



A4 PO Format Agreement and Return Receipt 签署同意中芯国际采购订单条款及回函

Dear Supplier:

In order to environmental protection and paper saving, SMIC will change the new purchase order format. The purchase order will change format from two pages print format to single page A4 laser print format. Because the new purchase order format does not list the back clause "GENERAL TERMS AND CONDITIONS OF PURCHASE ORDER" to let the supplier agrees to confirm.

Please read the attachment of "GENERAL TERMS AND CONDITIONS OF PURCHASE ORDER". If your company agrees to the "GENERAL TERMS AND CONDITIONS OF PURCHASE ORDER" clause, the future of your company purchase orders will adopt single page A4 format of the purchase order.

尊敬的供应商：

中芯国际为响应国家保护自然环境的号召，达到逐步减少纸张使用的目的，采购订单由两联式套表打印格式改为A4单页激光打印格式。新式订单将不会再显示原两联式订单背面所述之通用采购条款和条件（如附件，名称：GENERAL TERMS AND CONDITIONS OF PURCHASE ORDER）。

因此，请供应商详细阅读附件，并做一次性签署同意条款确认，此确认适用于中芯国际给与的所有订单。未来给与贵公司的中芯订单将采用 A4 单页激光打印格式作为中芯国际的采购订单。

Semiconductor Manufacturing International Corp. / Corp SPM
中芯国际集成电路制造有限公司/采购部

回 函

Dear SMIC Procurement Department:

尊敬的中芯国际采购部：

Our company read and **agreed** the attachment of "GENERAL TERMS AND CONDITIONS OF PURCHASE ORDER".

我公司已详细阅读并**同意**附件所述之通用采购条款和条件（GENERAL TERMS AND CONDITIONS OF PURCHASE ORDER）。

- And, agree to receive and confirm the e-PO in SMIC Supply Portal in future.且愿意配合中芯“无纸化”政策，未来同意使用中芯国际电子订单，在中芯网站上进行回复确认。
- Do not agree to receive and confirm the e-PO in SMIC Supply Portal. Printed PO is still needed.无法配合中芯“无纸化”政策，暂时不使用中芯国际电子订单。仍需要纸本订单，且同意附件所述之采购订单条款。

Vendor Code/供应商代码： _____ (无供应商代码时,免填此栏位)

Vendor Name /供应商全名： _____

Vendor Signature/供应商签署

Signature Date/签署日期

GENERAL TERMS AND CONDITIONS OF PURCHASE ORDER**1. Order acceptance**

Orders or agreements relating hereto, modifications hereof and additions hereto shall only be binding upon Semiconductor Manufacturing International Corporation, its subsidiaries or affiliates which is expressly set forth as purchaser on front of the PO (hereinafter referred to as "SMIC"), if they have been placed or confirmed as the case may be in writing by SMIC's Purchasing Department. Execution of said orders and agreements shall take place solely on the basis of these General Terms and Conditions of Purchase Order ("this PO"). The general conditions of Supplier shall not at any time be binding on SMIC. This PO shall be deemed accepted by and be binding on Supplier within 5 days from the date hereof or the receipt of any payment for the goods, whichever is earlier. Supplier agrees that it shall always give written notice to SMIC if it does not so accept within this period.

2. Title and Risk to the goods

Unless otherwise agreed to in writing or otherwise required by agreed INCOTERMS, title to the goods shall pass to SMIC upon delivery, and risk to the goods shall pass to SMIC only upon satisfactory inspection and written acceptance of the goods, free from all liens, encumbrances and/or other interests. Inspection and/or use of the goods shall at no time be construed as acceptance.

3. Completion time

Supplier shall deliver the ordered goods at the time(s) agreed. In the event of early delivery of all or part of the ordered goods, provided always that SMIC's prior written approval is obtained, payment may nevertheless be effected as if the initially agreed time(s) had been adhered to.

4. Warranty

Supplier guarantees that all the goods delivered are new, of merchantable quality, fit for the purposes for which they are destined for and conform to the requirements and specifications of SMIC. Supplier further guarantees that the goods are free from defects in workmanship, manufacture and material and satisfy mandatory regulations relating to inter alia health, safety, the environment and electromagnetic interference, and are valid in the country or territory for which the goods are destined. Where installation, assembly, commissioning or any other work is required and stated in this PO, Supplier warrants that the same shall be executed in a professional and good workmanlike manner. Supplier guarantees that the work shall be executed in accordance with the agreed requirements and that the intended results shall be met. Supplier further warrants that no misrepresentation has been made to SMIC and the foregoing is in addition to and not in lieu of any other warranties whether express or implied. Such warranty shall survive delivery, and shall not be deemed waived either by reason of SMIC's acceptance of said materials or articles or by payment for them. Any deviation from this order or specifications furnished hereunder, or any other exceptions of alterations must be approved in writing by SMIC.

5. Inspection

All goods shall be received subject to SMIC's right of inspection and rejection. SMIC is entitled to inspect the goods intended for delivery to SMIC at the factory of Supplier. Such inspection does not imply delivery, taking-over or acceptance of the goods. The goods remain for the account and at the risk of Supplier until the title and risk has passed to SMIC in accordance with Clause 2 above.

6. Rejection

Without prejudice to the warranties of Supplier, SMIC shall be entitled but not obliged to inspect the goods upon their arrival at SMIC's place of delivery or within a reasonable period upon completion of any installation, assembling, erecting, commissioning or other work carried out pursuant to this PO, to ascertain whether the agreed requirements have been complied with. In the event that SMIC does not inspect or discover defects, fault or damages which could not have been discovered in a preliminary inspection upon delivery, SMIC shall still be entitled to reject the goods even after expiration of the said reasonable period according to the provisions herein. SMIC reserves the right to reject the goods delivered in the event of defects and/or the goods otherwise not in conformity with SMIC's requirements and specifications. SMIC shall inform Supplier in writing, citing reasons for any rejection of the goods. At SMIC's sole discretion, all rejected goods shall be returned to Supplier, retained or disposed off by SMIC (all at Supplier's costs). Risk to all such rejected goods shall revert to Supplier from the moment SMIC's notice of rejection is dispatched to Supplier. Supplier shall pay to SMIC on SMIC's first demand, without delay and without any deduction, all amounts prepaid by SMIC for the rejected goods, works or services. Title to all such rejected goods shall revert to Supplier only after such amounts are fully refunded to SMIC. Supplier shall also indemnify SMIC against any and all damages, losses, claims and expenses resulting from the use or sale of such goods. If inspection discloses that part of the goods received are not in accordance with SMIC's specifications, SMIC shall have the right to cancel any undelivered portion of this PO. Payment for goods on this PO prior to inspection shall not constitute acceptance thereof and without prejudice to any and all claims that SMIC may have against Supplier. SMIC shall also be entitled to order the goods from a different supplier and any additional costs so incurred shall be for Supplier's account. Supplier shall perform remedial works on defective and/or non-conforming goods free of charge if SMIC so elects and if such defects and non-conformity are due to the neglect, act or omission of Supplier.

7. Payment terms

Unless otherwise agreed in writing and unless SMIC does not object to the way in which this PO has been executed, payment shall be effected within 30 days from the last day of the month in which, the ordered goods were delivered, or Supplier's invoice was received by SMIC, whichever is the later. Payment shall be made without prejudice to any of SMIC's rights.

8. Set-off

SMIC shall be entitled to set-off amounts payable by SMIC to Supplier with amounts owing by Supplier (and/or other companies which are part of the same group of companies as Supplier) to SMIC (and/or to other companies which are part of the same group of companies as SMIC). In the event that the amounts are quoted in different currencies, SMIC shall decide the currencies in which the set-off shall be effected. Conversion shall be effected at the rate of exchange prevailing on the due date of payment of the relevant invoice(s).

9. Property rights

Supplier shall immediately pass good title and ownership in the models, dies, moulds, jigs, gauges, tools, drawings and/or special equipment, including all industrial or intellectual property rights thereto ("models etc") to SMIC if these were acquired, obtained and/or manufactured by Supplier in the performance of this PO. In the event that the models etc were furnished by SMIC to Supplier or paid for by SMIC, these (and any replacements thereof) shall remain the property of SMIC and shall be returnable upon demand. Supplier agrees that the models etc shall be used only for the purpose of performing this PO. Where Supplier acquired any or all models etc from third parties, SMIC shall pay Supplier for the same, if this has been agreed, but only upon Supplier producing evidence that the same have been fully paid up for. All models etc, including materials, components and spare parts, which SMIC puts at Supplier's disposal for the execution of this PO, shall remain SMIC's property under all circumstances. SMIC reserves, at all times and under all circumstances, the right to take them back whether or not the same have been processed and/or used by Supplier, against reimbursement of processing costs by SMIC, if any. Supplier shall store such models etc, materials, components and spare parts separately and it shall clearly mark all such items as SMIC's property. Supplier shall inform any third parties, who might seek recourse thereon of SMIC's proprietary right, and it shall immediately inform SMIC of such an event. Supplier shall not use the models etc, materials, components and spare parts nor allow them to be used by or on behalf of third parties for or in connection with any purpose other than the execution of this PO.

10. Indemnification

Where this PO provides for installation, assembly, commissioning or any other work to be carried out by Supplier, the same shall be carried out at Supplier's cost, expense and risk, either by itself or by any third parties on its behalf, the latter however being subject to SMIC's prior consent. Supplier shall be liable for injuries and damages to persons and property suffered as a result of its performance of this PO. Supplier shall secure at its own expense, all insurance necessary to indemnify SMIC for all damages, costs and claims resulting from any negligence or act or omission on the part of Supplier and/or the above-mentioned third parties, and shall produce satisfactory evidence of the insurance on demand. Supplier shall warrant that there has been no violation of copyrights, patent rights or other intellectual property rights in developing, designing, manufacturing, producing or selling the goods shipped or ordered under this PO. Supplier shall indemnify SMIC against all fines, losses, damages, costs and expenses arising from any actual or alleged utilization of any patent, patent application or other industrial or intellectual property rights as a result of the use, processing, sale, storage or lease of the goods except to the extent that the same is the result of adoptions made against Supplier's advice by Supplier to comply with SMIC's specific design requirements.

11. Dangerous goods

When transporting dangerous goods, Supplier shall strictly adhere to statutory provisions and provisions of international treaties, conventions and agreements relating to transport of goods applicable in the countries where the goods will be transported. Supplier shall provide SMIC with such written information regarding the composition of dangerous goods so that transport, warehousing and processing thereof may be effected in compliance with the relevant provisions of laws, international treaties, conventions and agreements applicable in the countries referred to in the foregoing. Supplier shall not be released from its obligations hereunder by relying on information provided by SMIC regarding the above-mentioned provisions.

12. Confidentiality

All data and information, including but not limited to, purchase price, business plan, facility, technology, products and product development information, etc., obtained from SMIC whether verbally, in writing or in whatever storage media, shall remain the property of SMIC, be applied by Supplier only for the execution of this PO, and shall be kept in the strictest of confidence and shall not be disclosed, copied, transmitted or otherwise communicated to others by Supplier without SMIC's prior written consent.

13. Termination

Any breach of this PO shall entitle SMIC at its sole option: (a) to give Supplier an opportunity to remedy its failure within a period of time to be determined by SMIC; (b) to forthwith terminate this PO by means of written notice, in whole or in part without liability; and/or (c) to claim for losses and damages from Supplier. In the event that Supplier fails to remedy its failure within the period determined by SMIC, SMIC shall be entitled to forthwith terminate this PO. The termination of this PO shall not prejudice SMIC's right to claim against Supplier for all losses, damages, costs and expenses including fines, which SMIC may incur directly or indirectly as a result of such failure. SMIC shall also be entitled to forthwith terminate this PO by way of a prior written notice, if Supplier: (a) fails to proceed with reasonable diligence; or (b) ceases to carry on business in its normal course, commits an act of bankruptcy or becomes insolvent.

14. Waiver

SMIC's failure to insist on Supplier's compliance with any of its obligations shall not be construed as a waiver or relinquishment of SMIC's right to subsequently invoke strict compliance with such obligations.

15. System compliance

Supplier represents and warrants, in addition to all other representations and warranties herein, that the goods and/or systems supplied: (a) shall be free from any bugs, viruses, error(s) or manufacturing defect(s); (b) shall not generate any invalid and/or incorrect results; and (c) shall not impair the performance, functionality, output or accuracy of SMIC's existing systems and/or goods.

16. Delivery Schedule

Supplier shall deliver the goods as described in quantities as listed and on delivery dates as scheduled in this PO or in SMIC's Delivery Schedule/ Final Acceptance Schedule. Shall Supplier fail to deliver all or any of the goods or services by the delivery date specified in the PO or any extended delivery date agreed under the PO, or fail to complete the final acceptance as scheduled by Request For Quotation/Final Acceptance Schedule, Supplier shall pay to SMIC 0.1% of the contract price for each day or portion thereof delay up to a maximum 20% of the contract price by way of liquidated damages.

17. Transportation

Unless otherwise stated, transportation of goods shall be CIF, INCOTERMS® 2010. In the event that a forwarder has been appointed by SMIC in the country of origin of the goods, shipment of the goods shall be made via SMIC's forwarder unless otherwise agreed to in writing by SMIC. Where goods are to be shipped via the forwarder appointed by SMIC, Supplier will be notified accordingly and shall (a) separately issue invoices for each PO; and (b) consign the Airway Bill, Bill of Lading and Forwarder Receipt to SMIC.

18. Remedial Works

In the event that remedial works or sorting of the goods is necessary due to any defects or non-conformity to SMIC's specifications, SMIC shall at its sole and absolute discretion be entitled to engage a third party to sort or perform remedial works on behalf of Supplier upon which all costs and expense incurred for the same shall be for Supplier's account.

19. Assignment

SMIC shall have absolute right without Supplier's consent to assign all its rights and obligations hereunder to any other entities or persons, and by such assignment, the assignee shall assume all the said rights and obligations as if it were a party hereto and SMIC shall be fully discharged of the same. Supplier may assign only with the express consent of SMIC.

20. Intellectual Property Rights

Supplier warrants that it possesses the legitimate proprietary ownership over and/or the valid and enforceable permit, license or approval to use any and all intellectual property, including but not limited to patents, trademark, copyrights and trade secrets in connection with the hardware, software, services and other tangible or intangible goods purchased or ordered by SMIC hereunder as well as all materials, documents, technology or information that Supplier provides to SMIC.

Supplier further warrants that the hardware, software, services and other tangible or intangible goods purchased or ordered by SMIC hereunder as well as all materials, documents, technology or information that Supplier provides to SMIC will be free from any infringement of any patent, trademark, copyright, trade secret, or other intellectual property rights or other rights of any third party, and will not violate any applicable laws and/or regulations, or breach any legal documents to which the Supplier is a party. Supplier agrees to indemnify, hold harmless and protect SMIC, its successors, assignors, customers and users from such infringement claims. Supplier agrees to assume all liabilities incurred to SMIC.

21. Governing Law and Litigation

This PO and all agreements relating hereto shall be governed by and construed and interpreted in accordance to the laws of People's Republic of China. In the event of any disputes between the parties that cannot be resolved through negotiations, the parties agree to submit the dispute to the competent court in the venue in which SMIC resides.

22. Severability

If any or more of the provisions of this PO is for any reason held invalid, illegal or unenforceable, the remaining provisions of this PO will be unimpaired.

23. Entire Agreement

For issues that have not been specified in the PO, please conform to the related provisions in the Bidding file or other agreements signed by the parties. This PO and other agreements relating hereto, when accepted by Supplier, shall constitute the entire and only agreement between the parties and shall be binding upon both parties.

24. Conflicts

If there's any conflict between this PO and SMIC Purchase Contract, the latter (SMIC Purchase Contract) will always prevail.

25. Responsibility for breach of contract

For the reasons listed below, SMIC reserves the right to apply the following penalty charges as the stipulated penalty for breach of this PO; and SMIC has the right to return the goods, refuse to pay, and unilaterally terminate this PO. If vendor does not pay SMIC the penalty amounts below, SMIC may deduct the penalty amount from its PO payment: (a) Price increase by the vendor without prior written agreement with SMIC Procurement, SMIC reserves the right to apply 5% of total PO amount penalty charge as the stipulated penalty for breach of this PO; (b) Delay or refusal of product delivery by vendor without proper reason, SMIC reserves the right to apply 0.1% of total PO amount per day for both shipment and acceptance (max: 20%) penalty charge as the stipulated penalty for breach of this PO; (c) If the product supplied does not meet the brand, spec and/or quality, SMIC reserves the right to apply 5% of total PO amount penalty charge as the stipulated penalty for breach of this PO.