverables which show the similar or equivalent defect root cause to the maximum amount of Euro 100,000.00.
5. Any claims of the Buyer other than those set forth in the paragraphs 3 and 4 above, especially any claims for damages, shall be excluded irrespective of the legal basis of any such claim. The Buyer specifically understands that the Buyer shall not be entitled to reject the delivery of whole lots or batches of the Deliverables should individual Deliverables be defective.
6. None of the exclusions and limitations set forth in the paragraphs 4 and 5 above shall apply in case of fraudulent concealment of a defect by Lantiq, in case of any non-compliance of the Deliverable with a characteristic that has been guaranteed by Lantiq, in case of death and personal injuries resulting from warranted defects and in case the warranted defect was caused by Lantiq's gross negligence or wilful misconduct. This paragraph shall neither alter nor modify the distribution of the burden of proof as per governing law.
7. The Buyer's claims under this Section based on defects of the Deliverables shall be time barred within 12 months from the date of completion of delivery to the Buyer, except mandatory governing law provides for longer limitation periods.
8. Should the Buyer assert claims against Lantiq based on this Section although a defect of a Deliverable that has been returned to Lantiq is not involved, Lantiq shall be entitled to charge all costs incurred by Lantiq as a result of any defect analysis and correction attempts performed by Lantiq, unless Lantiq – applying reasonable duty of care - should have avoided any such costs.

VII. Intellectual Property Rights

1. If any third party with the right to assert infringement of its utility models, copyrights or patents issued as of the Effective Date as defined below (hereinafter referred to as "Intellectual Property Rights") in court (hereinafter referred to as "Third Party") brings a claim, request, accusation, allegation, assertion, complaint, petition, demand, suit, action, proceeding and/or cause of action of every kind and description that Deliverables manufactured and sold to Buyer under these GTCs directly infringe any U.S. and/or European Intellectual Property Right (hereinafter referred to as "Claim") against Buyer, Lantiq will defend Buyer against such Claims and pay any damage and costs (excluding punitive and/or exemplary damages) finally awarded against Buyer or adjudicated in a settlement with Lantiq's consent up to the amount of a reasonable license fee which the Third Party could claim directly from Lantiq for infringement by the Deliverables; provided that
 - (i) Buyer promptly informs Lantiq not to exceed 30 days from first receipt of the Third Party Claim and gives Lantiq a copy of all materials (including oral statements) obtained in connection with the Claim;
 - (ii) Buyer gives Lantiq sole control of the defense thereof and of all negotiations for its settlement;
 - (iii) Buyer gives reasonable assistance and cooperation in the defense at Buyer's expense (including making reasonable available Buyer's expert know how and personnel and business records); and
 - (iv) Buyer gives without undue delay all information – and all evidence that is either in Buyer's possession, or control or that Buyer may reasonably obtain relating to any defense available to Buyer and, on Lantiq's request, exercises or makes available to Lantiq such defense, including but not limited to any license or option to (sub)license any Intellectual Property Right that is the subject of such infringement allegation.

Buyer agrees to assert or permits Lantiq to assert on Buyer's behalf, against such Third Party any of Buyer's Intellectual Property Rights that may assist in connection with Lantiq's obligations specified in this section VII.1.

For the purposes of this section VII, "Effective Date" shall mean the date of the first delivery of the respective Deliverable under these GTC's.

"Affiliate" shall be a company controlled by, under control of or under the same control as a Party whereas control means the ownership of more than fifty percent (50%) of the capital or equivalent voting rights.

2. In the event of an allegation by a Third Party claiming infringement of its Intellectual Property Rights in connection with the Deliverable or if in Lantiq's opinion there is the likelihood of a Claim of a Third Party, Lantiq has the right to – but shall not be obligated to –
 - (i) obtain a license that allows Buyer to continue the use of the Deliverables free from any liability for that infringement consistent with these GTCs;
 - (ii) replace or modify the Deliverables so as to be non-infringing but in a manner that does not materially affect the functionality of the Deliverables; or
 - (iii) if neither (i) nor (ii) is available to Lantiq at a commercially reasonable expense, then Lantiq shall have the right to cancel any Individual Sales Contracts and refund the purchase price and transportation costs of all allegedly infringing Deliverables and prospectively cease to indemnify Buyer with regard to all such Deliverables without being in breach of these GTCs. Buyer shall return to Lantiq any Deliverables remaining in Buyer's possession or control.

If Lantiq elects to procure either of the options set forth in sections VII.2 (i) and (ii) above, Lantiq's obligation pursuant to section VII.1 shall be entirely fulfilled as to that individual Claim, except for any damages or costs specified therein incurred by Buyer prior to Lantiq taking such action. If Lantiq elects the option set forth in section VII.2 (iii) above, Lantiq's obligation under section VII.1 shall be entirely fulfilled, regardless of any additional Claim.
3. Lantiq has no obligation hereunder for Claims of a Third Party
 - (i) if such Claims arise as a result of Buyer's wilful acts or gross negligence;
 - (ii) if the infringement is not completed by the Deliverable itself and results from any application of the Deliverable; or
 - (iii) if an infringement allegation is made in connection with
 - (a) modifications to the Deliverables made by Buyer or a third party;
 - (b) Lantiq's implementation of design, material, software, specifications and/ or instructions provided by Buyer or by a third party for Buyer;
 - (c) Buyer's use of the Deliverables in combination with any other good, service, software or material;
 - (d) any Intellectual Property Right of an entity in which Buyer or Buyer's Affiliate has a controlling interest; or
 - (e) Lantiq's compliance with any proprietary and/or industry standard.

Lantiq's obligations under section VII.1 shall not apply to any infringement occurring after Buyer has received notice of a court proceeding alleging infringement by the Deliverables unless Lantiq has given written permission for the continuing use or sale of the Deliverables.

4. All claims under this section VII shall be subject to the limitation period of 2 years.
5. If any allegation is made against Lantiq and/or its Affiliates based on a claim that any of the items or activities in section VII.3 (iii) subparts (a) - (d) infringe an Intellectual Property Right, then the obligations of Lantiq under these GTCs shall reciprocally apply to Buyer in favour of Lantiq and its Affiliates.
6. THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY IN REGARD THERETO;
7. Notwithstanding anything to the contrary set forth in these GTCs, the parties agree that Lantiq shall not be liable and shall have no obligation under this Section VII with respect to any Claim that is related to or based on the Moore Microprocessor Patent Portfolio as currently asserted by Technology Properties Limited Inc. (including without limitation the US Patent US 5,440,749 or European Patent EP 0 870 226 or any patents claiming priority of one of these patents).
8. Except for an action to enforce the terms of these GTCs, Buyer and its Affiliates hereby covenant that they will not assist in or assert any claim (including, without limitation, any intellectual property claims) against Lantiq or its Affiliates, their customers, directors, employees or officers relating to the use, sale or manufacture of products of the same kind as Deliverables, any derivatives thereto, or any related materials.

VIII. Liability of Lantiq and Limitation of Action

1. Any claims of the Buyer against Lantiq for the compensation or the reimbursement of damages and costs incurred shall be excluded irrespective of the legal basis involved, save as provided otherwise in section IV with regard to Lantiq's delay in delivery, section VI with regard to defects in Deliverables and section VII. with regard to the infringement of Intellectual Property Rights.
2. The exclusion as per paragraph 1 of this section shall not apply, in case mandatory applicable law, including but not limited to mandatory law on strict product liability provides otherwise.
3. To the extent the Buyer is entitled to claim compensation or reimbursement of damages or costs from Lantiq under this section, any such claim shall be time-barred within one year from the date upon which governing law determines to start the limitation of action. However, the limitation periods provided for by governing law shall continue to apply, in case Lantiq commits a gross negligent or wilful breach of the Individual Sales Contract, in case the claim is based on death and personal injuries or in case mandatory law on strict product liability applies.

IX. Miscellaneous

1. These GTCs and each Individual Sales Contract between Lantiq and the Buyer shall be governed and construed by the laws of Switzerland, including but not limited to all issues relating to the conclusion or termination of any such Individual Sales Contract. The Agreement of the United Nations on Purchase Contracts on the International Sale of Goods dated April 11, 1980 shall not apply.
2. Should any provision in these GTCs or any provision in any Individual Sales Contract be or become invalid, the validity of all other provisions or agreements shall remain unaffected thereby.
3. The Buyer shall comply with all ex- and import laws applicable to the Deliverables, including but not limited to the ex- and import laws of Germany and USA. The Buyer shall verify the correctness of the ALNR/ECCN classification identified by Lantiq. Save as provided otherwise in the Individual Sales Contract, the Buyer shall execute all administrative proceedings and fulfil all statutory requirements in connection with or resulting from any cross border delivery of the Deliverables.
4. Place of jurisdiction for any disputes, which arise directly or indirectly from or in connection with these GTCs or any Individual Sales Contract, including but not limited in connection with their conclusion or termination – shall be Zürich, Switzerland. Any such choice of place of jurisdiction shall be exclusive for the Buyer only.