

## SOFTWARE LICENSE AGREEMENT

BY DOWNLOADING AND/OR USING (INCLUDING COPYING) THE SOFTWARE, LICENSEE AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF LICENSEE DOES NOT AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT, LICENSEE (INCLUDING YOU) SHALL NOT DOWNLOAD AND/OR USE (INCLUDING COPYING) THE SOFTWARE.

### 1. DEFINITIONS

- 1.1 **"Affiliate"** means a legal entity which is directly or indirectly controlled by the relevant entity, whereas control means the direct or indirect ownership of more than fifty (50) percent of the shares or ownership interests representing the right to make decisions for that entity, as long as such ownership subsists.
- 1.2 **"Agreement"** means this Software License Agreement.
- 1.3 **"Documentation"** means the technical information potentially provided along with the Software.
- 1.4 **"Licensed Items"** means the Software and the Documentation
- 1.5 **"Licensee"** means the company or individual indicated in the Registration.
- 1.6 **"Licensee's Products"** means all products from Licensee comprising Licensor's Products.
- 1.7 **"Licensor"** means Infineon Technologies AG, having its offices at Am Campeon 1-12, 85579 Neubiberg, Germany.
- 1.8 **"Licensor's Products"** means Licensor's 32-bit XMC™ microcontrollers.
- 1.9 **"Registration"** means an account with Licensor's internet service MyInfineon.com enabling the download of the Software.
- 1.10 **"Software"** means the software package of which this Agreement forms part.
- 1.11 **"Subcontractor"** means a third party producing Licensee's Products or parts for Licensee's Products.
- 1.12 **"You"** means (i) if Licensee is a company, an individual acting in the ordinary course of business of Licensee; or (ii) if Licensee is an individual, Licensee.

### 2. IMPORTANT NOTICE

- 2.1 Licensor is not and cannot be aware of the specific application of the Software by Licensee. However, Software may from time to time be used by Licensee in potentially harmful and/or life-endangering applications such as traffic, logistic, medical, nuclear or military applications or in other applications where failure of the Software may predictably cause damage to persons' life or health or to property (hereinafter "Critical Applications").
- 2.2 Licensee acknowledges that Licensor has not specifically designed or qualified the Software for Critical Applications that the Software may contain errors and bugs and that Licensee is required to qualify the Software for Critical Applications pursuant to the applicable local quality, safety and legal requirements before permitting or giving access to any such use.

### 3. LICENSE GRANT

- 3.1 For the term and subject to the terms and conditions of this Agreement, Licensor hereby grants Licensee under Licensor's intellectual property rights in the Licensed Items a limited, worldwide, non-exclusive, non-transferable, non-assignable, non-sublicensable, royalty-free right to

- (i) use and reproduce the Software only in order to program the flash memory of Licensors' Products;
  - (ii) have used the Software by its Subcontractors for the sole purpose of programming the flash memory of Licensors' Products;
  - (iii) use and have used the Documentation as required in order to exercise the rights pursuant to (i) and **Error! Reference source not found.**;
- 3.2 Licensee's Affiliates may exercise all license rights granted under this Agreement, subject to Licensee Affiliates' compliance with all terms and conditions of this Agreement, provided that Licensee agrees to be fully liable towards Licensor for any and all damages arising out of any acts or omissions of Affiliates regarding their exercise of license rights under this Agreement.
- 3.3 Except for the limited rights granted in Section this Section 3, Licensor retains all right, title and interest in and to the Licensed Items and all intellectual property rights therein. The license rights granted pursuant to this Agreement do not transfer to Licensee title or ownership in the Software or any copies thereof, but only a limited right of use.

#### 4. RESTRICTIONS

Licensee shall not itself or through any third party:

- (i) reproduce the Software (including printouts thereof) unless otherwise permitted under this Agreement or by mandatory statutory law;
- (ii) use the Software in and for the purpose of series production;
- (iii) remove any copyright notices contained in the Licensed Items;
- (iv) publicly display, publicly perform, publish or broadcast the Licensed Items without Licensor's prior written approval;
- (v) sell, lease, license or sublicense the Licensed Items to any third party without Licensor's prior written approval;
- (vi) make available the Licensed Items or assign or otherwise transfer any right in the Licensed Items to third parties;
- (vii) use the Licensed Items for the purposes of determining whether they are covered by any intellectual property rights (including without limitation patents and copyrights) of Licensee or any other third party;
- (viii) directly or indirectly bring any suit before any court or administrative agency or otherwise assert any claim against Licensor, its subsidiaries and/or any of their respective suppliers and/or customers due to their development, use, reproduction, manufacturing, marketing, sale, distribution, licensing, sublicensing or other disposal of the Licensed Items based on infringement of any of Licensee's intellectual property rights (including without limitation patents and copyrights).

#### 5. CONFIDENTIAL INFORMATION

- 5.1 Licensee shall treat ideas, concepts and information incorporated in the Software, the Documentation and the content of this Agreement (together hereinafter "Confidential Information") confidential, not disclose it to any third party other than its and/or its Affiliates' employees who are bound to confidentiality obligations not less strict than those contained in this Agreement, not use it for any other purposes except as granted by Section 3 above, and protect the confidentiality of such information with the same degree of care which it uses to protect its own confidential information but at least with reasonable care.
- 5.2 The obligations pursuant to Section 5.1 shall not apply with respect to information that: (i) was publicly known or made generally available in the public domain prior to the time of disclosure to Licensee by Licensor; (ii) becomes publicly known or made generally available after disclosure to Licensee by Licensor through no action or inaction of Licensee; or (iii) is in the possession of Licensee, without confidentiality restrictions, at the time of disclosure by Licensor as shown by Licensee's records immediately prior to the time of disclosure.

- 5.3 Licensee shall designate the right to use Confidential Information only to such employees who are bound to confidentiality obligations similar to those under this Agreement.

## **6. TERM AND TERMINATION**

- 6.1 This Agreement will become effective upon Licensee's start to use the Software and shall remain in effect unless terminated in accordance with the terms and conditions set forth in this Agreement.
- 6.2 This Agreement shall automatically terminate if Licensee is in breach of any provision of this Agreement.
- 6.3 Licensee may terminate this Agreement at any time by stop using the Software and deleting all copies of the Software in Licensee's control.
- 6.4 Licensor may terminate this Agreement by giving 2 weeks written notice to Licensee to the address indicated in the Registration (i) if a third party claims to have intellectual property rights in the Software; (ii) if Licensee itself or through any third party directly or indirectly brings any suit before any court or administrative agency or otherwise asserts any claim against Licensor and/or any of its Affiliates, suppliers or customers due to their development, use, reproduction, manufacturing, marketing, sale, distribution, licensing, sublicensing or other disposal of the Licensed Items based on infringement of any of Licensee's intellectual property rights (including without limitation patents and copyrights); and/or (iii) in case of a change of control of Licensee.
- 6.5 Upon expiration or termination of this Agreement for any reason, the rights and licenses granted to Licensee under this Agreement shall immediately cease. Licensee shall immediately stop using the Licensed Items, destroy all copies of the Licensed Items which are in Licensee's control, and, upon Licensor's written request, provide Licensor with a written certification from an authorized officer of Licensee within five (5) business days after Licensor's request, confirming that all copies of the Licensed Items have been destroyed.
- 6.6 The provisions of Sections 4, 5, 6.6, 7, 8, 9 and 10 shall survive any termination or expiration of this Agreement.

## **7. WARRANTY**

Licensee acknowledges that the Licensed Items are provided by Licensor free of charge. Accordingly, without prejudice to Section 8, the Licensed Items provided by Licensor under this Agreement are provided "AS IS" without any warranty or liability of any kind and Licensor hereby expressly disclaims any warranties or representations, whether express, implied, statutory or otherwise, including but not limited to warranties of workmanship, merchantability, fitness for a particular purpose, defects in the Licensed Items, or non-infringement of third parties' intellectual property rights.

## **8. LIABILITY**

- 8.1 Nothing in this Agreement shall limit or exclude Licensor's liability under mandatory statutory liability laws, or in cases of Licensor's intentional misconduct or gross negligence.
- 8.2 Without prejudice to Section 8.1, Licensor's liability under and/or in connection with this Agreement shall be excluded in all other cases.

## **9. EXPORT REGULATIONS**

- 9.1 This Agreement is subject to the proviso that the required export licenses and other statutory authorizations are granted by the competent export control authorities and that no impediment arises from the applicable export laws and regulations.
- 9.2 In case the required export licenses or other legally required approvals are not granted within six (6) months after the conclusion of this Agreement, then this Agreement shall be regarded as null and void, if Licensor requests so after expiration of the above specified time limit.

- 9.3 Licensee shall comply with all applicable national and international laws and regulations, in particular the applicable anti-terrorism and trade regulations. Licensee also agrees not to export, re-export or transfer any products developed with or using products, information, software or technology delivered by Licensor, in violation of any applicable laws or regulations of the competent authorities.
- 9.4 Licensee shall neither (a) use any products, information, software and technology delivered by Licensor in or in connection with nuclear technology or weapons of mass destruction (nuclear, biological or chemical) and carriers thereof nor (b) supply military, paramilitary, police, intelligence agencies or civil administrations of such institutions or other institutions acting on behalf of them, with products, information, software or technology which are subject to export licensing requirements.

## **10. APPLICABLE LAW / VENUE**

- 10.1 **This Agreement shall be governed by Swiss law without reference to its conflicts of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall be excluded.**
- 10.2 **The Commercial Court of the Canton of Zurich (Handelsgericht des Kantons Zürich) shall have exclusive jurisdiction on any dispute arising out of or in connection with this Agreement.**

## **11. GENERAL PROVISIONS**

- 11.1 Licensee shall not assign this Agreement or any rights or obligations hereunder, without the prior written consent of Licensor.
- 11.2 This Agreement embodies the entire understanding between Licensor and Licensee with respect to the subject matter contained herein, and replaces any prior oral or written communications between them. General Terms and Conditions of either party shall not apply to this Agreement.
- 11.3 If any provision of this Agreement is considered void or unfeasible by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.
- 11.4 This Agreement may only be modified or amended in written form. This form requirement can only be waived by mutual written agreement.