

# TOPSIL

## Standard Sales Conditions

(May 2008)

### Preamble

These Standard Sales Conditions shall apply when Topsil Semiconductor Materials A/S (Topsil) and the concerned Purchaser agree thereto. Deviations from the Standard Sales Conditions shall not apply unless explicitly agreed in writing.

### 1. Offers

Offers made by Topsil are valid for 30 days subject to capacity being unsold.

### 2. Prices

Prices are as per Topsil quotation. Prices are inclusive of Topsil's standard packaging but exclusive of VAT and other tax and duties according to applicable Danish Law.

### 3. Delivery and Delivery Time

Delivery takes place in accordance with the agreed trade terms to be interpreted in accordance with Incoterms 2000, FCA Frederikssund. The Purchaser is required to procure the documentation needed in order to obtain an export licence. Topsil shall be entitled to effect deliveries successively. Time of delivery will be indicated by the date of shipment, but with reservations for delays. The Purchaser may cancel the order where delivery has not been effected 42 days after the end of the agreed week of delivery.

Apart from this, the Purchaser is not entitled to raise any claims on account of the delay.

### 4. Cancellation or Postponement by Purchaser

Except by mutual agreement no order for goods manufactured to a Purchaser's specification may be cancelled or postponed except on payment by the Purchaser of the full costs incurred up to date of cancellation or to be incurred by reason of the applicable postponement. Topsil's estimation of this is final.

### 5. Quantity

The delivery of a quantity within  $\pm 10\%$  of the agreed quantity shall be considered legitimate delivery.

In case of minor orders, i.e. under 1,000 mm crystal or 1,000 wafers the delivery of  $\pm 25\%$  of the agreed quantity shall be considered legitimate delivery.

Orders not exceeding \$ 2,000 cannot be accepted, unless material is in stock.

### 6. Obstacles to Delivery

Where the delivery to be made by Topsil is frustrated or considerably impeded, Topsil's duty to deliver shall be negated for as long as the obstacle in question exists.

Topsil shall only be held responsible where gross negligence can be proven on the part of Topsil.

### 7. Payment

Unless otherwise agreed, the purchase price is payable in cash 30 days after the date of invoice at Topsil's address or by transfer to Topsil's bank account. If the Purchaser fails to pay by the agreed date, Topsil shall be entitled to interest from the day on which the purchase price became due at a rate of 2% per month entered into. Even where no agreement has been made to that effect, Topsil reserves the right to demand advance payment or other guarantee.

### 8. Passing of Ownership, Retention of Title

The goods shall remain the property of Topsil until paid for in full. The legal ownership of the goods shall pass to the Purchaser on the date of proper payment regardless of delivery terms. However, failure to pay on the agreed date does not eliminate the Purchaser's obligation.

If deliveries or successive deliveries are not properly paid according to clause 7 the Purchaser is obliged on his account upon Topsil's request to return the goods in question. In such case no further deliveries will take place until title to the goods has passed to the Purchaser according to clause 8.

### 9. Transfer of Responsibility

It is the Purchaser's full responsibility to provide a careful handling of all goods to prevent any losses, damages, or anything else which could reduce the value

of the goods until the ownership has passed to the Purchaser according to clause 8.

### 10. Breakages, Shortage, Non-delivery

Although every endeavour will be made to fulfil promises of delivery Topsil cannot accept any liability in respect of non-delivery.

Topsil is prepared to submit claims under any insurance taken out by Topsil on behalf of the Purchaser for the value of the goods delivered in respect of breakages, shortage, or non-delivery, conditional upon the following:

- a) breakage or shortage must be notified in writing to the carrier (copy to Topsil) within 3 days after delivery, and goods and packaging should be retained for inspection by the carrier, inclusive of documentation, otherwise no claim for loss of goods can be submitted, and
- b) no responsibility can be accepted for goods lost in transit unless both the carrier and Topsil are notified of non-delivery within 14 days from date of Topsil's notice of dispatch.

### 11. Liability for Defects

Topsil undertakes, subject to the restrictions under clauses 12 to 15, at its sole discretion, either to replace defective goods with similar goods free from defects or to credit the defective goods to the Purchaser's account.

12. Any Topsil liability under clause 11 is subject to 1) that Topsil has been notified of the defects found by the Purchaser within 6 months after the Purchaser has received the goods, 2) that the Purchaser has notified Topsil without undue delay, and 3) that the defective goods have been returned to Topsil in the same condition as delivered and in original packing within a period of 30 days after Topsil has been notified of the defects.

13. Topsil's liability under clause 11 requires that Topsil, after inspecting the returned goods cf. clause 12, acknowledges that the goods are defective.

14. Any claim in excess of Topsil's liability under clause 11 is no concern of Topsil's, unless the Purchaser proves gross negligence on the part of Topsil.

15. Should Topsil be held responsible, the Purchaser shall not be entitled to claim damages for trading loss, loss of profit, consequential damages or any other indirect damages.

### 16. Product Liability

Topsil shall under no circumstances be liable towards the Purchaser for damage caused by goods delivered by Topsil to any (movable or immovable) property or products of which the goods form a part, nor shall Topsil be liable for trading losses, loss of profit consequential damages or any other indirect damages. Topsil is liable for personal injury only if it is proven that the injury is due solely to the goods being defective when delivered to the Purchaser and that this is exclusively owing to gross negligence on the part of Topsil. In as far as Topsil should incur product liability towards any third party, the Purchaser is under an obligation to indemnify and hold Topsil harmless to the extent that Topsil's liability is limited towards the Purchaser. If a third party raises a claim against either party for damages for product liability, the party in question must notify the other party thereof forthwith. Topsil and the Purchaser are under a mutual obligation to allow proceedings to be instituted against them at the court which hears a claim for damages brought against either of them on the basis of damages allegedly caused by Topsil's goods. However any division of liability between Topsil and the Purchaser shall always be settled in accordance with clause 17.

### 17. Law Applicable and Venue

Any dispute arising out of these Standard Sales Conditions and or the contract of sale referring hereto between Topsil and the Purchaser shall be settled according to Danish law and at the Maritime and Commercial Court of Copenhagen.