

## **1. Definitions**

- 1.1. *Buyer MPW Design File* means the design and specifications of the Buyer's order and includes (i) the GDS file; (ii) the completed GDS File Submission Checklist with all required supporting documentation; and (iii) Export control documentation.
- 1.2. *HRL* means HRL Laboratories, LLC.
- 1.3. *Intellectual Property* means any and all U.S. and foreign patents and patent applications, together with any continuations, continuations in part or divisional applications thereof, and all patents issuing thereon (including reissues, renewals and re-examinations of the foregoing); invention disclosures; mask works; net lists; copyrights, and copyright applications and registrations; trademarks, servicemarks, service names, trade names, and trade dress, in each case together with any applications and registrations therefor and all appurtenant goodwill relating thereto; trade secrets, commercial and technical information, know how, proprietary or confidential information, including engineering, production and other designs, notebooks, processes, drawings, specifications, formulae, and technology; computer and electronic data processing programs and software (object and source code), data bases and documentation thereof; inventions (whether patented or not); and all other intellectual property under the laws of any country throughout the world.
- 1.4. *Internal research purposes* means performance on a research project funded by HRL, one or more of HRL's Owners (General Motors Holdings, LLC, The Boeing Company, or any other organization obtaining an ownership interest in HRL), or performance on a U.S. Government contract at any tier.
- 1.5. *Tapeout date* means the day on which all designs on a Multi-Project Wafer are finalized and submitted to production.
- 1.6. *Tile* means the unit of area available for subscription on a Multi-Project Wafer.

## **2. Order of Precedence**

- 2.1. Any inconsistencies in this Order shall be resolved in accordance with the following descending order of precedence: (1) HRL's Quote and these Terms & Conditions; (2) the Buyer Design File after acceptance by HRL; (3) Buyer's Purchase Order as accepted by HRL.
- 2.2. HRL rejects Buyer's Terms and Conditions and any attachments or supplements to Buyer's Terms and Conditions not expressly accepted by HRL in writing.

## **3. Pricing and Payment**

- 3.1. All pricing for Services shall be specified in the Quote. Orders will not be accepted until after receipt of a 50% non-refundable deposit from Buyer. The remaining 50% shall be due upon receipt of Deliverables by Buyer.
- 3.2. Pricing shall reflect net prices excluding any tax, charges, or duty. Any taxes or related charges HRL is required to pay shall be billed to Buyer as a separate item and paid by Buyer on the final invoice, unless a valid exemption certificate is furnished by Buyer to HRL.

3.3. Payment shall be on NET 30 terms. Unless otherwise agreed in writing between Buyer and HRL, full payment of each invoice shall be made within thirty (30) days of receipt. All Invoices shall be paid without retention or set-off by Buyer. Late invoice payments shall be subject to a late payment fee of one percent (1%) of the unpaid balance per month or if limited to lesser amount by law, the maximum interest allowed for commercial transactions.

**4. Reservations and Scheduling**

4.1. Reservations for Tile(s) in a MPW run will be accepted in the order received and will not be held until receipt of the non-refundable 50% deposit. The minimum reservation quantity is one (1) Tile.

4.2. Each MPW run subscription window will close six (6) weeks prior to the Tapeout date available at <https://www.hrl.com/products-services/foundry> or when the Tile area is filled, whichever comes first. In the event a MPW run is postponed by HRL for a reason other than a Force Majeure event, HRL will immediately notify Buyer who may request either (i) to cancel the order and receive a refund of the 50% deposit; or, (ii) if space is available, to move Buyer's reservation to another scheduled MPW run at no additional cost.

4.3. Buyer must submit a Buyer MPW Design File that fits the reserved Tile area and that is free of design rule check errors by deadline for final MPW Design File submission established in the Quote or the Tapeout date, whichever is earlier, or the reserved Tile area will be forfeit by Buyer with no refunds paid by HRL.

5. **Changes** Buyer may change the design prior to the deadline for final MPW Design File submission established in the Quote or the Tapeout date, whichever is earlier. Changes made after this time shall be subject to the Cancellation provisions of this Order.

**6. Intellectual Property**

6.1. This Agreement does not grant, confer, or otherwise transfer any right, title, or interest, by license or otherwise, in or to any invention, copyright, patent, trademark, trade secret, know-how, or other intellectual property of either Party to the other Party.

6.2. Buyer shall retain ownership of the intellectual property included in the Buyer MPW Design File. The Buyer MPW Design File will be held by HRL for the exclusive use of Buyer and HRL shall not use such Buyer MPW Design File for any other party or for its own benefit, other than as granted herein, without the prior written consent of Buyer.

6.3. Buyer grants to HRL an irrevocable, royalty-free, non-exclusive license to use any or all data generated, in the performance of this Order, including but not limited to process measurement and test data, for HRL's internal research purposes.

**7. Confidentiality**

7.1. The Commercial Foundry Services Non-Disclosure Agreement entered into between the Parties is incorporated herein by reference and governs the handling of proprietary information disclosed between the Parties in the course of this Order.

- 7.2. All physical manifestations of the Buyer MPW Design file, including but not limited to masks and residual parts, will be destroyed after one (1) year from the date of the shipment of Deliverables to Buyer.
8. **Reverse Engineering** Buyer shall not conduct, engage in, or in any other way, cause or perform, directly or indirectly, any chemical or physical analysis or in any way, reverse engineer, disassemble, or decompile any product or replicate the composition or construction of any Deliverables, HRL Intellectual Property or Proprietary Information provided hereunder.
9. **No Warranties**
- 9.1. The Parties acknowledge that Orders entered into hereunder are research and development activities with a risk of failure. HRL will make reasonable efforts to complete the Order; however, HRL does not guarantee the operation of any Customer-designed deliverables, regardless of whether an HRL employee provided any advice or comment on its design during the course of entering into this Order.
- 9.2. All services, deliverables, and work product delivered pursuant to this Agreement are provided "AS IS." HRL, ITS OWNERS AND AFFILIATES AND THEIR DIRECTORS, OFFICERS, AND EMPLOYEES, MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.
- 9.3. HRL does not guarantee operation of any customer-designed Deliverable(s).
- 9.4. Nothing in this Agreement shall be construed as a representation made or warranty given that the use by Buyer of any deliverable information shall not infringe on the intellectual property rights of third parties including HRL's owners.
10. **Limitation of Liability**
- 10.1. Regardless of cause or reason for damage (whether accident, negligence, or otherwise) HRL shall have no liability (direct, consequential, or other) for, in connection with or arising from any Services, Deliverables and/or other information related to this Order. In the event liability is adjudicated against HRL, HRL's aggregate liability to Buyer under any provision of this Agreement shall not exceed the total dollar value of the services and/or Deliverables that is the basis for such liability. The existence of more than one claim will not enlarge or extend this limit.
- 10.2. Neither Party will be liable for any loss, injury, damage, delay, claim or other casualty resulting from causes beyond its reasonable control, including but not limited to epidemic, war, fire, riots, delay caused by others, material shortage, force majeure, or labor conditions; and in the event of such a condition(s), the date(s) for HRL's performance will be extended for a period equal to any resulting delay and shall not be considered a breach of this Order.
- 10.3. In no event shall HRL, its owners and affiliates and their directors, officers, and employees, be liable for indirect, incidental, special or consequential damages of any kind including economic damage or injury to property and loss of profits and loss of use, resulting from, arising out of or in connection with

HRL's performance or failure to perform terms and conditions set forth in this Agreement, whether due to breach of contract, breach of warranty, tort, negligence of seller, or otherwise.

**11. Indemnification**

11.1. Buyer shall defend at its expense, indemnify, and hold harmless HRL, its owners and affiliates and their directors, officers, and employees (each an Indemnified Party) against any and all claims, proceedings, and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of or relating to:

11.1.1. The death or injury to any person or persons, or any damage to property, resulting from the production, manufacture, sale, use, lease, consumption, or advertisement of products or services produced and/or developed under this Order, or that uses, in whole or part, HRL's intellectual property pursuant to rights under this Order;

11.1.2. Any claim of infringement of any patent, trademark, copyright, trade secret, or mask work right arising from manufacture, use, or sale of intellectual property or items furnished under this Order;

11.1.3. Any claim that any resultant product, items, and/or deliverables produced under this Order infringes any product.

**12. Shipping and Delivery**

12.1. Unless otherwise agreed in writing, Shipping and Delivery shall be Ex Works (INCOTERMS 2020) for international agreements or FOB Origin for agreements within the United States at HRL's facility, Malibu, California.

12.2. Title and Risk of Loss of the Deliverables shall pass to Buyer when made available to Buyer for pickup at HRL's facility in Malibu, California.

**13. Cancellation**

13.1. Buyer may cancel this Order only in the event HRL (1) breaches any material provision of this Order and does not cure or remedy such breach within thirty (30) days after receipt of written notice of breach from the Terminating Party; or (2) becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed with prejudice within sixty (60) days after filing. Except as otherwise stated in this Order, no monetary payments will be returned to Buyer in the event of a cancellation of this Order.

13.2. Cancellation of this Order for any reason shall not affect the obligations accrued prior to the effective date of termination and any obligations under this Order shall survive the termination or expiration of this Order.

13.3. Notwithstanding any other term of this Order, HRL may immediately terminate the Order in the event Buyer gives notice that:

13.3.1. Buyer consolidates or merges with any third party and Buyer is not the surviving entity of such transaction;

- 13.3.2. Buyer sells, assigns or otherwise transfers all or substantially all of its assets to any third party;
- 13.3.3. Buyer becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed with prejudice within sixty (60) days after filing; or
- 13.3.4. Buyer fails to make timely invoice payments in accordance with this Order.

14. **No Reverse Engineering** Buyer shall not conduct, engage in, or in any other way, cause or perform, directly or indirectly, any chemical or physical analysis or in any way, reverse engineer, disassemble, or decompile any product or replicate the composition or construction of any deliverables, Intellectual Property, or Confidential Information provided under this Order.

15. **Disputes.** The Parties agree to make a good faith attempt to settle any dispute arising under or related to this Order without resort to legal action. If such good faith efforts fail, the Parties may at their option, submit the dispute to mediation and/or binding arbitration in Los Angeles County, California. The selection of an independent and neutral mediator shall be at the mutual agreement of the Parties. Either Party reserves the right to abandon arbitration and pursue all available legal and equitable remedies in the event the other Party does not comply with a demand for arbitration within sixty days of notice. Each Party shall bear its own cost of preparing and presenting its case.

16. **Governing Law and Venue**

- 16.1. This Agreement shall be interpreted, construed, and governed in all respects in accordance with the laws of the State of California, United States of America, excluding its conflict of laws provisions.
- 16.2. The U.N. Convention on Contracts for the International Sale of Goods (Vienna, 1980) shall not apply to any purchases made hereunder. The Federal and State courts of the State of California shall have exclusive jurisdiction and venue over controversies arising out of, or relating to, this Agreement. Each party consents to the exercise of jurisdiction by any such court and waives any objection it might have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine.
- 16.3. Each party waives to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of, or relating to, this Agreement.

17. **Government Contract Provisions** The Deliverable(s) (which for purposes of this Paragraph also includes services and/or Software) that HRL provides are "Commercial Items," "commercial computer software," and "commercial computer software documentation" as defined in FAR 2.101 (Definitions) and FAR 12.212 (Computer software). The United States Government's rights to any Product(s) consisting of "commercial computer software" and "commercial computer software documentation" shall be limited to those rights customarily provided by HRL to the public in the applicable End User License Agreement. If Buyer sells Deliverable(s) to the U.S. Government or if Buyer is using Product(s) on behalf of the U.S. Government, HRL makes no representations, warranties or certifications whatsoever about compliance with acquisition statutes or regulations (including, without limitation, those related to pricing, quality, origin or content). If Buyer sells Deliverable(s) to any other public entity, state or local or international, or to a prime contractor or

subcontractor of such entities, Buyer remains solely liable for compliance with all acquisition laws and regulations.

18. **Publication** Neither Party shall make or authorize any news release, advertisement, or other disclosure without the prior consent of the other Party, except as may be required to perform this Agreement. If approval is received by the submitting Party, no such publication shall include the receiving Party's proprietary information. The submitting Party shall give the receiving Party the option of receiving an acknowledgment in such publication for its sponsorship of, or partnership in, the work.
19. **No Recruiting** Each Party shall refrain from using the contacts that such Party makes with the employees of the other Party or the information about any employee of the other Party to recruit, or to recommend to another the recruiting of, an employee of the other Party, during the course of performance and during a period of one year after the Order delivery date. An employee of one Party may take the initiative to apply for employment at another Party and such other Party may offer employment to such employee so long as such employment is voluntary. This provision is enforceable by injunctive relief from a court of competent jurisdiction and is not subject to the limitation of liability provision, above.
20. **Export Control**
- 20.1. Information disclosed during the term of this Order may be subject to the laws and regulations of the United States pertaining to export control. Buyer agrees to comply with all such laws and regulations, including but not limited to the U.S. Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), and regulations administered by the U.S. Office of Foreign Asset Control (OFAC). If at any time an export license or other permission is required for HRL to lawfully export Deliverable(s) or technical data, or to perform export-controlled services, then the issuance of the appropriate license or permission shall constitute a condition precedent to HRL's obligations hereunder. HRL reserves the right to stop performance at any time if HRL, in its sole discretion, believes that such performance may violate export control laws or regulations.
- 20.2. Each Party shall be responsible for obtaining and maintaining all approvals and licenses, including export licenses and permits necessary to fulfill its obligations hereunder. If necessary, Buyer shall cooperate with HRL in obtaining appropriate export licenses for the Deliverable(s) and will submit all documentation requested by HRL to obtain the appropriate licenses prior to the export of the products or the transfer of any HRL technical data. If required by HRL, Buyer shall provide an end user statement providing a detailed explanation for the end use of the Deliverables. Delays in receiving information from Buyer may extend lead times and HRL shall not be liable in any way related to Buyer delays.
- 20.3. Buyer further agrees that it will comply with all import and export restrictions of any country in which Buyer does business, including but not limited to verification by Buyer that no end user of the Deliverables or recipient of technical data has been listed on any country's "restricted parties" list.
- 20.4. Each Party agrees that it will not export or re-export, resell, ship, or divert or cause to be exported or re-exported, resold, shipped, or diverted directly or indirectly any software, documentation or technical

data incorporating any software to any country for which the government (or any agency thereof) of the United States, or any foreign sovereign government with competent jurisdiction requires an export license or other governmental approval without first obtaining such license or approval.

21. **Waiver** The failure of any Party to insist on performance of any of the terms and conditions, or exercise any of its rights or privileges shall not constitute a waiver of such terms, conditions, rights, or privileges.

22. **Independent Contractors** The parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

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