

TERMS AND CONDITIONS OF SALE

Preamble

Seller is Dr. jur. Michael Jaffé as insolvency administrator over the assets of Qimonda AG, Gustav-Heinemann-Ring 212, 81739 Munich, Germany (referred to herein as „Qimonda“).

§ 1 Sale

- 1.1. The Seller hereby sells and - subject to full payment by Purchaser of the purchase price in accordance with section 2 - transfers title to the Purchased Goods listed in his quote to Purchaser which accepts the Purchased Goods hereby.
- 1.2. The Purchased Goods shall not encompass any immaterial property rights of Qimonda existing in connection with the Purchased Goods, and, in particular, shall not encompass software or licenses. This shall also apply where such rights are necessary for the use of the Purchased Goods. Purchaser is therefore required to obtain all third party immaterial property rights necessary to make use of the Purchased Goods at its own cost. Purchaser is further obliged to defend and hold harmless Seller from and against all justified claims, demands and actions brought against Seller based upon any infringement of the Necessary Third Party Rights.
- 1.3. The quote describes whether the Purchased Goods are in new or used condition. Where the Purchased Goods are in used condition, these are sold in their respective state and condition at the time of the purchase. The Parties agree that this condition shall represent the fitness for use owed (geschuldete Beschaffenheit) in respect of the relevant Purchased Goods.
- 1.4. Seller's quote also contains special stipulations Purchased Goods which have been purchased or manufactured with capital investment subsidy.

§ 2 Purchase Price

- 2.1. The total purchase price for the Purchased Goods amounts to the price stated in Seller's quote, plus statutory value added tax to the extent applicable.
- 2.2. The Purchase Price is payable immediately.
- 2.3. The Purchaser is obliged to pay the Purchase Price to the following account, unless stated otherwise in the quote:
Aktio RA Dr. M. Jaffé wg. Qimonda AG
Kontonummer: [290918280], Commerzbank AG, München BLZ: 70040041
IBAN: [DE 89700400410290918280], SWIFT: [COBADEFF700]

§ 3 Delivery, Transfer of Risk, Default of Acceptance

- 3.1. Delivery shall take place after payment of the Purchase Price at the respective site of the respective Purchased Goods according to the quote. The Purchaser is responsible for picking up the Purchased Goods, including disassembly, crating, packing and transportation of such Purchased Goods. The Purchaser also bears on its own the costs as may arise where other property that is not purchased must be removed or moved from its original location. Where other property is damaged or destroyed, Purchaser shall bear liability for such property pursuant to statutory regulations.
- 3.2. The Purchaser shall be obliged to take delivery of the Purchased Goods immediately. Where the Purchaser is in default of acceptance or where it culpably violates its obligations to assist in the consummation of the transaction, the Seller shall be entitled to claim against the Purchaser for the damages resulting thereof including compensation for the additional costs arising as a result thereof. The Purchaser reserves the right to assert additional claims.
- 3.3. The risk of accidental destruction or of accidental damage to the Purchased Goods is transferred to the Purchaser with the pick up or, if applicable, with the start of disassembly of the Purchased Goods, however no later than the date of default of acceptance.

§ 4 Export Authorization und Export Freedom

- 4.1. Where the Purchaser wishes to export the Purchased Goods, it shall bear the risk of an export prohibition as of the date it enters into the purchase, the risk of a subsequent export prohibition, and similarly, the risk of obtaining an import authorization.
- 4.2. All costs associated with export and import shall be borne by the Purchaser.

§ 5 Retention of Title

- The Seller shall retain title to Purchased Goods up until the fulfillment of all claims arising as a result of the business relationship with the Purchaser and, in particular, up until the settlement of any outstanding current account amounts (title retention until outstanding accounts have been paid – Saldovorbehalt). Until settlement of all such outstanding current account amounts the following shall apply:
- 5.1. In the event of actions of the Purchaser which violate this Agreement, in particular, in the event of payment default, the Seller shall be authorized to withdraw from this Agreement subject to the expiry of a reasonable notice period and to repossess the Purchased Goods delivered by it or to effect seizure upon these. Upon the repossession of one or more of the Purchased Goods, the Seller shall be authorized to liquidate these; the liquidation proceeds shall be set off against the amounts owing by the Purchaser after deducting reasonable liquidation costs.
 - 5.2. The Purchaser is obliged to store and keep safe the Purchased Goods on behalf of the Seller and to treat these with care. Where maintenance and inspection is necessary, the Purchaser shall ensure that this is performed on a timely basis at its own cost.
 - 5.3. The Purchaser must notify the Seller immediately in writing in the event of seizure or other interventions by third parties. Where the third party is not able to reimburse to the Seller the court and/or extra-judicial costs of third party, the Purchaser shall be liable to compensate the Seller for the shortfall resulting therefrom.
 - 5.4. The Purchaser is entitled to subsequently sell the Purchased Goods in the context of customary business transactions but may not provide security interests in or pledge these. The Purchaser hereby assigns to the Seller in advance all claims in the amount of the final invoice amount (including value added tax) which it becomes entitled to assert against its respective customers or other third parties as a result of the subsequent sale. The assignment shall serve to secure the claims of the Seller in the same scope as the reservation of title in accordance with section 5.1 of these Ts&Cs ("Ts&Cs"). The Purchaser shall remain entitled to enforce upon these claims subsequent to the assignment. However, the Seller is entitled to enforce upon these claims itself where the Purchaser fails to comply with its payment obligations, defaults on payment, an application for the commencement of insolvency proceedings is commenced with respect to the Purchaser or the Purchaser ceases to make payments. In such cases, the Seller may revoke its grant of authorization to enforce upon claims. In addition, the Seller may demand that the Purchaser notify it immediately of the assigned claims and the parties owing under these, makes available to the Seller a written notification of assignment and makes available to the Seller all information and documents necessary for the enforcement of the claims.
 - 5.5. Where Purchased Goods are irretrievably commingled with or integrated into other goods that do not belong to the Seller, the Seller shall acquire joint and several title to the commingled or integrated goods corresponding to the value of the Purchased Goods belonging to the Seller (final invoice amount including value added tax) proportionate to the value of the commingled or integrated goods as a whole. Where the Purchased Goods are commingled or integrated in such a manner that the Purchased Goods of the Purchaser are regarded as the principal goods (Hauptsache), it is agreed herein that the Purchaser hereby assigns and transfers to the Seller proportionate joint and several property rights. The Purchaser shall store and keep safe the Purchased Goods belonging solely – or jointly and severally – to the Seller on behalf of the Seller.
 - 5.6. The Purchaser also assigns to the Seller as security for the Seller's claims all claims against a customer of the Purchaser or third party resulting as a consequence of the Purchased Goods becoming attached as a fixture to real property. Section 5.4 of these Ts&Cs shall apply mutatis mutandis.
 - 5.7. At the request of the Purchaser, the Seller shall release security interests to the extent that the realizable value of the security interest exceeds the secured claims by more than 10 %. The Seller is entitled to select the security interests to be released.

§ 6 Warranty

- 6.1.1. The Seller assumes no responsibility for the achievement of any objectives – in particular commercial objectives - which the Purchaser is pursuing by entering into the purchase agreement.
- 6.1.2. Used Purchased Goods are sold exclusive of any warranty or guarantee, and nothing in these Ts&Cs shall be construed as an express or implied warranty or representation by Seller, irrespective of its legal basis.
- 6.2. The following terms apply to the sale of unused and/or new Purchased Goods.
 - 6.2.1. All information provided with respect to the Purchased Goods consists of information with respect to the attributes of the goods (Beschaffenseigenschaften) and does not constitute guarantees.
 - 6.2.2. The Purchaser may not refuse to accept Purchased Goods as a result of insignificant defects. Customary variations shall not constitute a defect.
 - 6.2.3. The Purchaser is obliged to carefully examine Purchased Goods immediately upon their delivery. This shall also apply where the Seller delivers the goods to third parties at the instruction of the Purchaser. Purchased Goods shall be deemed to be approved where notice of a defect is not made

immediately and the defect would have been discovered in the context of a careful inspection. Where a defect was not identifiable subject to careful inspection, the limitation period for providing timely written notice commences as of the date of discovery of the defect.

- 6.2.4. The Purchaser must immediately offer the Seller a reasonable opportunity to examine a defect during regular business hours. In the event of an intentionally or negligently false notification of a defect, the Purchaser shall be liable for the damages resulting therefrom.
 - 6.2.5. The Seller shall not be liable for defects of the Purchased Goods delivered which arise as a result of their improper treatment by the Purchaser or third parties.
 - 6.2.6. In the event of a defect as to quality (Sachmangel), the Seller shall be entitled to choose to deliver goods free of defects or to remedy the defect (Nacherfüllung). In the event of remedial action, the Seller shall be obliged to bear all necessary costs and expenses, in particular, transportation, shipping, labour and materials costs, to the extent that these are not increased as a result of the Purchased Goods having been relocated to a location different from that of the original delivery or shipping site. This shall not apply where the transportation of the goods to another site corresponds to the usual use of the Purchased Goods. Where the Seller elects to remedy the defect by way of subsequent delivery (Nacherfüllung in Form der Nachlieferung), the defective Purchased Goods shall be shipped back to the Seller free of freight and shipping charges, whereby the Purchaser shall select the most inexpensive means of shipping.
 - 6.2.7. In the event that the remedy of a defect is ineffective, the Purchaser shall be entitled – at its option – to withdraw from the purchase agreement, to reduce the Purchase Price or to claim damages instead of specific performance or compensation for fruitless efforts. No claims for damages instead of specific performance or for compensation for fruitless efforts may be asserted in the event of insignificant defects (unerhebliche Mängel). The presence of insignificant defects shall not entitle the Purchaser to withdraw from the purchase agreement. A remedy of a defect is ineffective where the Seller is unable to remedy the defect within a reasonable period of time as set by the Purchaser, where two attempts on the part of the Seller to remedy the defect have been ineffective, where the Seller seriously and conclusively refuses to remedy the defect or the remedy of the defect is unreasonable for the Purchaser. The rights to which the Seller is entitled pursuant to § 275 BGB to refuse to remedy the defect in a specific manner remain unaffected.
 - 6.2.8. Where, as a result of an ineffective remedy, the Purchaser is entitled on the one hand to continue to demand that the defect be remedied and, on the other hand, to assert the statutory rights to which it is otherwise entitled, the Seller may demand that the Purchaser exercise its rights within a reasonable period of time. The Purchaser shall notify the Seller of its decision in writing. The receipt of the written notification of the Purchaser shall be determinative with respect to compliance with notice periods. Where the Purchaser fails to exercise its rights on a timely basis (fristgerecht), it may exercise such rights, in particular, the right to claim damages or to withdraw from the purchase, only where an additional reasonable period (to be determined by it) for such remedy has expired without success.
 - 6.2.9. Claims in respect of delivery of Purchased Goods with defects as to quality including damages claims relating to the delivery of such defective Purchased Goods shall expire one year after delivery. This shall not apply to damages claims based on intentional misconduct or gross negligence as well as to claims resulting from death, injury or damage to health. Where statutory provisions provide for a longer limitation period in respect of the use of Purchased Goods in buildings, the statutory limitation period shall apply.
 - 6.2.10. The statutory provisions contained in §§ 478, 479 BGB remain unaffected.
- ## § 7 Limitation of Liability
- 7.1. In the event of intentional misconduct or gross negligence on the part of the Seller or on the part of a representative or agent of the Seller, the Seller shall be liable pursuant to statutory liability regulations. The same shall apply in the event of death or injury or damage to health. The Seller – and its representatives and agents – shall further be liable for general negligence (leichte Fahrlässigkeit), in the event of the impossibility of consummation, for default and for the violation of another fundamental contractual duty. Fundamental contractual duties comprise those which render essentially possible the proper fulfillment of the purchase agreement and which the Purchaser is generally entitled to rely upon. In such cases, the Seller's liability is limited to customary contractual damages which the Seller would have to have accounted for at the time the purchase agreement was entered into.
 - 7.2. Additional liability – regardless of its legal basis – is excluded. This applies – in particular – to all claims arising as a result of the violation of contractual duties and to claims arising in tort (unerlaubte Handlung). Liability in accordance with the Product Liability Act (Produkthaftungsgesetz) remains unaffected.
 - 7.3. This limitation of liability shall also apply to the benefit of the representatives and agents of the Seller.
 - 7.4. The Seller – as insolvency administrator – provides no personal guarantee and assumes no personal liability for the obligations contained in these Ts&Cs. All personal liability on the part of the insolvency administrator arising out of or in connection with these Ts&Cs is excluded to the extent permissible by statute. This applies in particular to obligations pursuant to §§ 60, 61 of the German Insolvency Act (Insolvenzordnung) and/or § 311 (2) BGB, but also to obligations arising under any other legal basis. In the event that personal liability on the part of the insolvency administrator should otherwise exist, this party shall only be liable for intentional misconduct and gross negligence. In any event, the personal liability of the insolvency administrator is limited to the purchase price actually paid by the Purchaser to the Seller for the Purchased Goods.
- ## § 8 Set-off, Rights to Withhold
- 8.1. Each contractual Party is entitled to set off claims to which it is entitled only to the extent that such claims have been established by a legally-binding, non-appealable judgment of a court or are undisputed. The same shall apply to the assertion of a right of retention (Zurückbehaltungsrecht).
 - 8.2. The Seller explicitly refers the Purchaser to the statutory provisions relating to set-off in an insolvency context pursuant to §§ 94 et seq. of the German Insolvency Act.
- ## § 9 Representation of the Insolvency Administrator
- The Seller notes that all notices made in connection with this purchase may only be provided by the Seller personally in his capacity as insolvency administrator or by individuals duly appointed by him. The previous representative bodies and appointees of Qimonda no longer exercise representative authority.
- ## § 10 Confidentiality
- Purchaser shall for a period of two years after signature of these Ts&Cs use all information, which the Purchaser receives in connection with this Agreement confidentially, use it only for the purposes of these these Ts&Cs and shall keep this information confidential to third parties.
- ## § 11 Concluding Provisions
- 11.1. Arbitration agreements or provisions agreed to between the Parties or subject to the participation of Qimonda similarly shall not apply to this purchase agreement.
 - 11.2. With these Ts&Cs, the Parties regulate only the undertaking of the performance hereof. All other matters remain unaffected by this Agreement. In addition, by agreeing to these Ts&Cs, the Parties shall not prejudice any other matters, including comparable matters. Section 11.3 remains unaffected thereby. The ability of the insolvency administrator to assert potential claims in relation to other transactions or activities remains unaffected; this especially relates to entitlements to have transactions set aside. Third parties may derive no rights from this Agreement. In particular, the entering into of this Agreement does not constitute a representation to third parties with respect to performance or non-performance.
 - 11.3. Unless otherwise expressly regulated in these Ts&Cs, each Party shall bear the costs, fees and transaction taxes incurred by it in relation to the entering into and performance of these Ts&Cs.
 - 11.4. This Agreement is governed exclusively by German law with the exception of UN commercial law. German-language terms contained in this Agreement shall serve as interpretative sources for the application of such terms in the context of this Agreement. These Ts&Cs are drafted in English; in all cases, however, German law and German legal definitions shall be used to interpret and apply these Ts&Cs regardless of whether a German definition is provided in the text of this Agreement.
 - 11.5. The ordinary courts (ordentliche Gerichte) shall have jurisdiction over disputes arising from and in connection with this Agreement. The exclusive venue for all disputes arising from and in connection with this Agreement is Munich, provided that no other exclusive jurisdiction is founded. However, the Seller shall also be permitted to claim against the Purchaser at its discretion in any other courts available to it by law.
 - 11.6. The English translation of these terms and conditions is for information purposes only. In case of any conflicts, the German version shall prevail.