1. Limits of Agreement

All deliveries and services are exclusively under those conditions and any separate contractual agreements based. The conditions therefore apply also to all future Business relations, even if they are not explicitly agreed. The General Terms and Conditions of the Purchaser are hereby expressly excluded, they do not apply.

2. Offer and Acceptance

A. All orders have to be placed in written form. Telephone orders shall only be binding after the Buyer’s written confirmation. The Seller’s written order acknowledgement shall constitute a binding contract between the parties. Failure by the Buyer to immediately object to the Seller’s order acknowledgement in writing shall constitute an acceptance thereof.

B. Orders may be changed or cancelled only upon the Seller’s written approval. Any change or cancellation will be subject to the following charges: standard orders 10% of the order value, minimum 50 EUR, orders for custom made products: all costs incurred by the Seller relating to the change or cancellation up to the full order value.

C. Where the goods are supplied for export from Germany, the contract is subject to the Seller obtaining the necessary export licenses and all other relevant consents, authorizations and permits relating to the export of the goods. Any contract is deemed invalid, if delivery of the goods would violate ANY legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties on them.

3. Price and Payment Terms

A. All prices shall be ex works Weiterstadt plus the applicable VAT at the time of purchase. All transportation costs shall be paid by the Buyer unless otherwise agreed to in writing by the Seller. Any costs for the disposal of the goods according to the German Electricity Act (ElektroG) are not included in the price.

B. Should any of the third-party costs mentioned in the Seller’s order acknowledgement rise later than four weeks after completion of the contract, e.g. due to monetary parity, the Seller reserves the right to change the price without prior notice.

C. Duty-free delivery (if agreed) has to be accepted by customs authorities. If the Seller is charged customs fees, these will be charged to the Buyer together with an additional, reasonable handling fee.

D. Unless otherwise stated in the Seller’s order acknowledgement, payment is due upon receipt of the goods and invoice within 8 days net without deduction. Upon the expiry of the aforementioned term of payment, the Buyer will be in default of payment. If the Buyer fails to pay any invoice when due, the Buyer shall pay default interest amounting to 9% points above the base interest rate of the German Federal Bank. Additionally, the Seller reserves the right to claim any damages that incur due to the Buyer’s default. Check payments will only be considered effected after bank clearance.

E. In the event of default by the Buyer on stipulated prepayments, the Seller will have the right to cancel the purchase and demand compensation. Compensation will be 15% of the purchase price, unless the Buyer can prove a lower or the Seller can prove a higher actual damage.

F. Unless the Buyer’s counterclaims are legally ascertained, the Buyer has no right to withhold any payments or charge payments against counterclaims.

4. Delivery and Delay in Supply

A. All delivery dates are non-binding unless otherwise agreed by both parties in writing. The Seller reserves the right to deliver earlier than the agreed date.

B. Observance of agreed delivery dates is always subject to complete and timely delivery by the Seller’s supplier. The Seller shall notify the Buyer of the beginning and end of any such circumstances as soon as possible.

C. In the event of failure by the Seller to deliver all of or any part of any order as a result of Acts of God, labor disputes or other causes beyond the Seller’s control, the delivery time will be extended accordingly. The Seller will inform the Buyer of the beginning and end of any such circumstances as soon as possible.

D. The Seller reserves the right to make partial deliveries of any part of any order unless a partial delivery is of no use to the Buyer.

E. Fulfillment of all terms on the part of the Seller is subject to all obligations on the part of the Buyer to be strictly observed.

F. If the Seller fails to observe binding delivery times and if the Seller is in default because of a written reminder and the Buyer
incurs damage as a result thereof, the Buyer is entitled to a fixed
default compensation. For each complete week of the default, com-
rensation shall be 0.5% but not more than a maximum of 5% of the
et value of that portion of the total delivery which cannot be used
on time or in accordance with the terms of contract as a result of the
delay. We shall reserve the right to proof that Buyer has suffered
no damage or that such damage was significantly lower than the
aforesaid lump sum.

G. In the event that upon the Seller’s default the Buyer sets the
Seller a written time limit of at least 12 weeks to fulfill the order,
always considering the exceptions stipulated by law, and should the
Seller fail to comply with this limit, the Buyer shall have the right to
cancel the order within all legal regulations.

H. All other default claims are set forth in section 8. b) of these
terms.

I. If shipments are postponed due to the request or fault of the
Buyer, the Seller reserves the right to claim damage remedy. All risk
of loss or damage shall pass to the Buyer at the time when goods
are ready for shipment.

5. Risk of Loss

A. The Buyer shall assume all risk of loss or damage upon de-
delivery of the goods to the carrier or as soon as the goods have left
the Seller’s warehouse for shipment. This holds true even if the
shipment is effected in the Seller’s vehicles or by the Seller’s em-
ployees. The choice of carrier lies with the Seller, unless otherwise
agreed in writing by both parties.

B. If the Buyer delays shipment, all risk of loss shall pass to the
Buyer at the time when goods are ready for shipment.

C. All shipments will be covered by the Seller’s transport ins-
urance. In the event of transport damage, all claims against the
carrier or insurance company are assigned from the Seller to the
Buyer. All further claims cease to exist. The Buyer shall report any
transport damage immediately.

6. Reservation of Title

A. The Seller shall retain all rights and title to all goods until
payment in full for all sums due for all goods supplied has been
received.

B. All goods remain property of the Seller. The Buyer has the right
to sell or process the goods as long as he has paid in full all sums
owed to the Seller. Pledging or transfer of security interests are pro-
hibited.

C. The Buyer transfers all claims resulting from the sales of the
goods subject to retention of title to the Seller by way of security. The
Buyer is entitled to assert the claims transferred to the Seller for the
Seller’s account on his own behalf. This collection authorization may
be revoked if the Buyer fails to meet his liabilities.

D. In case of failure of the Buyer to meet his obligations, parti-
cularly payment obligations, the Seller is entitled to take back the
delivered goods and the Buyer is obliged to release them. Filing of
petition in insolvency entitles the Seller to withdraw from the con-
tract and demand the immediate release of the goods. Due to the
reservation of title, the Seller may only demand release of the goods
if he has withdrawn from the contract.

7. Warranty

All other claims excluded and subject to section 8. Of these terms,
the Seller warrants the following for material defects and defects
of title:

Material defects

A. The Buyer shall inspect the goods immediately upon delive-
yrand give written notice of any defects to the Seller. If goods turn
out to have been defective prior to the transfer of risk, the Seller
will either repair the defective part or replace it free of charge at his
sole option.

B. Upon agreement with the Seller, the Buyer shall allow for an
appropriate time period for all necessary repairs and/or replace-
ments. The Seller shall not be liable for any damage arising from
lack of time for proper repairs/replacements.

C. The Buyer has the right to withdraw from the purchase order
if the Seller does not repair or replace the defective parts within an
appropriate set period of time, all legal exceptions taken into ac-
count. If the defect is only minor, the Buyer may not withdraw from
the order but has the right to decrease the purchase price. The Buy-
er may not decrease the price under any other circumstances.

D. The Seller is not bound to solely deliver goods which are ap-
proved by the European Association for Electrical, Electronic &
Information Technologies (VDE) or which are CE certified, as com-
mon technical and/or safety regulations are also guaranteed by
other foreign regulations. Other claims are set forth in section 8.

E. Warranty exclusions: Goods which are in any way altered by
the Buyer or third parties; Goods subjected to improper installation,
 misuse, negligence in use or handling by the Buyer or third parties;
Goods which are considered to require repair or replacement due to
normal wear and tear.
F. In case that the use of the goods causes an infringement of industrial property rights within the domestic territory, the Seller shall procure the right of further use for the Buyer or modify the goods in a way acceptable to the Buyer that the infringement no longer exists. If this is not possible under economically reasonable conditions or within an adequate period of time, the Buyer is entitled to withdraw from the contract. Under the above mentioned conditions, the Seller is also entitled to withdraw from the contract. In addition, the Seller shall release the Buyer from uncontested claims or claims recognized by declaratory judgment of the respective holder of property rights. The above mentioned obligations of the Seller are binding for infringement of industrial property and copy rights, except as provided in section 8.b. These obligations only exist if

- the Buyer notifies the Seller without delay of asserted infringements of industrial property or copy rights.
- the Buyer assists the Seller to a reasonable extent in rejecting asserted claims or enables the Seller to execute modification actions according to section 7.f.
- the Seller reserves the right to all defensive measures, including out-of-court arrangements.

8. Liability

A. In case the product cannot be used by the Buyer as stipulated in the contract as a result of the Seller’s faulty or failed execution or implementation of suggestions made and advice given before or after the conclusion of the contract, or as a result of the infringement of other contractual collateral obligations, the stipulations of sections 7 and 8 shall be valid accordingly, to the exclusion of further claims of the Buyer.

B. Irrespective of the legal reasoning used, the Seller shall only be liable for damage that has not occurred on the goods themselves

- if the damage was done intentionally.
- in case of gross negligence of the owner/ organs or executive personnel.
- in case of culpable injury of life, health and body.
- if defects were fraudulently concealed or their absence had been guaranteed.
- for defects of the goods, in so far as the Seller is responsible for personal injuries and property damage of items used privately according to the German Product Liability Law. In the event of a fundamental breach of contract, the Seller shall also be responsible for gross negligence of non-executive staff and for slight negligence, the latter being limited to reasonably foreseeable damage that can be considered typical for the contract. Any further claims are excluded.

9. Disposal of Goods

If the goods ordered are electronic goods according to the German Electricity Act (ElektroG), the Seller assumes the responsibilities of a manufacturer of old electric products for other users than private households, as stipulated in §10.2 ElektroG. The Buyer shall treat and dispose of the goods at his own expense according to the Electricity Act. In case of further transfer of the goods, the Buyer shall pass this obligation to the recipient. The Buyer shall exempt the Seller from all obligations resulting from the Electricity Act towards authorities and other third parties. The claims of the supplier of this agreement do not become time-barred before two years after the final abandonment of use of the goods. The two-year period shall begin no sooner than with a written notice of the Buyer that the use has been abandoned. For adequate compensation, the Seller is prepared to dispose of the goods on behalf of the Buyer. If desired, the Seller shall provide the Buyer with addresses of qualified disposal companies.

10. Statute of Limitation

The statute of limitation applicable to any of the Buyers claims shall be twelve (12) months from the date of risk transfer of the delivery item. Any claims as set forth in paragraph 8.b) shall be subject to the legal limitation periods.

11. Special design

When orders are made to the buyer’s specifications, the buyer is solely responsible for ensuring that no industrial property rights are breached. In case the seller is claimed for damages due to breach of industrial property rights, the seller is entitled to be released from liability.

12. Governing Law, Jurisdiction and Venue

A. Any contracts entered into between the Seller and the Buyer shall be governed by the laws of the Federal Republic of Germany under exclusion of the UN Convention on the International Sale of Goods (CISG), without prejudice to any mandatory conflict of laws provisions.

B. If the Buyer is a corporation, limited liability company or commercial partnership or otherwise operates a commercial business (Kaufmann within the meaning of Sec. 1 (1) of the German Commercial Code) or is a legal entity or special fund organized under public law, the courts in the place of business of the Seller Weiterstadt/Germany shall have exclusive jurisdiction in respect of all disputes arising out of or in connection with the relevant contract.
C. Should any provision of this Terms, or any provision incorpo-
rated into this Terms, in the future be or become invalid or unenfor-
ceable, the validity or enforceability of the other provisions of this
terms shall not be affected thereby. The invalid or unenforceable
 provision shall be deemed to be substituted by a suitable and equi-
table provision which, to the extent legally permissible, comes as
close as possible to the economic intent and purpose of the invalid
or unenforceable provision.

D. This “TERMS AND CONDITIONS OF SALE” are executed in the
German and English languages. In the event of any inconsistencies,
the German version shall prevail.

Our current terms and conditions you will find
http://www.ii-vi.de/downloads/AGB_EN.pdf

€ Konto:
Bank of America, Ffm
SWIFT-BIC: BOFADEFX
IBAN: DE22 5001 0900 0020 8850 17

US$-Konto:
Bank of America, Ffm
SWIFT-BIC: BOFADEFX
IBAN: DE97 5001 0900 0020 8850 25

GBP-Konto:
Bank of America, Ffm
SWIFT-BIC: BOFAGB22
IBAN: GB93 BOFA 1650 5079 1920 10