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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-K

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934.

For the fiscal year ended December 29, 1996

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 1-7882

ADVANCED MICRO DEVICES, INC.  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION)

94-1692300  
(IRS EMPLOYER  
IDENTIFICATION NUMBER)

ONE AMD PLACE  
SUNNYVALE, CALIFORNIA  
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

94086  
(ZIP CODE)

Registrant's telephone number, including area code: (408) 732-2400

Securities registered pursuant to Section 12(b) of the Act:

(TITLE OF EACH CLASS) -----	(NAME OF EACH EXCHANGE ON WHICH REGISTERED) -----
\$.01 Par Value Common Stock	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark whether the registrant (1) has filed all reports  
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of  
1934 during the preceding 12 months (or for such shorter period that the  
registrant was required to file such reports), and (2) has been subject to  
such filing requirements for the past 90 days. Yes X No  
--- ---

Indicate by check mark if disclosure of delinquent filers pursuant to Item  
405 of Regulation S-K is not contained herein, and will not be contained, to  
the best of registrant's knowledge, in definitive proxy or information  
statements incorporated by reference in Part III of this Form 10-K or any  
amendment to this Form 10-K.

Aggregate market value of the voting stock  
held by nonaffiliates as of February 25, 1997.

\$5,068,372,307

Indicate the number of shares outstanding of each of the registrant's  
classes of common stock, as of the latest practicable date.

138,952,155 shares as of February 25, 1997.

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DOCUMENTS INCORPORATED BY REFERENCE

- (1) Portions of the Annual Report to Stockholders for the fiscal year ended December 29, 1996, are incorporated into Parts II and IV hereof.
- (2) Portions of the Proxy Statement for the Annual Meeting of Stockholders to be held on April 24, 1997, are incorporated into Part III hereof.
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ADVANCED MICRO DEVICES, INC.  
FORM 10-K  
FOR THE FISCAL YEAR ENDED DECEMBER 29, 1996

TABLE OF CONTENTS

	PAGE
	----
PART I	
Item 1. Business.....	3
Item 2. Properties.....	14
Item 3. Legal Proceedings.....	15
Item 4. Submission of Matters to a Vote of Security Holders.....	16
Executive Officers of the Registrant.....	16
PART II	
Item 5. Market for the Registrant's Common Stock and Related Stockholder Matters.....	17
Item 6. Selected Financial Data.....	18
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.	18
Item 8. Financial Statements and Supplementary Data.....	18
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure..	18
PART III	
Item 10. Directors and Executive Officers of the Registrant.....	18

Item 11. Executive Compensation.....	18
Item 12. Security Ownership of Certain Beneficial Owners and Management.....	18
Item 13. Certain Relationships and Related Transactions.....	18

PART IV

Item 14. Exhibits, Financial Statement Schedules, and Reports on Form 8-K.....	19
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PART I

ITEM 1. BUSINESS

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

THE STATEMENTS IN THIS REPORT THAT ARE FORWARD-LOOKING ARE BASED ON CURRENT EXPECTATIONS AND BELIEFS AND INVOLVE NUMEROUS RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY. THE FORWARD-LOOKING STATEMENTS RELATE TO OPERATING RESULTS, CASH FLOWS, REALIZATION OF NET DEFERRED TAX ASSETS, CAPITAL EXPENDITURES AND ADEQUACY OF RESOURCES TO FUND OPERATIONS AND CAPITAL INVESTMENTS; FUTURE BUSINESS PROSPECTS FOR MICROPROCESSORS, FLASH MEMORY DEVICE PRODUCTS AND OTHER PRODUCT LINES; THE EFFECT OF FOREIGN EXCHANGE CONTRACTS AND INTEREST RATE SWAPS; THE DEVELOPMENT, VALIDATION, CERTIFICATION, INTRODUCTION, MARKET ACCEPTANCE AND PRICING OF THE K86 PRODUCTS; THE COMPANY'S COMMITMENT TO RESEARCH AND DEVELOPMENT; THE EFFECTIVE UTILIZATION OF FAB 25 (AS DEFINED BELOW); AND PROJECTS WHICH ARE PROPOSED OR UNDER CONSTRUCTION IN JAPAN, GERMANY AND CHINA. FOR A DISCUSSION OF THE FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY, SEE SUCH OTHER RISKS AND UNCERTAINTIES AS SET FORTH BELOW IN THIS REPORT OR DETAILED IN THE COMPANY'S OTHER SECURITIES AND EXCHANGE COMMISSION REPORTS AND FILINGS.

GENERAL

Advanced Micro Devices, Inc. was incorporated under the laws of the state of Delaware on May 1, 1969. The Company's mailing address and executive offices are located at One AMD Place, Sunnyvale, California 94086, and its telephone number is (408) 732-2400. Unless otherwise indicated, the terms "Company," "AMD" and "Registrant" in this report refer to Advanced Micro Devices, Inc. and its subsidiaries.

AMD is a semiconductor manufacturer with manufacturing facilities in the U.S. and Asia and sales offices throughout the world. The Company's products include a wide variety of industry-standard integrated circuits (ICs) which are used in many diverse product applications such as telecommunications equipment, data and network communications equipment, consumer electronics, personal computers (PCs) and workstations.

For a discussion of the risk factors related to the Company's business operations please see the "Cautionary Statement Regarding Forward-Looking Statements" and "Risk Factors" sections of Management's Discussion and Analysis of Results of Operations and Financial Condition contained in the 1996 Annual Report to Stockholders.

INDUSTRY

The IC market has grown dramatically over the past ten years, driven primarily by the demand for electronic business and consumer products. Today, ICs are used in virtually all products involving electronics, including personal computers and related peripherals, voice and data communications and networking products, fax and copy machines, home entertainment equipment, industrial control equipment and automobiles.

The market for ICs can be divided into separate markets for digital and analog devices. AMD participates primarily in the market for digital ICs. The three principal types of digital ICs used in most electronic systems are: (i) memory circuits, (ii) logic circuits and (iii) microprocessors. Memory is used to store data and programming instructions, logic is employed to manage the interchange and manipulation of digital signals within a system, and microprocessors are used for control and computing tasks. Set forth below is a discussion of the principal segments of the digital IC market in which the Company participates.

#### THE MEMORY MARKET

Memory ICs store data or programs and are characterized as either volatile or non-volatile. Volatile devices lose their stored information after electrical power is shut off, while non-volatile devices retain their stored information. The three most significant categories of semiconductor memory are (i) Dynamic Random Access Memory (DRAM) and (ii) Static Random Access Memory (SRAM), both of which are volatile memories, and (iii) non-volatile memory, which includes Read-Only Memory (ROM), Flash memory and Erasable Programmable Read-Only Memory (EPROM) devices. DRAM provides large capacity "main" memory, and

3

SRAM provides specialized high speed memory. Flash and other non-volatile memory devices are used in applications in which data must be retained after power is turned off. The Company does not produce any DRAM products, the largest and most commodity oriented segment of the memory market, or SRAM products.

Several factors have contributed to an increasing demand for memory devices during recent years including the expanding unit sales of personal computers in the business and consumer market segments; the increasing use of personal computers to perform memory-intensive graphics and multimedia functions; the volume of memory required to support faster microprocessors; the proliferation of increasingly complex personal computer software; and the increasing performance requirements of workstations, servers and networking and telecommunications equipment.

The Company believes that Flash memory devices will be one of the fastest growing segments of the memory market in terms of both unit and dollar sales, as an expanding range of applications utilize Flash memory in the computer, telecommunications, networking, consumer electronics, automotive, industrial control and instrumentation industries. The ability of Flash memory devices to be electrically rewritten to update parameters or system software provides greater flexibility and ease of use than other non-volatile memory devices, such as ROM or EPROM devices. Flash memory can be used to provide storage of control programs and system-critical data in communication devices such as cellular phones and routers (devices used to transfer data between local area networks). Another common application for Flash memory is in PC cards, which are inserted into notebook and subnotebook computers or personal digital assistants to provide added data storage.

#### THE LOGIC MARKET

Logic circuits contain interconnected groupings of simple logical circuits commonly described as "gates." Typically, complex combinations of individual gates are required to implement the specialized logic circuits required for digital systems applications. While system designers use a relatively small number of standard ICs to meet their microprocessor and memory needs, they require a wide variety of logic circuits in order to differentiate their products from those of their competitors.

Logic circuits are found in a wide range of today's electronic systems, including communications equipment, computers, peripherals, instrumentation, industrial control and military systems. The logic market encompasses, among

other segments, standard Transistor-to-Transistor Logic (TTL), custom designed Application Specific ICs (ASICs), input/output (I/O), communications, multimedia, networking and programmable logic devices. ASICs include conventional gate-arrays, standard cells and full custom logic circuits. Logic circuits are often classified by the number of gates per circuit, with TTL circuits typically containing up to 100 gates. Conventional gate arrays and custom logic circuits typically have up to several hundred thousand gates. Programmable logic devices typically have up to 20,000 gates but may have fewer gates in specialized applications.

Logic circuits are used extensively in networking and telecommunications applications including Internet and intranet applications. Networking is a method of connecting PCs to other PCs and closely related peripherals (e.g., printers), so that resources and information can be transferred and shared. In large corporations today, most PCs are networked to improve productivity and communication. Networking continues to spread to medium- and small-sized companies and could eventually make inroads into the home market. The Ethernet standard is the most commonly used method for networking workstations, network servers, personal computers and related peripheral devices.

Telecommunications applications relate to the lines, switches, and routing equipment required to provide connectivity among enterprises and homes that are part of the public infrastructure. This infrastructure is owned and operated by private companies such as AT&T and the regional Bell operating companies in the U.S., and may be owned and operated by governments, private companies, or some combination of these in other regions of the world. The infrastructure for voice communications continues to expand throughout the world, fueling demand for IC-based telecommunications line card solutions, which convert signals from analog to digital for

4

transmission, then convert signals back to analog on the receiving end. To perform these tasks, line cards rely on integrated circuit logic products called subscriber line interface circuits and subscriber line audio processing circuits.

Logic devices are also used extensively with respect to I/O applications, which involve the sending and receiving of data from the central processing unit (CPU) of a PC to peripheral devices such as disk drives and printers, and multimedia applications, which utilize combinations of sound, graphics, animation and text.

Manufacturers of electronic systems are increasingly challenged to bring differentiated products to market quickly. These competitive pressures sometimes preclude the use of custom designed ASICs, which generally entail significant design costs and time delay. Standard logic products, an alternative to custom designed ASICs, limit a manufacturer's flexibility to adequately optimize and customize an end system. Programmable logic addresses this inherent dilemma. Programmable logic devices are standard products, purchased by systems manufacturers in a "blank" state, which can be custom configured into many specific logic circuits by programming the device with electrical signals. Programmable logic devices give system designers the ability to quickly create their own custom logic circuits to provide product differentiation and rapid time to market. Certain programmable logic products, including the Company's, are reprogrammable, which means that the logic configuration can be modified, if needed, after the initial logic programming. A recent technology development, in-system programmability, extends the flexibility of standard programmable logic devices by allowing the system designer to configure and reconfigure the logic functions of the programmable logic device with a standard 3- or 5-volt power supply without removing the programmable logic device from the system board.

Several common types of programmable logic devices currently coexist in the marketplace, each offering customers a particular set of benefits. These include simple programmable logic devices (SPLDs, less than 1,000 gates), complex programmable logic devices (CPLDs, up to 20,000 gates) and field programmable gate arrays (FPGAs, up to 100,000 gates). CPLDs are generally preferred to FPGAs for control logic applications, such as state machines, bus arbitration, encoders/decoders and sequencers. FPGAs are generally preferred to CPLDs for register intensive and data path logic applications, such as interface logic and arithmetic functions. The Company believes that a substantial portion of programmable logic device customers utilize both CPLD and FPGA architectures together to optimize overall system performance and

improve time to market for new products.

#### THE MICROPROCESSOR MARKET

IBM introduced its first PC in 1981 containing a microprocessor based upon the x86 instruction set developed by Intel Corporation (Intel) and utilizing the Microsoft MS-DOS operating system. The so-called IBM-compatible computer has evolved over the years with each successive generation of x86 microprocessors. Each new generation of x86 microprocessors has delivered increased performance and functionality while maintaining software, hardware and peripheral compatibility for industry standard operating systems such as Microsoft MS-DOS and Microsoft Windows. The microprocessor market is currently dominated by Intel.

The microprocessor, an IC generally consisting of millions of transistors, serves as the central processing unit, or "brain," of a computer system. The microprocessor is typically the most critical component to the performance and efficiency of a PC. The microprocessor is responsible for controlling data flowing through the electronic system, manipulating such data as specified by the hardware or software which controls the system. Microprocessors can be divided into two broad categories: Reduced Instruction Set Computing (RISC) and Complex Instruction Set Computing (CISC). Compared to CISC microprocessors, RISC microprocessors employ an architectural approach that requires a smaller number of simplified instructions to perform the microprocessors' internal operations. Developments in circuit design and very large scale integration process technology have resulted in dramatic advances in microprocessor performance over the past ten years. Today, the greatest demand for microprocessors is from personal computer manufacturers and, in particular, for microprocessors which are Microsoft Windows compatible and are based on the x86 instruction set. Improvements in the performance characteristics of microprocessors, coupled with decreases in production costs resulting from advances in process technology, have broadened the market for PCs and increased the demand for microprocessors.

5

Embedded processors are also an important segment of the microprocessor market. Embedded processors are general purpose devices used to carry out a single application with limited user interface and programmability. A system designed around an embedded processor cannot usually be programmed by an end user because the system is preprogrammed to execute a specific task. Key markets for embedded processors include telecommunications, networking, office automation, storage, automotive applications and industrial control.

The microprocessor business is characterized by short product life cycles, intense price competition and rapid advances in product design and process technology resulting in rapidly occurring product obsolescence. The early stages of the life cycle of each generation of microprocessors is generally characterized by high demand, prices and margins. Historically, as the product life cycle progresses, prices and margins decrease rapidly and production volume rapidly increases. Toward the end of the product life cycle, as the life cycles of one or more future generations of microprocessors are beginning, prices and margins decline further and demand for the product ultimately ends.

The establishment of hardware and software standards for PCs and the emergence of numerous PC suppliers have caused the PC industry to be extremely competitive, with short product life cycles, limited product differentiation and substantial price competition. To compete more effectively, many PC suppliers have evolved from fully integrated manufacturers with proprietary system designs to vendors focused on building brand recognition and distribution capabilities. Many of these suppliers now rely either on Intel or on third-party manufacturers for the major subsystems of their PCs, such as the motherboard, and increasingly are outsourcing the design and manufacture of complete systems. The third-party suppliers of these subsystems, based primarily in Asia, are focused on providing PCs and motherboards that incorporate the latest trends in features and performance at low prices. Increasingly, these third-party suppliers are also supplying fully configured PC systems through alternative distribution channels.

#### BUSINESS GROUPS; PRODUCTS

AMD participates in all three segments of the digital IC market - memory circuits, logic circuits and microprocessors - through, collectively, its

Communications and Components Group (CCG), its Computation Products Group (CPG) and its Programmable Logic Division (Vantis).

#### COMMUNICATIONS AND COMPONENTS GROUP

CCG products (\$1,364 million, or 70%, of the Company's 1996 net sales) include Flash memory devices, EPROM devices, voice and data communications products, embedded processors, I/O devices and network products.

**FLASH MEMORY.** Flash memory devices are used in cellular telephones, networking equipment and other applications which require memory to be non-volatile and to be rewritten. Their ability to be rewritten electrically provides greater flexibility and ease of use than EPROMs and other similar integrated circuits which cannot be rewritten electrically. Communications companies use Flash memory devices in cellular telephones and related equipment to enable users to program and reprogram frequently called numbers and manufacturers to preprogram other information. In networking applications, Flash memory devices are used in hubs and routers to enable systems to store programmed and reprogrammed Internet addresses and other routing information. The market for Flash memory devices has recently experienced rapid growth and is becoming increasingly competitive as additional manufacturers introduce competitive products and production capacity in the industry increases. A substantial portion of the Company's revenues are derived from sales of Flash memory devices.

**EPROMs.** EPROMs represent an older generation of erasable programmable read-only memory technology which is used primarily in the electronic equipment industry. The devices are used in cellular phones and base stations, telecommunication switching equipment, automotive applications, personal computer hard disk drives and BIOS (basic input/output system software encoded in read-only memory which controls access to

6

devices connected to a PC, such as the monitor and the serial communications port), printer controllers, industrial machine controls and numerous other types of electronic equipment to store software which controls the equipment's operation. The ability of EPROMs to be programmed electrically enables equipment manufacturers to achieve shorter time to market for new products than otherwise would be possible if they were required to have specific integrated circuits manufactured containing their final software programs. EPROMs are generally preferred to more expensive Flash memory devices in applications in which it is not necessary to enable the end user to reprogram the information stored on the integrated circuit. The market for EPROMs is significantly smaller than the market for Flash memory devices and the Company believes the market will decline as EPROMs are replaced in various applications by Flash memory devices.

**COMMUNICATIONS PRODUCTS.** The Company's communications products are used in public and private communications infrastructure systems. Specifically, the products are used in such equipment as central office switches, private branch exchange (PBX) equipment and voice/data terminals. Among the Company's more significant products for the communications market are its logic products. In modern telephone communications systems, voice communications are generally transmitted between the speaker and the central office switch in analog format, but are switched and transmitted over longer distances in digital format. The AMD SLIC line cards connect the user's telephone wire to the telephone company's digital switching equipment. The AMD SLAC line cards are coder/decoders which convert analog voice signals to a digital format and back.

**EMBEDDED PROCESSORS.** Embedded processors are general purpose devices, consisting of an instruction control unit and an arithmetic and logic unit, used to carry out a single application with limited user interface and programmability. The Company offers a proprietary family of RISC processors, known as its Am29000 products, which are used as embedded processors in applications which include high-performance laser printer controllers, high-resolution graphics controllers, communications controllers and accelerator cards. The Company has discontinued development of new versions of its Am29000 products, but it continues to produce existing versions. The Company's current product focus for embedded processors utilizes existing x86 microprocessor designs which are customized for specific applications. The Company offers a line of C186 and C188 processors for use as embedded processors in hard disk drives. In the future, the Company expects to offer embedded processors based

upon third- and fourth-generation x86 microprocessor technology, the E86 family of processors, which are designed for use in hand-held computers and voice and data communication devices.

NETWORK AND I/O PRODUCTS. The Company's network and I/O products are used within personal computers to manage the connection of the personal computer to local area networks and to manage selected input/output functions. The Company's network products support voice and data communications and internetworking and are used in hubs, routers and equipment used to connect workstations and personal computers in local area network infrastructures. In data communications, the Company is a supplier of network infrastructure ICs for products including Ethernet hubs and switches.

The Company supplies integrated circuits for business applications utilizing the 10-megabit-per-second and the 100-megabit-per-second Ethernet local area network standards. The Company offers a range of integrated circuits that work with central processing units to manage selected input/output functions such as audio, small computer system interface disk drive controllers and communications and networking devices. The Company also supplies a range of products specially designed to add additional functions, improve performance and reduce costs in computer peripheral, interface or mass storage applications. These are generally special-purpose products which are designed for a specific application. In the case of some large customers, these products are tailored for specific customers' needs.

OTHER PRODUCTS. The Company also offers a wide variety of older standard products, some of which are nearing the end of their product life cycles, which are sold into various IC markets and require limited ongoing research and development or capital expenditures.

7

#### COMPUTATION PRODUCTS GROUP

CPG products (\$341 million, or 17%, of 1996 net sales) include microprocessors and the majority of CPG's net sales are derived from Microsoft Windows compatible microprocessors which are used primarily in personal computers.

The Company currently participates in the microprocessor market through its fourth- and fifth-generation Microsoft Windows compatible microprocessors. In 1994 and 1995, the Company's most significant microprocessor product was the Am486 microprocessor, a fourth-generation CISC x86 microprocessor. In 1996, Am486 microprocessor sales decreased significantly due to average selling price and unit volume declines. Accordingly, Am486 microprocessor revenues in 1996 were significantly below those of 1995 as the product life cycle of the fourth-generation x86 products aged. The Company's fifth- and future generations of microprocessor products, known as the K86 microprocessors, are based on Superscalar RISC architecture. The K86 products are designed to be compatible with operating system software such as Windows, UNIX, DOS and Windows NT. In the first quarter of 1996, the Company began shipping the AMD-K5PR75/1/ microprocessor, the first member of the K86 family, and during the third quarter of 1996, the Company began shipping the AMD-K5PR100. The AMD-K5 is a fifth-generation, superscalar device that has been certified by Microsoft as being fully compatible with its operating system. The Company introduced PR133 and PR150 versions of its AMD-K5 microprocessor in the fourth quarter of 1996, and the PR166 version in January of 1997. The AMD-K5 microprocessor was introduced relatively late in the life cycle of fifth-generation microprocessor products and will not result in the levels of revenue for the Company realized from the Am486 microprocessor.

The Company's ability to maintain or expand its current levels of revenues from microprocessor products, and its ability to benefit fully from the substantial financial commitments it has made to process technologies and integrated circuit manufacturing facilities dedicated to the production of microprocessors, depends primarily upon its success in developing and marketing in a timely manner its sixth-generation microprocessor products, the AMD-K6 processors. The AMD-K6 microprocessor has been designed as a superscalar device to be competitive in performance to Intel Corporation's forthcoming single chip version of its sixth-generation microprocessor, the Pentium Pro, which is being designed by Intel specifically for desktop PCs and is expected to be introduced in 1997. The Company intends to begin volume shipments of the AMD-K6 products in the second quarter of 1997, although no assurance can be given that such products will be successfully or timely



developed or that subsequent product orders or related shipments will occur. A failure of the Company's K86 products, particularly the AMD-K6, to be timely introduced or to achieve market acceptance, would have a material adverse effect on the Company. AMD is also devoting substantial resources to the development of its seventh-generation Microsoft Windows compatible microprocessor, the AMD-K7 processor.

Intel has long held a dominant position in the market for microprocessors used in PCs. Intel Corporation's dominant market position has allowed it to set x86 microprocessor standards and thus dictate the type of product the market requires of Intel Corporation's competitors. In addition, Intel Corporation's financial strength has enabled it to reduce prices on its microprocessor products within a short period of time following their introduction, which reduces the margins and profitability of its competitors. In addition to its dominant microprocessor market share, Intel also dominates the PC platform. The Company does not have the financial resources to compete with Intel on such a large scale.

As Intel has expanded its dominance in designing and setting standards for PC systems, many PC original equipment manufacturers (OEMs) have reduced their system development expenditures and have begun to purchase microprocessors in conjunction with chip sets or in assembled motherboards. In marketing its microprocessors to these OEMs and dealers, AMD is dependent upon companies other than Intel for the design

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/1"PR"/refers to the performance rating assigned to the microprocessors by AMD based upon tests conducted employing the Ziff-Davis Winstone 96 benchmark, which compares the systems performance provided by a microprocessor to the systems performance provided by Pentium processors of various clock speeds. A performance rating of 166, for example, indicates that the microprocessor has been determined to deliver systems performance equal to or greater than that provided by a 166 Megahertz Pentium.

8

and manufacture of core logic chip sets, motherboards, BIOS software and other components. In recent years, these third-party designers and manufacturers have lost market share to Intel. To compete with Intel in this market in the future, the Company intends to continue to form closer relationships with third-party designers and manufacturers of core logic chip sets, motherboards, BIOS software and other components. The Company similarly intends to continue to expand its chip set and system design capabilities, and offer to OEMs a portion of the Company's processors together with chip sets and licensed system designs incorporating the Company's processors and companion products. There can be no assurance, however, that such efforts by the Company will be successful.

#### VANTIS

Vantis products (\$248 million, or 13%, of the Company's 1996 net sales) are high speed programmable logic devices which are used in a wide range of electronic systems. Programmable logic devices are standard logic products produced in a "blank" state that can be custom configured into specific logic circuits by programming the devices with electrical signals.

The Company offers a full range of simple programmable logic devices and complex programmable logic devices, but does not participate in the market for field programmable gate arrays. Programmable logic devices are used in telecommunications equipment, network infrastructures, hard disk drives, printers, industrial machine control and numerous other types of electronic equipment by third-party OEMs which seek to optimize the performance of their products by custom configuring the logic IC while minimizing time to market through the use of a standard logic product. The Company's programmable logic devices are sold to a broad range of manufacturers of electronics systems.

Customers utilizing programmable logic devices must use special software packages, generally provided by the suppliers of the programmable logic devices, to program the programmable logic devices. AMD provides its programmable logic device customers with software which it licenses from third parties and is dependent upon third parties for the software and continuing improvements in the software. An inability of AMD to continue to obtain appropriate software and improvements from third parties, to license alternative software from another third party, or to develop its own software

internally could materially adversely affect the Company's Vantis business, including the timing of new or improved product introductions, which could have a material adverse effect on the Company.

The Company is in the process of transferring its operations relating to the design, development and marketing of programmable logic devices to a wholly owned subsidiary, Vantis Corporation, dedicated solely to programmable logic devices. Vantis Corporation will rely upon the Company for manufacturing services. A dedicated programmable logic device sales force was formed from members of the Company's existing sales force and began operating as a separate unit in the second half of 1996.

#### RESEARCH AND DEVELOPMENT; MANUFACTURING TECHNOLOGY

The Company's expenses for research and development in 1994, 1995 and 1996, were \$295 million, \$417 million and \$401 million, respectively. Such expenses represented 14%, 17% and 21% of net sales in 1994, 1995 and 1996, respectively. The Company's research and development expenses are charged to operations as incurred. Most of the Company's research and development personnel are integrated into the engineering staff.

Manufacturing technology is the key determinant in the improvement in semiconductor products. Each new generation of process technology has resulted in products with higher speed and greater performance produced at lower cost. AMD continues to make significant infrastructure investments to enable the Company to continue to achieve high volume, high reliability and low cost production using leading edge process technology.

The Company's efforts concerning process technologies are focused in three major areas: non-volatile memory technology used by Flash memory and EPROM products; logic technology used by the Company's microprocessors, embedded processors, I/O, networking and communications products; and programmable logic

technology used in the Company's programmable logic products. The Company's goals are to increase density and improve product performance, to reduce the access time for non-volatile memory products and to increase the clock speed for microprocessor products.

In order to remain competitive, the Company must make continuing substantial investments in improving its process technologies. In particular, the Company has made and continues to make significant research and development investments in the technologies and equipment used in the fabrication of its microprocessor products and in the fabrication of Flash memory devices. Portions of these investments might not be recoverable if the Company's K86 microprocessors fail to gain market acceptance or if the market for its Flash memory products should significantly deteriorate. This could have a material adverse effect on the Company. In addition, any inability of the Company to remain competitive with respect to process technology could have a material adverse effect on the Company.

#### COMPETITION

The IC industry is intensely competitive and, historically, has experienced rapid technological advances in product and system technologies together with substantial price reductions in maturing products. After a product is introduced, prices normally decrease over time as production efficiency and competition increase, and as a successive generation of products is developed and introduced for sale. Technological advances in the industry result in frequent product introductions, regular price reductions, short product life cycles and increased product capabilities that may result in significant performance improvements. Competition in the sale of ICs is based upon performance, product quality and reliability, price, adherence to industry standards, software and hardware compatibility, marketing and distribution capability, brand recognition, financial strength and ability to deliver in large volumes on a timely basis.

In each particular market in which it participates, the Company faces competition from different groups of companies. With respect to CCG's product lines, the Company's principal competitors are Intel, Sharp, Atmel, SGS Thomson, Texas Instruments, Siemens, NEC, LM Ericsson, Alcatel, National Semiconductor, 3Com and Motorola. With respect to microprocessors, Intel holds

a dominant market position. In Vantis' market, the Company's principal competitors are Altera, Lattice Semiconductor and other smaller companies focused on programmable logic device development and production.

MANUFACTURING FACILITIES

The Company's current integrated circuit manufacturing facilities are described in the chart set forth below:

FACILITY LOCATION	WAFER SIZE (DIAMETER IN INCHES)	PRODUCTION TECHNOLOGY (IN MICRONS)	APPROX. CLEAN ROOM (SQUARE FOOTAGE)
Austin, TX			
Fab 25.....	8	0.35	89,700
Fab 15.....	6	0.7	22,000
Fab 14.....	6	0.8	22,000
Fab 10.....	5	0.9	22,000
Aizu-Wakamatsu, Japan			
FASL.....	8	0.35	70,000
Sunnyvale, CA			
SDC.....	6	0.35	42,500

10

The Company's joint venture with Fujitsu Limited, Fujitsu AMD Semiconductor Limited (FASL), is constructing a second manufacturing facility in Aizu-Wakamatsu, Japan. In addition, the Company is planning to construct and operate a manufacturing facility in Dresden, Germany, through a wholly owned subsidiary of the Company. AMD also has foundry arrangements for the production of its products by third parties.

The Company's current assembly and test facilities are described in the chart set forth below:

FACILITY LOCATION	APPROX. ASSEMBLY & TEST SQUARE FOOTAGE	ACTIVITY
Penang, Malaysia.....	141,283	Assembly & Test
Bangkok, Thailand.....	77,473	Assembly & Test
Singapore.....	54,000	Test

In addition to the assembly and test facilities described above, AMD has a 50 year land lease in Suzhou, China, and is constructing an additional assembly and test facility there. Foreign manufacturing entails political and economic risks, including political instability, expropriation, currency controls and fluctuations, changes in freight and interest rates, and loss or modification of exemptions for taxes and tariffs. For example, if AMD were unable to assemble and test its products abroad, or if air transportation between the United States and the Company's overseas facilities were disrupted, there could be a material adverse effect on the Company.

CERTAIN MATERIAL AGREEMENTS. Set forth below are descriptions of certain material contractual relationships of the Company relating to FASL and the Company's planned facility in Dresden, Germany.

FASL. In 1993, the Company and Fujitsu Limited (Fujitsu) formed a joint venture, FASL, for the development and manufacture of non-volatile memory devices. Through FASL, the two companies have constructed and are operating an advanced integrated circuit manufacturing facility in Aizu-Wakamatsu, Japan, to produce Flash memory devices. The facility began volume production in the first quarter of 1995, and utilizes eight-inch wafer processing technologies capable of producing products with geometrics of 0.5 micron or smaller. Pursuant to the terms of the joint venture, the Company and Fujitsu have each

agreed not to independently produce Flash memory devices with geometrics of 0.5 micron or smaller outside of the joint venture.

In the third quarter of 1995, FASL approved construction of a second Flash memory integrated circuit manufacturing facility (FASL II) at a site contiguous to the existing FASL facility. Groundbreaking for FASL II occurred in the first quarter of 1996. The \$1.1 billion in capital expenditures planned for the construction of FASL II are expected to be funded by cash generated from FASL operations and, if necessary, borrowings by FASL. To the extent that FASL is unable to secure the necessary funds for FASL II, the Company may be required to contribute cash or guarantee third party loans in proportion to its 49.95% interest in FASL. As of January 26, 1997, the Company had guarantees of \$33 million outstanding with respect to such loans. The planned FASL II costs are denominated in yen and, therefore, are subject to change due to foreign exchange rate fluctuations.

In connection with FASL, the Company and Fujitsu have entered into various joint development, cross-license and investment arrangements. Accordingly, the Company and Fujitsu are providing their product designs and process and manufacturing technologies to FASL. In addition, both companies are collaborating in developing manufacturing processes and designing integrated circuits for FASL. The right of each company to use the licensed intellectual property of the other with respect to certain products is limited to certain geographic areas. Consequently, the Company's ability to sell Flash memory products incorporating Fujitsu intellectual property, whether or not produced by FASL, is also limited in certain territories, including the United Kingdom and Japan. Fujitsu is likewise limited in its ability to sell Flash memory devices incorporating the Company's intellectual property, whether or not produced by FASL, in certain territories including the United States and Europe, other than the United Kingdom and Ireland.

11

DRESDEN. AMD Saxony Manufacturing GmbH (AMD Saxony), a German subsidiary wholly owned by the Company through a German holding company, is building a 900,000 square foot submicron integrated circuit manufacturing and design facility in Dresden, in the State of Saxony, Germany (the Dresden Facility) over the next five years at a presently estimated cost of approximately \$1.5 billion. The Dresden Facility is being designed for the production of microprocessors and other advanced logic products. The Federal Republic of Germany and the State of Saxony have agreed to support the project in the form of (i) a guarantee of 65% of the bank debt to be incurred by AMD Saxony up to a maximum of Deutsche marks (DM) 1.65 billion, (ii) investment grants and subsidies totaling DM500.5 million, and (iii) interest subsidies from the State of Saxony totaling DM300 million. In March 1997, AMD Saxony will be entering into a loan agreement with a consortium of banks led by Dresdner Bank AG under which facilities totaling DM1.65 billion will be made available. In connection with the financing, the Company has agreed to invest in AMD Saxony over the next three years equity and subordinated loans in an amount totaling approximately DM507.5 million. Until the Dresden Facility has been completed, AMD has also agreed to guarantee AMD Saxony's obligations under the loan agreement up to a maximum of DM217.5 million. After completion of the Dresden Facility, AMD has agreed to make available to AMD Saxony up to DM145 million if the subsidiary does not meet its fixed charge coverage ratio covenant. Finally, AMD has agreed to undertake certain contingent obligations, including various obligations to fund project cost overruns. The Company began site preparation of the Dresden Facility in the fourth quarter of 1996, and plans to commence construction during the second quarter of 1997. The planned Dresden Facility costs are denominated in Deutsche marks and, therefore, are subject to change due to foreign exchange rate fluctuations. The Company plans to hedge future foreign exchange exposure for the Dresden Facility.

AMD is currently negotiating the final forms of all the agreements relating to the operation and financing of the Dresden Facility. The negotiations presently contemplate that, in addition to the obligations discussed above, AMD (directly or indirectly) will be required to (1) return all federal and state government grants, allowances and interest subsidies, or replace all such subsidies that are not made available, if the Company or AMD Saxony fails to meet certain material obligations to the Federal Republic of Germany or the State of Saxony; (2) purchase the output of the Dresden Facility at transfer prices to be set pursuant to specific formulas, and which adjust downwards when the Dresden Facility is operating at less than 75% capacity because of a lack of market demand for the products being fabricated there (the Company's

product purchase obligation can be terminated once the syndicated loan has been repaid or under circumstances relating to a change of control of AMD Saxony or the destruction or abandonment of the Dresden Facility); (3) cause AMD Saxony to undertake bona fide research and development activities at the design center of the Dresden Facility; and (4) grant a non-exclusive license to AMD Saxony to use, at the Dresden Facility and in products manufactured at the Dresden Facility, intellectual property developed at the Dresden design center.

No assurance can be given that AMD will be able to negotiate final agreements relating to the operation and financing of the Dresden Facility on terms satisfactory to it, that the terms of any such agreements will not be materially different from those described, or that the financial exposure of AMD in connection with the Dresden Facility will not materially exceed the proposed terms described herein.

#### MARKETING AND SALES

The Company's products are marketed and sold under the AMD trademark. AMD employs a direct sales force through its principal facilities in Sunnyvale, California, and field sales offices throughout the United States and abroad (primarily Europe and Asia Pacific). In 1996, the Company established a separate sales force dedicated to sales of programmable logic devices as a part of the Company's process of transferring its operations relating to the design, development and marketing of programmable logic devices to a wholly owned subsidiary, Vantis Corporation. AMD also sells its products through third-party distributors and independent representatives in both domestic and international markets pursuant to nonexclusive agreements. The distributors also sell products manufactured by the Company's competitors, including those products for which AMD is an alternate source. One of the Company's distributors, Arrow Electronics, Inc., accounted for approximately 13% of 1996 net sales. No other distributor or OEM customer accounted for 10% or more of net sales in 1996.

12

Distributors typically maintain an inventory of the Company's products. Pursuant to the Company's agreements with distributors, AMD protects its distributors' inventory of the Company's products against price reductions, as well as products that are slow moving or have been discontinued. These agreements, which may be canceled by either party on a specified notice, generally contain a provision for the return of the Company's products in the event the agreement with the distributor is terminated. The price protection and return rights AMD offers to its distributors may materially adversely affect the Company.

AMD derives a substantial portion of its revenues from its sales subsidiaries located in Europe and Asia Pacific. AMD subsidiaries have offices in Australia, Belgium, Brazil, Canada, China, Finland, France, Germany, Hong Kong, Italy, Japan, Korea, Singapore, Sweden, Switzerland, Taiwan and the United Kingdom. (See Note 11 of Notes to Consolidated Financial Statements contained in the 1996 Annual Report to Stockholders.) The international sales force also works with independent sales representatives and distributors with offices in approximately 37 countries, including those where AMD has sales subsidiaries. The Company's international sales operations entail political and economic risks, including expropriation, currency controls, exchange rate fluctuations, changes in freight rates, and changes in rates and exemptions for taxes and tariffs.

#### RAW MATERIALS

Certain of the raw materials used by the Company in the manufacture of its products are available from a limited number of suppliers. For example, several types of the integrated circuit packages purchased by AMD, as well as by the majority of other companies in the semiconductor industry, are principally supplied by Japanese companies. Shortages could occur in various essential materials due to interruption of supply or increased demand in the industry. If AMD were unable to procure certain of such materials, it would be required to reduce its manufacturing operations which could have a material adverse effect on the Company. To date, AMD has not experienced significant difficulty in obtaining necessary raw materials.

#### ENVIRONMENTAL REGULATIONS

The failure to comply with present or future governmental regulations related to the use, storage, handling, discharge or disposal of toxic, volatile or otherwise hazardous chemicals used in the manufacturing process could result in fines being imposed on the Company, suspension of production, alteration of the Company's manufacturing processes or cessation of operations. Such regulations could require the Company to acquire expensive remediation equipment or to incur other expenses to comply with environmental regulations. Any failure by the Company to control the use, disposal or storage of, or adequately restrict the discharge of, hazardous substances could subject the Company to future liabilities and could have a material adverse effect on the Company.

#### INTELLECTUAL PROPERTY AND LICENSING

AMD and its subsidiaries have been granted over 1,165 United States patents, and over 1,327 patent applications are pending in the United States. In certain cases, the Company has filed corresponding applications in foreign jurisdictions. The Company expects to file future patent applications in both the United States and abroad on significant inventions as it deems appropriate.

On January 11, 1995, the Company and Intel reached an agreement to settle all previously outstanding legal disputes between the two companies. As part of the settlement, in December 1995, the Company signed a five-year, comprehensive cross-license agreement with Intel which expires on December 31, 2000. The agreement provides that after December 20, 1999, the parties will negotiate in good faith a patent cross-license agreement to be effective January 1, 2001. Effective January 1, 1996, the new agreement gives the Company and Intel the right to use each others' patents and certain copyrights, including copyrights to the x86 instruction sets but excluding other microprocessor microcode copyrights beyond the Intel 486(TM) processor code. The cross-license is royalty-bearing for the Company's products that use certain Intel technologies. The Company is required to pay Intel minimum non-refundable royalties during the years 1997 through 2000.

13

In addition, AMD has entered into numerous cross-licensing and technology exchange agreements with other companies under which it both transfers and receives technology and intellectual property rights. Although the Company attempts to protect its intellectual property rights through patents, copyrights, trade secrets and other measures, there can be no assurance that the Company will be able to protect its technology adequately or that competitors will not be able to develop similar technology independently. There can be no assurance that any patent applications that the Company may file will be issued or that foreign intellectual property laws will protect the Company's intellectual property rights. There can be no assurance that any patent licensed by or issued to the Company will not be challenged, invalidated or circumvented, or that the rights granted thereunder will provide competitive advantages to the Company. Furthermore, there can be no assurance that others will not independently develop similar products, duplicate the Company's products or design around the patents issued to or licensed by the Company.

From time to time, AMD has been notified that it may be infringing intellectual property rights of others. If any such claims are asserted against the Company, the Company may seek to obtain a license under the third party's intellectual property rights. The Company could decide, in the alternative, to resort to litigation to challenge such claims. Such challenges could be extremely expensive and time-consuming and could materially adversely affect the Company. No assurance can be given that all necessary licenses can be obtained on satisfactory terms, nor that litigation may always be avoided or successfully concluded.

#### BACKLOG

AMD manufactures and markets standard lines of products. Consequently, a significant portion of its sales are made from inventory on a current basis. Sales are made primarily pursuant to purchase orders for current delivery, or agreements covering purchases over a period of time, which are frequently subject to revision and cancellation without penalty. Generally, in light of current industry practice and experience, AMD does not believe that such agreements provide meaningful backlog figures or are necessarily indicative of actual sales for any succeeding period.

## EMPLOYEES

On January 28, 1997, AMD and its subsidiaries employed approximately 12,200 employees, none of whom are represented by collective bargaining arrangements. The Company believes that its relationship with its employees is generally good.

## ITEM 2. PROPERTIES

The Company's principal engineering, manufacturing, warehouse and administrative facilities comprise approximately 3.11 million square feet and are located in Sunnyvale, California and Austin, Texas. Over 2.56 million square feet of this space is in buildings owned by the Company.

The Company leases property containing two buildings with an aggregate of approximately 360,000 square feet, located on 45.6 acres of land in Sunnyvale, California (One AMD Place). These leases provide the Company with an option to purchase One AMD Place for \$40 million during the lease term. The lease term ends in 1998. At the end of the lease term, the Company is obligated to either purchase One AMD Place or to arrange for its sale to a third party with a guarantee of residual value to the seller equal to the option purchase price. In 1993, the Company entered into a lease agreement for approximately 175,000 square feet located adjacent to One AMD Place (known as AMD Square) to be used in connection with One AMD Place.

The Company also owns or leases facilities containing approximately 804,000 square feet for its operations in Malaysia, Thailand and Singapore. The Company leases approximately 15 acres of land in Suzhou, China. The Company owns 74 undeveloped acres of land in the Republic of Ireland. The Company also has an equity interest in 58 acres of land in Albuquerque, New Mexico. In 1996, the Company acquired approximately 103 acres of land in Dresden, Germany. Fab 25 is encumbered by a lien securing the Company's \$400 million Senior Secured Notes and its \$400 million bank credit arrangements. The planned Dresden Facility will be encumbered by a lien securing borrowings of AMD Saxony.

14

AMD leases 28 sales offices in North America, 9 sales offices in Asia Pacific, 12 sales offices in Europe and one sales office in South America for its direct sales force. These offices are located in cities in major electronics markets where concentrations of the Company's customers are located.

Leases covering the Company's facilities expire over terms of generally one to twenty years. The Company currently does not anticipate significant difficulty in either retaining occupancy of any of its facilities through lease renewals prior to expiration or through month-to-month occupancy, or replacing them with equivalent facilities.

## ITEM 3. LEGAL PROCEEDINGS

1. ENVIRONMENTAL MATTERS. Since 1981, the Company has discovered, investigated and begun remediation of three sites where releases from underground chemical tanks at its facilities in Santa Clara County, California, adversely affected the groundwater. The chemicals released into the groundwater were commonly in use in the semiconductor industry in the wafer fabrication process prior to 1979. At least one of the released chemicals (which is no longer used by the Company) has been identified as a probable carcinogen.

In 1991, the Company received four Final Site Clean-up Requirements Orders from the California Regional Water Quality Control Board, San Francisco Bay Region, relating to the three sites. One of the orders named the Company as well as TRW Microwave, Inc. and Philips Semiconductors Corporation. Another of the orders named the Company as well as National Semiconductor Corporation.

The three sites in Santa Clara County are on the National Priorities List (Superfund). If the Company fails to satisfy federal compliance requirements or inadequately performs the compliance measures, the government (a) can bring an action to enforce compliance, or (b) can undertake the desired response actions itself and later bring an action to recover its costs, and penalties, which is up to three times the costs of clean-up activities, if appropriate.

With regard to certain claims related to this matter the statute of limitations has been tolled.

The Company has computed and recorded the estimated environmental liability in accordance with applicable accounting rules and has not recorded any potential insurance recoveries in determining the estimated costs of the cleanup. The amount of environmental charges to earnings has not been material during any of the last three fiscal years. The Company believes that the potential liability, if any, in excess of amounts already accrued with respect to the foregoing environmental matters will not have a material adverse effect on the financial condition or results of operations of the Company.

2. MCDAID V. SANDERS, ET AL. (CASE NO. C-95-20750-JW, N.D. CAL.); KOZLOWSKI, ET AL. V. SANDERS, ET AL. (CASE NO. C-95-20829-JW, N.D. CAL.). The McDaid complaint was filed November 3, 1995 and the Kozlowski complaint was filed November 15, 1995. Both actions allege violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, against the Company and certain individual officers and directors (the Individual Defendants), and purportedly were filed on behalf of all persons who purchased or otherwise acquired common stock of the Company during the period April 11, 1995 through September 22, 1995. The complaints seek damages allegedly caused by alleged materially misleading statements and/or material omissions by the Company and the Individual Defendants regarding the Company's development of its AMD-K5, -K6 and -K7 microprocessors, which statements and omissions, the plaintiffs claim, allegedly operated to inflate artificially the price paid for the Company's common stock during the period. The complaints seek compensatory damages in an amount to be proven at trial, fees and costs, and extraordinary equitable and/or injunctive relief. The court has consolidated both actions into one. Defendants filed answers in the consolidated action in May, 1996 and discovery has begun. Based upon information presently known to management, the Company does not believe that the ultimate resolution of this lawsuit will have a material adverse effect on the financial condition or results of operations of the Company.

15

3. ADVANCED MICRO DEVICES, INC. V. ALTERA CORPORATION (CASE NO. C-94-20567-RMW, N. D. CAL.). This litigation, which began in 1994, involves multiple claims and counterclaims for patent infringement relating to the Company's and Altera Corporation's programmable logic devices. On June 27, 1996, a jury returned a verdict and found that four of the eight patents-in-suit were licensed to Altera. The parties have stipulated that the court, not a jury, will decide which of the remaining AMD patents-in-suit fall within the scope of the license that the jury found. The court will hear the first of two phases regarding the remaining patents in April, 1997. Based upon information presently known to management, the Company does not believe that the ultimate resolution of this lawsuit will have a material adverse effect on the financial condition or results of operations of the Company.

4. INTEL CORPORATION V. ADVANCED MICRO DEVICES, INC., ET AL. (CASE NO. 97-118, D. DEL.). On March 14, 1997, Intel Corporation (Intel) filed suit against the Company and Cyrix Corporation in the United States District Court for the District of Delaware alleging false designation of origin and false advertising, trademark infringement and trademark dilution, and deceptive trade practices arising out of alleged misuse by the Company of the term "MMX," which Intel claims as a trademark. In a related matter filed by Intel against the Company on March 14, 1997, in the regional Court of Braunschweig, Germany (Case Ref. No. 9 0 89/97), Intel was granted a temporary injunction prohibiting the Company from using the term "MMX" to identify, advertise or market its processors. Based upon information presently known to management, the Company does not believe that the ultimate resolution of these lawsuits will have a material adverse effect upon the financial condition or results of operation of the Company.

5. OTHER MATTERS. The Company is a defendant or plaintiff in various other actions which arose in the normal course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on the financial condition or results of operations of the Company.

#### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of the fiscal year covered by this report.



## EXECUTIVE OFFICERS OF THE REGISTRANT

NAME ----	AGE ---	POSITION -----	HELD SINCE -----
W. J. Sanders III....	60	Chairman of the Board and Chief Executive Officer.	1969
Richard Previte.....	62	Director, President and Chief Operating Officer. Mr. Previte became Chief Operating Officer in 1989 and President in 1990. Mr. Previte was Chief Financial Officer and Treasurer from 1969 to 1989.	1989
Marvin D. Burkett....	55	Senior Vice President, Chief Financial and Administrative Officer and Treasurer. Mr. Burkett was Controller from 1972 until 1989.	1989
Eugene D. Conner.....	53	Senior Vice President, Operations. Mr. Conner joined the Company in 1969, and was elected an executive officer in 1981.	1987
S. Atiq Raza.....	48	Director, Senior Vice President and Chief Technical Officer. Formerly, Mr. Raza was the Chairman of the Board, President, Chief Executive Officer, and Secretary of NexGen, Inc.	1996
Stanley Winvick.....	57	Senior Vice President, Human Resources. Mr. Winvick had been Vice President, Human Resources since 1980.	1991
Stephen J. Zelencik..	62	Senior Vice President and Chief Marketing Executive. Mr. Zelencik joined the Company in 1970.	1979
Thomas M. McCoy.....	46	Vice President, General Counsel and Secretary. Prior to joining the Company, Mr. McCoy was with the law firm of O'Melveny and Myers where he had been a partner since 1985.	1995

There is no family relationship between any executive officers of the Company.

16

## KEY EMPLOYEES

NAME ----	AGE ---	POSITION -----	HELD SINCE -----
Donald M. Brettner...	60	Group Vice President, Manufacturing Services Group. Mr. Brettner joined the Company in 1982. Prior to joining the Company, Mr. Brettner was Chief Operating Officer at NBK Corporation and Vice President of Manufacturing Services at Fairchild Semiconductor.	1996
Vinod Dham.....	46	Group Vice President, Computation Products Group. Prior to joining the Company, Mr. Dham was Executive Vice President and Chief Operating Officer of NexGen, Inc. and held those positions from May, 1995, until it was acquired by the Company on January 17, 1996. Before joining NexGen, Mr. Dham was Vice President of the Microprocessor Products Group and General Manager of the Pentium Processor Division at Intel. Mr. Dham was employed by Intel from July 1979 to April 1995.	1996
Richard Forte.....	53	Group Vice President, Communications and Components Group, and President, Vantis. Mr. Forte joined the Company in 1986. Prior to joining the Company, Mr. Forte was Vice President of Monolithic Memories, Inc. from 1986 until it was acquired by the Company in 1987.	1996
Gary O. Heerssen.....	50	Group Vice President, Wafer Fabrication Group. Mr. Heerssen joined the Company in 1986. Prior to joining the Company, Mr. Heerssen worked for Fairchild Semiconductor and spent 15 years with Texas Instruments in a variety of engineering and operations management positions.	1996
William T. Siegle....	58	Group Vice President, Technology Development Group and Chief Scientist. Mr. Siegle joined the Company and was elected Vice President and Chief Scientist in 1990. Prior to joining the Company, Mr. Siegle was Director of the Advanced Technology Center for IBM in East	1990

Fishkill, New York.  
Terryll R. Smith..... 47 Group Vice President, Sales and Marketing. Mr. Smith 1996  
joined the Company in 1975. Prior to his current  
position, Mr. Smith was Vice President of Sales &  
Marketing for European Operations in Switzerland, Vice  
President of International Sales & Marketing for AMD  
Sunnyvale and Group Vice President of Applications  
Solutions Products.

## PART II

### ITEM 5. MARKET FOR THE REGISTRANT'S COMMON STOCK AND RELATED STOCKHOLDER MATTERS

The Company's common stock is publicly traded on the New York Stock Exchange. The information regarding market price range, dividend information and number of holders of common stock of AMD appearing under the captions "Supplementary Financial Data" and "Financial Summary" on pages 38 and 39 of the Company's 1996 Annual Report to Stockholders is incorporated herein by reference.

During 1996, the Company sold one million shares of its common stock to Fujitsu which were not registered under the Securities Act of 1933 based upon an exemption from the registration requirements of the Act for transactions not involving public offerings. The Company sold 500,000 shares on April 1, 1996, at \$19.00 per share and 500,000 shares on October 1, 1996, at \$14.00 per share. In each case, the consideration was cash.

17

### ITEM 6. SELECTED FINANCIAL DATA

The information regarding selected financial data for the fiscal years 1992 through 1996, under the caption "Financial Summary" on page 39 of the Company's 1996 Annual Report to Stockholders is incorporated herein by reference.

### ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The information appearing under the caption "Management's Discussion and Analysis of Results of Operations and Financial Condition" on pages 8 through 17 of the Company's 1996 Annual Report to Stockholders is incorporated herein by reference.

### ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The Company's consolidated financial statements at December 29, 1996 and December 31, 1995 and for each of the three years in the period ended December 29, 1996, and the report of independent auditors thereon, and the unaudited quarterly financial data of AMD for the two-year period ended December 29, 1996, appearing on pages 18 through 38 of the Company's 1996 Annual Report to Stockholders are incorporated herein by reference.

### ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

## PART III

### ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information appearing at the end of Item 4 in Part I of this report under the caption "Executive Officers of the Registrant" and under the captions "Proposal No. 1 Election of Directors" and "Section 16(a) Beneficial Ownership Reporting Compliance" in the Company's Proxy Statement for its Annual Meeting of Stockholders to be held on April 24, 1997 (the 1997 Proxy Statement) is incorporated herein by reference.

### ITEM 11. EXECUTIVE COMPENSATION

The information under the caption "Directors Fees and Expenses" under the main caption "Committees and Meetings of the Board of Directors," and the

information under the captions "Executive Compensation," "Employment Agreements, Compensation Agreements and Change in Control Agreements" and "Compensation Committee Interlocks and Insider Participation" in the 1997 Proxy Statement are incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information appearing under the captions "Principal Stockholders" and "Stock Ownership Table" in the 1997 Proxy Statement is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information appearing under the caption "Certain Relationships and Related Transactions" in the 1997 Proxy Statement is incorporated herein by reference.

With the exception of the information specifically incorporated by reference in Part III of this Annual Report on Form 10-K from the 1997 Proxy Statement, the 1997 Proxy Statement shall not be deemed to be filed as part of this report. Without limiting the foregoing, the information under the captions "Report of the Compensation Committee" and "Comparison of Five-Year Cumulative Total Return Advanced Micro Devices, S&P 500 Composite Index and Technology-500 Index" in the 1997 Proxy Statement is not incorporated by reference in this Annual Report on Form 10-K.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K

(A)

1. FINANCIAL STATEMENTS

The financial statements listed in the accompanying Index to Consolidated Financial Statements and Financial Statement Schedule covered by Report of Independent Auditors are filed or incorporated by reference as part of this Annual Report on Form 10-K. The following is a list of such financial statements:

PAGE REFERENCES  
-----  
1996 ANNUAL  
FORM REPORT TO  
10-K STOCKHOLDERS  
-----

Report of Ernst & Young LLP, Independent Auditors.....	--	37
Consolidated Statements of Operations for the three years in the period ended December 29, 1996.....	--	18
Consolidated Balance Sheets at December 29, 1996 and December 31, 1995.....	--	19
Consolidated Statements of Stockholders' Equity for the three years in the period ended December 29, 1996.....	--	20
Consolidated Statements of Cash Flows for the three years in the period ended December 29, 1996.....	--	21
Notes to Consolidated Financial Statements.....	--	22-36

2. FINANCIAL STATEMENT SCHEDULE

The financial statement schedule listed in the accompanying Index to Consolidated Financial Statements and Financial Statement Schedule covered by the Report of Independent Auditors is filed as part of this Annual Report on Form 10-K as follows:

Schedule II Valuation and Qualifying Accounts..... F-3      --

All other schedules have been omitted because the required information is not present or is not present in amounts sufficient to require submission of the schedules, or because the information required is included in the Consolidated Financial Statements or Notes thereto. With the exception of the information specifically incorporated by reference into Parts II and IV of this Annual Report on Form 10-K, the 1996 Annual Report to Stockholders is not to be deemed filed as part of this report.

19

### 3. EXHIBITS

The exhibits listed in the accompanying Index to Exhibits are filed as part of, or incorporated by reference into, this Annual Report on Form 10-K. The following is a list of such Exhibits:

EXHIBIT NUMBER -----	DESCRIPTION OF EXHIBITS -----
2.1	Agreement and Plan of Merger dated October 20, 1995, as amended, between the Company and NexGen, Inc., filed as Exhibit 2 to the Company's Quarterly Report for the period ended October 1, 1995, and as Exhibit 2.2 to the Company's Current Report on Form 8-K dated January 17, 1996, is hereby incorporated by reference.
2.2	Amendment No. 2 to the Agreement and Plan of Merger, dated January 11, 1996, among Advanced Micro Devices, Inc. and NexGen, Inc., filed as Exhibit 2.2 to the Company's Current Report on Form 8-K dated January 17, 1996, is hereby incorporated by reference.
3.1	Certificate of Incorporation, as amended, filed as Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the period ended July 2, 1995, is hereby incorporated by reference.
3.2	By-Laws, as amended, filed as Exhibit 3.2 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1995, is hereby incorporated by reference.
4.1	Form of Advanced Micro Devices, Inc. 11% Senior Secured Notes due August 1, 2003, filed as Exhibit 4.1 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
4.2	Indenture, dated as of August 1, 1996, between Advanced Micro Devices, Inc. and United States Trust Company of New York, as trustee, filed as Exhibit 4.2 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
4.3	Intercreditor and Collateral Agent Agreement, dated as of August 1, 1996, among United States Trust Company of New York, as trustee, Bank of America NT&SA, as agent for the banks under the Credit Agreement of July 19, 1996, and IBJ Schroder Bank & Trust Company, filed as Exhibit 4.3 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
4.4	Payment, Reimbursement and Indemnity Agreement, dated as of August 1, 1996, between Advanced Micro Devices, Inc. and IBJ Schroder Bank & Trust Company, filed as Exhibit 4.4 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
4.5	Deed of Trust, Assignment, Security Agreement and Financing Statement, dated as of August 1, 1996, among Advanced Micro Devices, Inc., as grantor, IBJ Schroder Bank & Trust Company, as grantee, and Shelley W. Austin as trustee, filed as Exhibit 4.5 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
4.6	Security Agreement, dated as of August 1, 1996, between Advanced Micro Devices, Inc. and IBJ Schroder Bank & Trust Company, as agent for United States Trust Company of New York, as Trustee, and Bank of America NT&SA, as agent for banks, filed as Exhibit 4.6 to the

Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.

- 4.7 Lease, Option to Purchase and Put Option Agreement, dated as of August 1, 1996, between Advanced Micro Devices, Inc., as lessor, and AMD Texas Properties, LLC, as lessee, filed as Exhibit 4.7 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
- 4.8 Reciprocal Easement Agreement, dated as of August 1, 1996, between Advanced Micro Devices, Inc. and AMD Texas Properties, LLC, filed as Exhibit 4.8 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
- 4.9 Sublease Agreement, dated as of August 1, 1996, between Advanced Micro Devices, Inc., as sublessee, and AMD Texas Properties, LLC, as sublessor, filed as Exhibit 4.9 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.

20

EXHIBIT  
NUMBER

DESCRIPTION OF EXHIBITS

- 4.10 The Company hereby agrees to file on request of the Commission a copy of all instruments not otherwise filed with respect to long-term debt of the Company or any of its subsidiaries for which the total amount of securities authorized under such instruments does not exceed 10% of the total assets of the Company and its subsidiaries on a consolidated basis.
- \*10.1 AMD 1982 Stock Option Plan, as amended, filed as Exhibit 10.1 to the Company's Annual Report on Form 10-K for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
- \*10.2 AMD 1986 Stock Option Plan, as amended, filed as Exhibit 10.2 to the Company's Annual Report on Form 10-K for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
- \*10.3 AMD 1992 Stock Incentive Plan, as amended, filed as Exhibit 10.3 to the Company's Annual Report on Form 10-K for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
- \*10.4 AMD 1980 Stock Appreciation Rights Plan, as amended, filed as Exhibit 10.4 to the Company's Annual Report on Form 10-K for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
- \*10.5 AMD 1986 Stock Appreciation Rights Plan, as amended, filed as Exhibit 10.5 to the Company's Annual Report on Form 10-K for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
- \*10.6 Forms of Stock Option Agreements, filed as Exhibit 10.8 to the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 1991, are hereby incorporated by reference.
- \*10.7 Form of Limited Stock Appreciation Rights Agreement, filed as Exhibit 4.11 to the Company's Registration Statement on Form S-8 (No. 33-26266), is hereby incorporated by reference.
- \*10.8 AMD 1987 Restricted Stock Award Plan, as amended, filed as Exhibit 10.10 to the Company's Annual Report on Form 10-K for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
- \*10.9 Forms of Restricted Stock Agreements, filed as Exhibit 10.11 to the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 1991, are hereby incorporated by reference.
- \*10.10 Resolution of Board of Directors on September 9, 1981, regarding acceleration of vesting of all outstanding stock options and associated limited stock appreciation rights held by officers under certain circumstances, filed as Exhibit 10.10 to the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 1985, is hereby incorporated by reference.
- \*10.11 Advanced Micro Devices, Inc. 1996 Stock Incentive Plan, as amended.
- \*10.12 Employment Agreement dated September 29, 1996, between the Company and W. J. Sanders III, filed as Exhibit 10.11(a) to the Company's Quarterly Report on Form 10-Q for the period ended September 29, 1996, is hereby incorporated by reference.
- \*10.13 Management Continuity Agreement between the Company and W. J. Sanders III, filed as Exhibit 10.14 to the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 1991, is hereby incorporated by reference.

- \*10.14 Bonus Agreement between the Company and Richard Previte, filed as Exhibit 10.15 to the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 1991, is hereby incorporated by reference.
- \*10.15 Executive Bonus Plan, as amended, filed as Exhibit 10.16 to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994, is hereby incorporated by reference.

EXHIBIT NUMBER -----	DESCRIPTION OF EXHIBITS -----
*10.16	Advanced Micro Devices, Inc. 1996 Executive Incentive Plan, filed as Exhibit 10.14(b) to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1996, is hereby incorporated by reference.
*10.17	Form of Bonus Deferral Agreement, filed as Exhibit 10.12 to the Company's Annual Report on Form 10-K for the fiscal year ended March 30, 1986, is hereby incorporated by reference.
*10.18	Form of Executive Deferral Agreement, filed as Exhibit 10.17 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1989, is hereby incorporated by reference.
*10.19	Director Deferral Agreement of R. Gene Brown, filed as Exhibit 10.18 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1989, is hereby incorporated by reference.
10.20	Intellectual Property Agreements with Intel Corporation, filed as Exhibit 10.21 to the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 1991, are hereby incorporated by reference.
*10.21	Form of Indemnification Agreements with former officers of Monolithic Memories, Inc., filed as Exhibit 10.22 to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 1987, is hereby incorporated by reference.
*10.22	Form of Management Continuity Agreement, filed as Exhibit 10.25 to the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 1991, is hereby incorporated by reference.
**10.23 (a)	Joint Venture Agreement between the Company and Fujitsu Limited, filed as Exhibit 10.27(a) to the Company's Amendment No. 1 to its Annual Report on Form 10K/A for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
**10.23 (b)	Technology Cross-License Agreement between the Company and Fujitsu Limited, filed as Exhibit 10.27(b) to the Company's Amendment No. 1 to its Annual Report on Form 10K/A for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
**10.23 (c)	AMD Investment Agreement between the Company and Fujitsu Limited, filed as Exhibit 10.27(c) to the Company's Amendment No. 1 to its Annual Report on Form 10K/A for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
**10.23 (d)	Fujitsu Investment Agreement between the Company and Fujitsu Limited, filed as Exhibit 10.27(d) to the Company's Amendment No. 1 to its Annual Report on Form 10K/A for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
***10.23 (e)	First Amendment to Fujitsu Investment Agreement dated April 28, 1995.
10.23 (f)	Second Amendment to Fujitsu Investment Agreement, dated February 27, 1996.
**10.23 (g)	Joint Venture License Agreement between the Company and Fujitsu Limited, filed as Exhibit 10.27(e) to the Company's Amendment No. 1 to its Annual Report on Form 10K/A for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
**10.23 (h)	Joint Development Agreement between the Company and Fujitsu Limited, filed as Exhibit 10.27(f) to the Company's Amendment No. 1 to its Annual Report on Form 10K/A for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
**10.23 (i)	Fujitsu Joint Development Agreement Amendment, filed as Exhibit 10.23(g) to the Company's Quarterly Report on Form 10-Q for the period ended March 31, 1996, is hereby incorporated by reference.
10.24 (a)	Credit Agreement, dated as of July 19, 1996, among Advanced Micro

Devices, Inc., Bank of America NT&SA, as administrative agent and lender, ABN AMRO Bank N.V., as syndication agent and lender, and Canadian Imperial Bank of Commerce, as documentation agent and lender, filed as Exhibit 99.1 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.

EXHIBIT NUMBER -----	DESCRIPTION OF EXHIBITS -----
10.24(b)	First Amendment to Credit Agreement, dated as of August 7, 1996, among Advanced Micro Devices, Inc., Bank of America NT&SA, as administrative agent and lender, ABN AMRO Bank N.V., as syndication agent and lender, and Canadian Imperial Bank of Commerce, as documentation agent and lender, filed as Exhibit 99.2 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
10.24(c)	Second Amendment to Credit Agreement, dated as of September 9, 1996, among Advanced Micro Devices, Inc., Bank of America NT&SA, as administrative agent and lender, ABN AMRO Bank, N.V., as syndication agent and lender, and Canadian Imperial Bank of Commerce, as documentation agent and lender, filed as Exhibit 10.24(b) to the Company's Quarterly Report on Form 10-Q for the period ended September 29, 1996, is hereby incorporated by reference.
10.25(a)	Third Amended and Restated Guaranty, dated as of August 21, 1995, made by the Company in favor of CIBC Inc. (replacing in entirety the Amended and Restated Guaranty and the First Amendment thereto filed as Exhibits 10.29(a) and 10.29(b), respectively, to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994) filed as Exhibit 10.29(a) to the Company's Quarterly Report on Form 10-Q for the period ended October 1, 1995, is hereby incorporated by reference.
10.25(b)	First Amendment to Third Amended and Restated Guaranty, dated as of October 20, 1995, amending the Third Amended and Restated Guaranty dated as of August 21, 1995, made by the Company in favor of CIBC Inc. and filed as Exhibit 10.29(a), as filed as Exhibit 10.29(d) to the Company's Quarterly Report on Form 10-Q for the period ended October 1, 1995, is hereby incorporated by reference.
10.25(c)	Second Amendment to Third Amended and Restated Guaranty, dated as of January 12, 1996 (amending the Third Amended and Restated Guaranty dated as of August 21, 1995, made by the Company in favor of CIBC Inc.), filed as Exhibit 10.25(c) to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1995, is hereby incorporated by reference.
10.25(d)	Third Amendment to Third Amended and Restated Guaranty, dated as of May 10, 1996 (amending the Second Amendment to the Third Amended and Restated Guaranty, dated as of January 12, 1996, made by the Company in favor of CIBC Inc.), filed as Exhibit 10.25(n) to the Company's Quarterly Report on Form 10-Q for the period ended September 29, 1996, is hereby incorporated by reference.
10.25(e)	Fourth Amendment to Third Amended and Restated Guaranty, dated as of June 20, 1996 (amending the Third Amendment to the Third Amended and Restated Guaranty, dated as of May 10, 1996, made by the Company in favor of CIBC Inc.), filed as Exhibit 10.25(o) to the Company's Quarterly Report on Form 10-Q for the period ended September 29, 1996, is hereby incorporated by reference.
10.25(f)	Fifth Amendment to Third Amended and Restated Guaranty, dated as of August 1, 1996 (amending the Third Amended and Restated Guaranty, dated as of August 25, 1995, made by the Company in favor of CIBC Inc.), filed as Exhibit 99.3 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
10.26(a)	Building Lease by and between CIBC Inc. and AMD International Sales & Service, Ltd., dated as of September 22, 1992, filed as Exhibit 10.28(b) to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 1992, is hereby incorporated by reference.
10.26(b)	First Amendment to Building Lease dated December 22, 1992, by and between CIBC Inc. and AMD International Sales & Service, Ltd., filed

as Exhibit 10.28(c) to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 1992, is hereby incorporated by reference.

- 10.26(c) Second Amendment to Building Lease dated December 17, 1993, by and between CIBC Inc. and AMD International Sales & Service, Ltd., filed as Exhibit 10.29(e) to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994, is hereby incorporated by reference.

23

EXHIBIT NUMBER -----	DESCRIPTION OF EXHIBITS -----
10.26(d)	Third Amendment to Building Lease dated August 21, 1995, by and between CIBC Inc. and AMD International Sales and Service, Inc. (amending the Building Lease filed as Exhibit 10.29(c) to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994), filed as Exhibit 10.29(b) to the Company's Quarterly Report on Form 10-Q for the period ended October 1, 1995, is hereby incorporated by reference.
10.26(e)	Fourth Amendment to Building Lease dated November 10, 1995, by and between CIBC Inc. and AMD International Sales & Service, Inc. (amending the Building Lease filed as Exhibit 10.29(c) to the Company's Annual Report on Form 10-K for the fiscal year ended December 24, 1994), filed as Exhibit 10.25(h) to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1995, is hereby incorporated by reference.
10.26(f)	Fifth Amendment to Building Lease dated August 1, 1996 (amending the Building Lease dated as of September 22, 1992, by and between AMD International Sales & Service, Ltd. and CIBC Inc.), filed as Exhibit 99.4 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
10.27(a)	Land Lease by and between CIBC Inc. and AMD International Sales & Service, Ltd., dated as of September 22, 1992, filed as Exhibit 10.28(d) to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 1992, is hereby incorporated by reference.
10.27(b)	First Amendment to Land Lease dated December 22, 1992, by and between CIBC Inc. and AMD International Sales & Service, Ltd., filed as Exhibit 10.28(e) to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 1992, is hereby incorporated by reference.
10.27(c)	Second Amendment to Land Lease dated December 17, 1993, by and between CIBC Inc. and AMD International Sales & Service, Ltd., filed as Exhibit 10.29(h) to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994, is hereby incorporated by reference.
10.27(d)	Third Amendment to Land Lease dated August 21, 1995, by and between CIBC Inc. and AMD International Sales & Service, Inc. (amending the Land Lease filed as Exhibit 10.29(f) to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994), filed as Exhibit 10.29(c) to the Company's Quarterly Report on Form 10-Q for the period ended October 1, 1995, is hereby incorporated by reference.
10.27(e)	Fourth Amendment to Land Lease dated November 10, 1995, by and between CIBC Inc. and AMD International Sales & Service, Ltd. (amending the Land Lease filed as Exhibit 10.29(f) to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994), filed as Exhibit 10.25(m) to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1995, is hereby incorporated by reference.
10.27(f)	Fifth Amendment to Land Lease dated as of August 1, 1996 (amending the Land Lease dated as of September 22, 1992, by and between AMD International Sales & Service, Ltd. and CIBC Inc.), filed as Exhibit 99.5 to the Company's Current Report on Form 8-K dated August 13, 1996, is hereby incorporated by reference.
*10.28	Executive Savings Plan, as amended, filed as Exhibit 10.30 to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994, is hereby incorporated by reference.



- \*10.29 Form of Split Dollar Agreement, as amended, filed as Exhibit 10.31 to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994, is hereby incorporated by reference.
- \*10.30 Form of Collateral Security Assignment Agreement, filed as Exhibit 10.32 to the Company's Annual Report on Form 10-K for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
- \*10.31 Forms of Stock Option Agreements to the 1992 Stock Incentive Plan, filed as Exhibit 4.3 to the Company's Registration Statement on Form S-8 (No. 33-46577), are hereby incorporated by reference.

EXHIBIT  
NUMBER  
-----

DESCRIPTION OF EXHIBITS  
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- \*10.32 1992 United Kingdom Share Option Scheme, filed as Exhibit 4.2 to the Company's Registration Statement on Form S-8 (No. 33-46577), is hereby incorporated by reference.
- \*\*10.33 Compaq Computer Company/Advanced Micro Devices, Inc. Agreement, filed as Exhibit 10.35 to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994, is hereby incorporated by reference.
- \*10.34 Form of indemnification agreements with current officers and directors of the Company, filed as Exhibit 10.38 to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 1994, is hereby incorporated by reference.
- \*10.35 Agreement to Preserve Goodwill dated January 15, 1996, between the Company and S. Atiq Raza, filed as Exhibit 10.36 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1995, is hereby incorporated by reference.
- \*10.36 1995 Stock Plan of NexGen, Inc., as amended.
- \*\*10.37 Patent Cross-License Agreement dated December 20, 1995, between the Company and Intel Corporation, filed as Exhibit 10.38 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1995, is hereby incorporated by reference.
- 10.38 Contract for Transfer of the Right to the Use of Land between Advanced Micro Devices (Suzhou) Limited and China-Singapore Suzhou Industrial Park Development Co., Ltd., filed as Exhibit 10.39 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1995, is hereby incorporated by reference.
- \*10.39 NexGen, Inc. 1987 Employee Stock Plan, filed as Exhibit 99.3 to Post-Effective Amendment No. 1 on Form S-8 to the Company's Registration Statement on Form S-4 (No. 33-64911), is hereby incorporated by reference.
- \*10.40 1995 Stock Plan of NexGen, Inc. (assumed by Advanced Micro Devices, Inc.), as amended, filed as Exhibit 10.37 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1996, is hereby incorporated by reference.
- \*10.41 Form of indemnity agreement between NexGen, Inc. and its directors and officers, filed as Exhibit 10.5 to the Registration Statement of NexGen, Inc. on Form S-1 (No. 33-90750), is hereby incorporated by reference.
- 10.42 Series E Preferred Stock Purchase Warrant of NexGen, Inc. issued to PaineWebber Incorporated, filed as Exhibit 10.14 to the Registration Statement of NexGen, Inc. on Form S-1 (No. 33-90750), is hereby incorporated by reference.
- 10.43 Series F Preferred Stock Purchase Warrant of NexGen, Inc., filed as Exhibit 10.15 to the Registration Statement of NexGen, Inc. on Form S-1 (No. 33-90750), is hereby incorporated by reference.
- 10.44 Series G Preferred Stock Purchase Warrant of NexGen, Inc., filed as Exhibit 10.16 to the Registration Statement of NexGen, Inc. on Form S-1 (No. 33-90750), is hereby incorporated by reference.
- \*\*10.45 Agreement for Purchase of IBM Products between IBM and NexGen, Inc. dated June 2, 1994, filed as Exhibit 10.17 to the Registration Statement of NexGen, Inc. on Form S-1 (No. 33-90750), is hereby incorporated by reference.

EXHIBIT NUMBER -----	DESCRIPTION OF EXHIBITS -----
*10.46	Letter Agreement dated as of September, 1988, between NexGen, Inc. and S. Atiq Raza, First Promissory Note dated October 17, 1988, and Second Promissory Note dated October 17, 1988, as amended, filed as Exhibit 10.20 to the Registration Statement of NexGen, Inc. on Form S-1 (No. 33-90750), are hereby incorporated by reference.
10.47	Series B Preferred Stock Purchase Warrant of NexGen, Inc. issued to Kleiner, Perkins, Caufield and Byers IV, as amended, filed as Exhibit 10.23 to the Registration Statement of NexGen, Inc. on Form S-1 (No. 33-90750), is hereby incorporated by reference.
***10.48	C-4 Technology Transfer and Licensing Agreement dated June 11, 1996, between the Company and IBM Corporation, filed as Exhibit 10.48 to the Company's Amendment No. 1 to its Quarterly Report on Form 10-Q/A for the period ended September 29, 1996, is hereby incorporated by reference.
***10.49 (a)	Design and Build Agreement dated November 15, 1996, between AMD Saxony Manufacturing GmbH and Meissner and Wurst GmbH.
10.49 (b)	Amendment to Design and Build Agreement dated January 16, 1997, between AMD Saxony Manufacturing GmbH and Meissner and Wurst GmbH.
11	Statement regarding computation of per share earnings.
13	1996 Annual Report to Stockholders, portions of which have been incorporated by reference into Parts II and IV of this annual report.
21	List of AMD subsidiaries.
23	Consent of Ernst & Young LLP, Independent Auditors, refer to page F-2 herein.
24	Power of Attorney.
27	Financial Data Schedule.

The Company will furnish a copy of any exhibit on request and payment of the Company's reasonable expenses of furnishing such exhibit.

\* Management contracts and compensatory plans or arrangements required to be filed as an Exhibit to comply with Item 14(a) (3).

\*\* Confidential treatment has been granted as to certain portions of these Exhibits.

\*\*\* Confidential treatment has been requested as to certain portions of these Exhibits.

(B) REPORTS ON FORM 8-K.

The following report on Form 8-K was filed during the fourth quarter of the Company's fiscal year ended December 29, 1996:

1. A Current Report on Form 8-K dated October 7, 1996, was filed announcing the Company's third quarter revenues.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ADVANCED MICRO DEVICES, INC.  
Registrant

March 17, 1997

By: /s/ Marvin D. Burkett

-----  
 Marvin D. Burkett  
 Senior Vice President, Chief  
 Financial and Administrative Officer  
 and Treasurer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons, on behalf of the registrant and in the capacities and on the dates indicated.

SIGNATURE -----	TITLE -----	DATE -----
/s/ W. J. Sanders III* _____ W. J. Sanders III	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	March 17, 1997
/s/ Friedrich Baur* _____ Friedrich Baur	Director	March 17, 1997
/s/ Charles M. Blalack* _____ Charles M. Blalack	Director	March 17, 1997
/s/ R. Gene Brown* _____ R. Gene Brown	Director	March 17, 1997
/s/ Marvin D. Burkett _____ Marvin D. Burkett	Senior Vice President, Chief Financial and Administrative Officer and Treasurer (Principal Financial Officer)	March 17, 1997
/s/ Richard Previte* _____ Richard Previte	Director, President and Chief Operating Officer	March 17, 1997
/s/ S. Atiq Raza* _____ S. Atiq Raza	Director, Senior Vice President and Chief Technical Officer	March 17, 1997
/s/ Joe L. Roby* _____ Joe L. Roby	Director	March 17, 1997
/s/ Leonard Silverman* _____ Leonard Silverman	Director	March 17, 1997
*By: /s/ Marvin D. Burkett _____ Marvin D. Burkett (Marvin D. Burkett, Attorney-in-Fact)		
/s/ Geoff Ribar _____ Geoff Ribar	Vice President and Controller (Principal Accounting Officer)	March 17, 1997

## ADVANCED MICRO DEVICES, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS  
AND FINANCIAL STATEMENT SCHEDULE  
COVERED BY THE REPORT OF INDEPENDENT AUDITORS

## ITEM 14(A) (1) AND (2)

The information under the following captions, which is included in the Company's 1996 Annual Report to Stockholders, a copy of which is attached hereto as Exhibit 13, is incorporated herein by reference:

	PAGE REFERENCES
	-----
	1996 ANNUAL
	FORM REPORT TO
	10-K STOCKHOLDERS
	-----
Report of Ernst & Young LLP, Independent Auditors.....	-- 37
Consolidated Statements of Operations for the three years in the period ended December 29, 1996.....	-- 18
Consolidated Balance Sheets at December 29, 1996 and December 31, 1995.....	-- 19
Consolidated Statements of Stockholders' Equity for the three years in the period ended December 29, 1996.....	-- 20
Consolidated Statements of Cash Flows for the three years in the period ended December 29, 1996.....	-- 21
Notes to Consolidated Financial Statements.....	-- 22-36
Schedule for the three years in the period ended December 29, 1996:	
Schedule II Valuation and Qualifying Accounts.....	F-3 --

All other schedules have been omitted because the required information is not present or is not present in amounts sufficient to require submission of the schedules, or because the information required is included in the Consolidated Financial Statements or Notes thereto. With the exception of the information specifically incorporated by reference into Parts II and IV of this Annual Report on Form 10-K, the 1996 Annual Report to Stockholders is not to be deemed filed as part of this report.

F-1

## CONSENT OF ERNST &amp; YOUNG LLP, INDEPENDENT AUDITORS

We consent to the incorporation by reference in this Annual Report (Form 10-K) of Advanced Micro Devices, Inc. of our report dated January 9, 1997, included in the 1996 Annual Report to Stockholders of Advanced Micro Devices, Inc.

Our audits also included the financial statement schedule of Advanced Micro Devices, Inc. listed in Item 14(a). This schedule is the responsibility of the Company's management. Our responsibility is to express an opinion based on our audits. In our opinion, the financial statement schedule referred to above, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 33-16095) pertaining to the Advanced Micro Devices, Inc. 1987 Restricted Stock Award Plan, in the Registration Statement on Form S-8 (No. 33-39747) pertaining to the Advanced Micro Devices, Inc. 1991 Employee Stock Purchase Plan, in the Registration Statements on Form S-8 (Nos. 33-10319, 33-36596 and 33-46578) pertaining to the Advanced Micro Devices, Inc. 1982 and 1986 Stock Option Plans and the 1980 and 1986 Stock Appreciation Rights Plans, in the Registration Statements on Form S-8 (Nos. 33-46577 and 33-55107) pertaining to the Advanced Micro Devices, Inc., 1992 Stock Incentive

Plan, in the Registration Statement on Form S-8 (No. 333-00969) pertaining to the Advanced Micro Devices, Inc. 1991 Employee Stock Purchase Plan and to the 1995 Stock Plan of NexGen, Inc., in the Registration Statement on Form S-8 (No. 333-04797) pertaining to the Advanced Micro Devices Inc. 1996 Stock Incentive Plan, in Post-Effective Amendment No. 1 to the Registration Statement on Form S-8 (No. 33-95888) pertaining to the 1995 Stock Plan of NexGen, Inc. and the NexGen, Inc. 1987 Employee Stock Plan, in Post-Effective Amendment No. 1 to the Registration Statement on Form S-8 (No. 33-92688) pertaining to the 1995 Employee Stock Purchase Plan of NexGen, Inc. in Post-Effective Amendment No. 1 on Form S-8 to the Registration Statement on Form S-4 (No. 33-64911) pertaining to the 1995 Employee Stock Purchase Plan of NexGen, Inc., the 1995 Stock Plan of NexGen, Inc. and the NexGen, Inc. 1987 Employee Stock Plan, and in Post-Effective Amendment No. 2 on Form S-3 to such registration statement pertaining to common stock issuable to certain warrant holders of our report dated January 9, 1997 with respect to the consolidated financial statements incorporated herein by reference, and our report included in the preceding paragraph with respect to the financial statement schedule included in this Annual Report (Form 10-K) of Advanced Micro Devices, Inc.

ERNST & YOUNG LLP

March 19, 1997  
San Jose, California

F-2

SCHEDULE II

ADVANCED MICRO DEVICES, INC.

VALUATION AND QUALIFYING ACCOUNTS

YEARS ENDED DECEMBER 25, 1994, DECEMBER 31, 1995 AND DECEMBER 29, 1996  
(THOUSANDS)

	BALANCE BEGINNING OF PERIOD	ADDITIONS CHARGED (REDUCTIONS CREDITED) TO OPERATIONS	DEDUCTIONS (1)	BALANCE END OF PERIOD
	-----	-----	-----	-----
Allowance for doubtful accounts:				
Years ended:				
December 25, 1994.....	\$ 7,492	\$3,873	\$ (896)	\$10,469
December 31, 1995.....	10,469	7,784	(2,635)	15,618
December 29, 1996.....	15,618	2,000	(7,809)	9,809

- - - - -  
(1) Accounts (written off) recovered, net.

F-3

AMD-90286

ADVANCED MICRO DEVICES, INC.  
1996 STOCK INCENTIVE PLAN

## 1. PURPOSE

The purpose of this Plan is to encourage key personnel, Outside Directors and advisors whose long-term service is considered essential to the Company's continued progress, to remain in the service of the Company or its Affiliates. By means of the Plan, the Company also seeks to attract new key employees, Outside Directors and advisors whose future services are necessary for the continued improvement of operations. The Company intends future increases in the value of securities granted under this Plan to form part of the compensation for services to be rendered by such persons in the future. It is intended that this purpose will be effected through the granting of Options.

## 2. DEFINITIONS

The terms defined in this Section 2 shall have the respective meanings set forth herein, unless the context otherwise requires.

(a) "AFFILIATE" The term "Affiliate" shall mean any corporation, partnership, joint venture or other entity in which the Company holds an equity, profits or voting interest of thirty percent (30%) or more.

(b) "BOARD" The term "Board" shall mean the Company's Board of Directors or its delegate as set forth in Sections 3(d) and 3(e) below.

(c) "CHANGE OF CONTROL" Unless otherwise defined in a Participant's employment agreement, the term "Change of Control" shall be deemed to mean any of the following events: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such person any securities acquired directly from the Company or any of its Affiliates) representing more than 20% of either the then outstanding shares of the Common Stock of the Company or the combined voting power of the Company's then outstanding voting securities; (ii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board and any new director (other than a director designated by a person who has entered into an agreement or arrangement with the Company to effect a transaction described in clause (i) or (ii) of this sentence) whose appointment, election, or nomination for election by the Company's stockholders, was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose appointment, election or nomination for election was previously so approved, cease for any reason to constitute a majority of the Board; or (iii) there is consummated a merger or consolidation of the Company or subsidiary thereof with or into any other corporation, other than a merger or consolidation which would result in the holders of the voting securities of the Company outstanding immediately prior thereto holding securities which represent immediately after such

merger or consolidation more than 50% of the combined voting power of the voting securities of either the Company or the other entity which survives such merger or consolidation or the parent of the entity which survives such merger or consolidation; or (iv) the stockholders of the Company approve a plan of complete liquidation of the Company or there is consummated the sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 80% of the combined voting power of the voting securities of which are owned by persons in substantially the same proportions as their ownership of the Company immediately prior to such sale. Notwithstanding the foregoing (i) unless otherwise provided in a Participant's employment agreement, no "Change of Control" shall be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the Common Stock of the Company immediately prior to such transaction

or series of transactions continue to have substantially the same proportionate ownership in an entity which owns all or substantially all of the assets of the Company immediately prior to such transaction or series of transactions and (ii) unless otherwise provided in a Participant's employment agreement, "Change of Control" shall exclude the acquisition of securities representing more than 20% of either the then outstanding shares of the Common Stock of the Company or the combined voting power of the Company's then outstanding voting securities by the Company or any of its wholly owned subsidiaries, or any trustee or other fiduciary holding securities of the Company under an employee benefit plan now or hereafter established by the Company.

(d) "CODE" The term "Code" shall mean the Internal Revenue Code of 1986, as amended to date and as it may be amended from time to time.

(e) "COMPANY" The term "Company" shall mean Advanced Micro Devices, Inc., a Delaware corporation.

(f) "CONSTRUCTIVE TERMINATION" The term "Constructive Termination" shall mean a resignation by a Participant who has been elected by the Board as a corporate officer of the Company due to diminution or adverse change in the circumstances of such Participant's employment with the Company, as determined in good faith by the Participant; including, without limitation, reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment. Constructive Termination shall be communicated by written notice to the Company, and such termination shall be deemed to occur on the date such notice is delivered to the Company.

(g) "DISINTERESTED DIRECTOR" The term "Disinterested Director" shall mean a member of the Board who has not, during the one year prior to service as an administrator of the Plan, or during such service, been granted or awarded equity securities of the Company pursuant to this Plan (except for automatic grants of options to Outside Directors pursuant to Section 8 hereof) or any other plan of the Company or any of its Affiliates.

(h) "FAIR MARKET VALUE PER SHARE" The term "Fair Market Value per Share" shall mean as of any day (i) the closing price for Shares on the New York Stock Exchange as reported on the composite tape on the day as of which such determination is being made or, if there was no sale of Shares reported on the composite tape on such day, on the most recently preceding day

on which there was such a sale, or (ii) if the Shares are not listed or admitted to trading on the New York Stock Exchange on the day as of which the determination is made, the amount determined by the Board or its delegate to be the fair market value of a Share on such day.

(i) "INSIDER" The term "Insider" means an officer or director of the Company or any other person whose transactions in the Company's Common Stock are subject to Section 16 of the Exchange Act.

(j) "ISO" The term "ISO" shall mean a stock option described in Section 422(b) of the Code.

(k) "NSO" The term "NSO" shall mean a nonstatutory stock option not described in Section 422(b) of the Code.

(l) "OPTION" The term "Option" shall mean (except as herein otherwise provided) a stock option granted under this Plan.

(m) "OUTSIDE DIRECTOR" The term "Outside Director" shall mean a member of the Board of Directors of the Company who is not also an employee of the Company or an Affiliate.

(n) "PARTICIPANT" The term "Participant" shall mean any person who holds an Option or Restricted Stock Award granted under this Plan.

(o) "PLAN" The term "Plan" shall mean this Advanced Micro Devices, Inc. 1996 Stock Incentive Plan, as amended from time to time.

(p) "SHARES" The term "Shares" shall mean shares of Common Stock of the Company and any shares of stock or other securities received as a

result of the adjustments provided for in Section 11 of this Plan.

3. ADMINISTRATION

(a) The Board, whose authority shall be plenary, shall administer the Plan and may delegate part or all of its administrative powers with respect to part or all of the Plan pursuant to Section 3(d); provided, however, that the Board shall delegate administration of the Plan to the extent required by Section 3(e).

(b) Except for automatic grants of Options to Outside Directors pursuant to Section 8 hereof, the Board or its delegate shall have the power, subject to and within the limits of the express provisions of the Plan:

(1) To grant Options pursuant to the Plan.

(2) To determine from time to time which of the eligible persons shall be granted Options under the Plan, the number of Shares for which each Option shall be granted, the term of each granted Option and the time or times during the term of each Option within which all or portions of each Option may be exercised (which at the discretion of the Board of its delegate may be accelerated.)

(3) To prescribe the terms and provisions of each Option granted (which need not be identical) and the form of written instrument that shall constitute the Option agreement.

(4) To take appropriate action to amend any Option hereunder, including to amend the vesting schedule of any outstanding Option, or to cause any Option granted hereunder to cease to be an ISO, provided that no such action adverse to a Participant's interest may be taken by the Board or its delegate without the written consent of the affected Participant.

(5) To determine whether and under what circumstances an Option may be settled in cash or Shares.

(c) The Board or its delegate shall also have the power, subject to and within the limits of the express provisions of this Plan:

(1) To construe and interpret the Plan and Options granted under the Plan, and to establish, amend and revoke rules and regulations for administration of the Plan. The Board or its delegate, in the exercise of this power, shall generally determine all questions of policy and expediency that may arise and may correct any defect, omission or inconsistency in the Plan or in any Option agreement in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(2) Generally, to exercise such powers and to perform such acts as are deemed necessary or expedient to promote the best interests of the Company.

(d) The Board may, by resolution, delegate administration of the Plan (including, without limitation, the Board's powers under Sections 3(b) and (c) above), under either or both of the following:

(1) with respect to the participation of or granting of Options to an employee, consultant or advisor who is not an Insider, to a committee of one or more members of the Board, whether or not such members of the Board are Disinterested Directors;

(2) with respect to matters other than the selection for participation in the Plan, substantive decisions concerning the timing, pricing, amount or other material term of an Option, to a committee of one or more members of the Board, whether or not such members of the Board are Disinterested Directors, or to one or more Insiders.

(e) Unless each member of the Board is a Disinterested Director, the Board shall, by resolution, delegate administration of the Plan with respect to the participation in the Plan of employees who are Insiders, including its powers to select such employees for participation in the



Plan, to make substantive decisions concerning the timing, pricing, amount or any other material term of an Option, to a committee of two or more Disinterested Directors who are also "outside directors" within the meaning of Section 162(m) of the Code. Any committee to which administration of the Plan is so delegated pursuant to this Section 3(e) may also administer the Plan with respect to an employee described in Section 3(d) (1) above.

(f) Except as required by Section 3(e) above, the Board shall have complete discretion to determine the composition, structure, form, term and operations of any committee established to administer the Plan. If administration is delegated to a committee, unless the Board otherwise provides, the committee shall have, with respect to the administration of the Plan, all of the powers and discretion theretofore possessed by the Board and delegable to such committee, subject to any constraints which may be adopted by the Board from time to time and which are not inconsistent with the provisions of the Plan. The Board at any time may revest in the Board any of its administrative powers under the Plan, except under circumstances where a committee is required to administer the Plan under Section 3(e) above.

(g) The determinations of the Board or its delegate shall be conclusive and binding on all persons having any interest in this Plan or in any awards granted hereunder.

#### 4. SHARES SUBJECT TO PLAN

Subject to the provisions of Section 11 (relating to adjustments upon changes in capitalization), the Shares which may be available for issuance under the Plan shall not exceed in the aggregate 6,665,000 Shares of the Company's authorized Common Stock and may be unissued Shares or reacquired Shares or Shares bought on the market for the purposes of issuance under the Plan. If any Options granted under the Plan shall for any reason be forfeited or canceled, terminate or expire, the Shares subject to such Options shall be available again for the purposes of the Plan. Shares which are delivered or withheld from the Shares otherwise due on exercise of an Option shall become available for future awards under the Plan. Shares that have actually been issued under the Plan, upon exercise of an Option shall not in any event be returned to the Plan and shall not become available for future awards under the Plan.

#### 5. ELIGIBILITY

Options may be granted only to full or part-time employees, officers, directors, consultants and advisors of the Company and/or of any Affiliate; provided such consultants and advisors render bona fide services not in

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connection with the offer and sale of securities in a capital-raising transaction. Outside Directors shall not be eligible for the benefits of the Plan, except as provided in Section 8 hereof. Any Participant may hold more than one Option at any time; provided that the maximum number of shares which

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are subject to Options granted to any individual shall not exceed in the aggregate two million (2,000,000) Shares over the full ten-year life of the Plan.

#### 6. STOCK OPTIONS -- GENERAL PROVISIONS

(a) Except for automatic grants of Options to Outside Directors under Section 8 hereof, each Option granted pursuant to the Plan may, at the discretion of the Board, be granted either as an ISO or as an NSO. No Option may be granted alternatively as an ISO and as an NSO.

(b) To the extent that the aggregate exercise price for ISOs which are exercisable for the first time by a Participant during any calendar year (under this Plan or any other plans of the

Company or its subsidiaries or parent (as such terms are defined in Section 424 of the Code) exceeds \$100,000, such Options shall be treated as NSOs.

(c) No ISO may be granted to a person who, at the time of grant, owns stock possessing more than 10% of the total combined voting power of the

Company or any of its subsidiaries or parent (as such terms are defined in Section 424 of the Code) unless the exercise price is at least 110% of the Fair Market Value per Share of the stock subject to the Option and the term of the Option does not exceed five (5) years from the date such ISO is granted.

(d) Notwithstanding any other provision in this Plan, no term of this Plan relating to ISOs will be interpreted, amended or altered, nor will any discretion or authority granted under this Plan be exercised, so as to disqualify this Plan under Section 422 of the Code or, without the consent of the Participant affected, to disqualify an ISO under Section 422 of the Code.

## 7. TERMS OF OPTION AGREEMENT

Except as otherwise required by the terms of Section 8 hereof, each Option agreement shall be in such form and shall contain such terms and conditions as the Board from time to time shall deem appropriate, subject to the following limitations:

(a) The term of any NSO shall not be greater than ten (10) years and one day from the date it was granted. The term of any ISO shall not be greater than ten (10) years from the date it was granted.

(b) The exercise price of each ISO shall be not less than the Fair Market Value per Share of the stock subject to the Option on the date the Option is granted. NSOs may be granted at an exercise price that is not less than Fair Market Value per Share of the Shares at the time an NSO is granted.

(c) Unless otherwise specified in the Option agreement, no Option shall be transferable otherwise than by will, pursuant to the laws of descent and distribution or pursuant to a qualified domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act, or the rules thereunder, or as otherwise permitted by regulations and interpretations under Section 16 of the Exchange Act.

(d) Except as otherwise provided in paragraph (e) of this Section 7 or in a Participant's employment agreement, the rights of a Participant (other than an Outside Director) to exercise an Option shall be limited as follows:

(1) DEATH OR DISABILITY: If a Participant's service is terminated by death or disability, then the Participant or the Participant's estate, or such other person as may hold the Option, as the case may be, shall have the right for a period of twelve (12) months following the date of death or disability, or for such other period as the Board may fix, to exercise the Option to the extent the Participant was entitled to exercise such Option on the date of his death or disability, or to such extent as may otherwise be specified by the Board (which may so specify after the date of his death or disability but before expiration of the Option), provided the actual date of exercise is in no event after

the expiration of the term of the Option. A Participant's estate shall mean his legal representative or any person who acquires the right to exercise an Option by reason of the Participant's death or disability.

(2) MISCONDUCT: If a Participant is determined by the Board to have committed an act of theft, embezzlement, fraud, dishonesty, a breach of fiduciary duty to the Company (or Affiliate), or deliberate disregard of the rules of the Company (or Affiliate), or if a Participant makes any unauthorized disclosure of any of the trade secrets or confidential information of the Company (or Affiliate), engages in any conduct which constitutes unfair competition with the Company (or Affiliate), induces any customer of the Company (or Affiliate) to break any contract with the Company (or Affiliate), or induces any principal for whom the Company (or Affiliate) acts as agent to terminate such agency relationship, then, unless otherwise provided in a Participant's employment agreement, neither the Participant, the Participant's estate nor such other person who may then hold the Option shall be entitled to exercise any Option with respect to any Shares whatsoever, after termination of service, whether or not after termination of service the Participant may receive payment from the Company (or Affiliate) for vacation pay, for services rendered prior to termination, for services rendered for the day on which

termination occurs, for salary in lieu of notice, or for any other benefits. In making such determination, the Board shall give the Participant an opportunity to present to the Board evidence on his behalf. For the purpose of this paragraph, unless otherwise provided in a Participant's employment agreement, termination of service shall be deemed to occur on the date when the Company dispatches notice or advice to the Participant that his service is terminated.

(3) TERMINATION FOR OTHER REASONS: If a Participant's service is terminated for any reason other than those mentioned above under "DEATH OR DISABILITY" or "MISCONDUCT," the Participant, the Participant's estate, or such other person who may then hold the Option may, within three months following such termination, or within such longer period as the Board may fix, exercise the Option to the extent such Option was exercisable by the Participant on the date of termination of his employment or service, or to the extent otherwise specified by the Board (which may so specify after the date of the termination but before expiration of the Option) provided the date of exercise is in no event after the expiration of the term of the Option.

(4) EVENTS NOT DEEMED TERMINATIONS: Unless otherwise provided in a Participant's employment agreement, the service relationship shall not be considered interrupted in the case of (i) a Participant who intends to continue to provide services as a director, employee, consultant or advisor to the Company or an Affiliate; (ii) sick leave; (iii) military leave; (iv) any other leave of absence approved by the Board, provided such leave is

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for a period of not more than 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to formal policy adopted from time to time by the Company and issued and promulgated to employees in writing; or (v) in the case of transfer between locations of the Company or between the Company or its Affiliates. In the case of any employee on an approved leave of absence, the Board may make such provisions respecting suspension of vesting

of the Option while on leave from the employ of the Company or an Affiliate as it may deem appropriate, except that in no event shall an Option be exercised after the expiration of the term set forth in the Option.

(e) Unless otherwise provided in a Participant's employment agreement, if any Participant's employment is terminated by the Company for any reason other than for Misconduct or, if applicable, by Constructive Termination, within one year after a Change of Control has occurred, then all Options held by such Participant shall become fully vested for exercise upon the date of termination, irrespective of the vesting provisions of the Participant's Option agreement. For purposes of this subsection (e), the term "Change of Control" shall have the meaning assigned by this Plan, unless a different meaning is defined in an individual Participant's Option agreement or employment agreement.

(f) Options may also contain such other provisions, which shall not be inconsistent with any of the foregoing terms, as the Board or its delegate shall deem appropriate.

(g) The Board may modify, extend or renew outstanding Options and authorize the grant of new Options in substitution therefor; provided

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that any such action may not, without the written consent of a Participant, impair any such Participant's rights under any Option previously granted.

## 8. AUTOMATIC GRANTS TO OUTSIDE DIRECTORS

(a) Each Outside Director shall be granted an Option to purchase 12,000 Shares under the Plan (the "FIRST OPTION") on the date such Outside Director is first elected or appointed as a member of the Board; provided that an Outside Director who has previously been elected as a

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member of the Board on the Effective Date set forth in Section 14 below shall not be granted a First Option under the Plan. Thereafter, on the first business day coincident with or following each annual meeting of the Company's stockholders, each Outside Director reported as being

elected shall be granted an additional Option to purchase 3,000 Shares under the Plan (the "ANNUAL OPTION"). Further, subject to the right of any Outside Director who has not previously been elected as a member of the Board to receive a First Option, if there are insufficient Shares available under the Plan for each Outside Director who is eligible to receive an Annual Option (as adjusted) in any year, the number of Shares subject to each Annual Option in such year shall equal the total number of available Shares then remaining under the Plan divided by the number of Outside Directors who are eligible to receive an Annual Option on such date, as rounded down to avoid fractional Shares. All Options granted to Outside Directors shall be subject to the following terms and conditions of this Section 8.

(b) All Options granted to Outside Directors pursuant to the Plan shall be NSOs.

(c) The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, may consist entirely of (i) cash, (ii) certified or cashier's check, (iii) other Shares which (x) either have been owned by the Participant for more than six months on the date of surrender or were not acquired, directly or indirectly, from the Company, and (y) have a Fair Market Value per Share on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised, (iv) delivery of

a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company the amount of sale or loan proceeds required to pay the exercise price, or (v) any combination of the foregoing methods of payment.

(d) Each Option granted to an Outside Director shall be for a term of ten years plus one day. Each First Option shall vest and become exercisable on July 15 of subsequent calendar years, according to the following schedule: 4,800 shares in the first calendar year following the date of grant; 3,600 shares in the second such calendar year; 2,400 shares in the third such calendar year; and 1,200 shares in the fourth such calendar year. Each Annual Option shall vest and become exercisable on July 15 of subsequent calendar years according to the following schedule: in equal installments of 1,000 shares each in the second, third and fourth calendar years following the date of grant. Any Shares acquired by an Outside Director upon exercise of an Option shall not be freely transferable until six months after the date stockholder approval referred to in Section 14 hereof is obtained.

(e) If an Outside Director's tenure on the Board is terminated for any reason, then the Outside Director or the Outside Director's estate, as the case may be, shall have the right for a period of twelve months following the date such tenure is terminated to exercise the Option to the extent the Outside Director was entitled to exercise such Option on the date the Outside Director's tenure terminated; provided the actual date of exercise is in no event after the expiration of the term of the Option. An Outside Director's "estate" shall mean the Outside Director's legal representative or any person who acquires the right to exercise an Option by reason of the Outside Director's death or disability.

(f) Upon a Change of Control, all Options held by an Outside Director shall become fully vested and exercisable upon such Change of Control, irrespective of any other provisions of the Outside Director's Option agreement.

(g) The automatic grants to Outside Directors pursuant to this Section 8 shall not be subject to the discretion of any person. The other provisions of this Plan shall apply to the Options granted automatically pursuant to this Section 8, except to the extent such other provisions are inconsistent with this Section 8.

## 9. PAYMENTS AND LOANS UPON EXERCISE OF OPTIONS

With respect to Options other than Options granted to Outside Directors pursuant to Section 8, the following provisions shall apply:

(a) The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be

determined by the Board or its delegate (and, in the case of an ISO, shall be determined at the time of grant) and may consist entirely of (i) cash, (ii) certified or cashier's check, (iii) promissory note, (iv) other Shares which (x) either have been owned by the Participant for more than six months on the date of surrender or were not acquired, directly or indirectly, from the Company, and (y) have a Fair Market Value per Share on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised, (v) delivery of a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company the amount of sale or

loan proceeds required to pay the exercise price, or (vi) any combination of the foregoing methods of payment. Any promissory note shall be a full recourse promissory note having such terms as may be approved by the Board and bearing interest at a rate sufficient to avoid imputation of income under Sections 483, 1274 or 7872 of the Code; provided that

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Participants who are not employees or directors of the Company will not be entitled to purchase Shares with a promissory note unless the note is adequately secured by collateral other than the Shares; provided further,

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that the portion of the exercise price equal to the par value, if any, of the Shares must be paid in cash;

(b) The Company may make loans or guarantee loans made by an appropriate financial institution to individual Participants, including Insiders, on such terms as may be approved by the Board for the purpose of financing the exercise of Options granted under the Plan and the payment of any taxes that may be due by reason of such exercise.

#### 10. TAX WITHHOLDING

(a) Where, in the opinion of counsel to the Company, the Company has or will have an obligation to withhold federal, state or local taxes relating to the exercise of any Option, the Board may in its discretion require that such tax obligation be satisfied in a manner satisfactory to the Company. With respect to the exercise of an Option, the Company may require the payment of such taxes before Shares deliverable pursuant to such exercise are transferred to the holder of the Option.

(b) With respect to the exercise of an Option, a Participant may elect (a "WITHHOLDING ELECTION") to pay his minimum statutory withholding tax obligation by the withholding of Shares from the total number of Shares deliverable pursuant to the exercise of such Option, or by delivering to the Company a sufficient number of previously acquired Shares, and may elect to have additional taxes paid by the delivery of previously acquired Shares, in each case in accordance with rules and procedures established by the Board. Previously owned Shares delivered in payment for such additional taxes must have been owned for at least six months prior to the delivery or must not have been acquired directly or indirectly from the Company and may be subject to such other conditions as the Board may require. The value of Shares withheld or delivered shall be the Fair Market Value per Share on the date the Option becomes taxable. All Withholding Elections are subject to the approval of the Board must be made in compliance with rules and procedures established by the Board.

#### 11. ADJUSTMENTS OF AND CHANGES IN CAPITALIZATION

If there is any change in the Common Stock of the Company by reason of any stock dividend, stock split, spin-off, split up, merger, consolidation, recapitalization, reclassification, combination or exchange of Shares, or any other similar corporate event, then the Board shall make appropriate adjustments to the number of Shares theretofore appropriated or thereafter subject or which may become subject to an Option under the Plan. Outstanding Options shall also be automatically converted as to price and other terms if necessary to reflect the foregoing events. No right to purchase fractional Shares shall result from any adjustment in Options pursuant to this Section 11. In case of any such adjustment, the Shares subject to the Option shall be rounded down to the nearest whole Share. Notice of any adjustment shall be given by

the Company to each holder of any Option which shall have been so adjusted and

such adjustment (whether or not such notice is given) shall be effective and binding for all purposes of the Plan.

12. PRIVILEGES OF STOCK OWNERSHIP

No Participant will have any rights of a stockholder with respect to any Shares until the Shares are issued to the Participant. After Shares are issued to the Participant, the Participant will be a stockholder and have all the rights of a stockholder with respect to such Shares, including the right to vote and receive all dividends or other distributions made or paid with respect to such Shares.

13. EXCHANGE AND BUYOUT OF AWARDS; RULE 16b-3

The Board or its delegate may, at any time or from time to time, authorize the Company, with the consent of the respective Participants, to issue new Options in exchange for the surrender and cancellation of any or all outstanding Options, except as otherwise provided in Section 7(i) with respect to Insiders. The Board or its delegate may at any time buy from a Participant an Option previously granted with payment in cash, Shares or other consideration, based on such terms and conditions as the Board or its delegate and the Participant may agree. Grants of Options to Insiders are intended to comply with the applicable provisions of Rule 16b-3 and such Options shall contain such additional conditions or restrictions, if any, as may be required by Rule 16b-3 to be in the written agreement relating to such Options in order to qualify for the maximum exemption from Section 16 of the Exchange Act with respect to Plan transactions.

14. EFFECTIVE DATE OF THE PLAN

This Plan will become effective when adopted by the Board (the "EFFECTIVE DATE"). This Plan must be approved by the stockholders of the Company, consistent with applicable laws, within twelve (12) months before or after the Effective Date. Upon the Effective Date, the Board or its delegate may grant Options pursuant to this Plan; provided that no Option may be exercised prior to the initial stockholder approval of this Plan. In the event that stockholder approval is not obtained within the time period provided herein, all Options granted hereunder will be canceled. So long as Insiders are Participants, the Company will comply with the requirements of Rule 16b-3 with respect to stockholder approval.

15. AMENDMENT OF THE PLAN

(a) The Board at any time, and from time to time, may amend the Plan; provided that, except as provided in Section 11 (relating to adjustments ----- upon changes in capitalization), no amendment for which stockholder approval is required shall be effective unless such approval is obtained within the required time period. Whether stockholder approval is required shall be determined by the Board.

(b) It is expressly contemplated that the Board may, without seeking approval of the Company's stockholders, amend the Plan in any respect necessary to provide the Company's

employees with the maximum benefits provided or to be provided under Section 422 of the Code or Section 16 of the Exchange Act and the regulations promulgated thereunder and/or to bring the Plan or Options granted under it into compliance therewith.

(c) Rights and obligations under any Option granted before any amendment of the Plan shall not be altered or impaired by amendment of the Plan, except with the consent of the person who holds the Option, which consent may be obtained in any manner that the Board or its delegate deems appropriate.

(d) To the extent required by Rule 16b-3, the Board may not amend the provisions of Section 8 hereof more than once every six months, other than to comport with changes in the Code, the Employee Retirement Income Security Act, or the rules thereunder.

16. REGISTRATION, LISTING, QUALIFICATION, APPROVAL OF STOCK AND OPTIONS

An award under this Plan will not be effective unless such award is in

compliance with all applicable federal and state securities laws, rules and regulations of any governmental body, and the requirements of any stock exchange or automated quotation system upon which the Shares may then be listed or quoted, as they are in effect on the date of grant of the award and also on the date of exercise or other issuance. Notwithstanding any other provision in this Plan, the Company will have no obligation to issue or deliver certificates for Shares under this Plan prior to: (a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and/or (b) completion of any registration or other qualification of such Shares under any state or federal law or ruling of any governmental body that the Company determines to be necessary or advisable. The Company will be under no obligation to register the Shares with the Securities and Exchange Commission or to effect compliance with the registration, qualification or listing requirements of any state securities laws, stock exchange or automated quotation system, and the Company will have no liability for any inability or failure to do so.

17. NO RIGHT TO EMPLOYMENT

Nothing in this Plan or in any Option shall be deemed to confer on any employee any right to continue in the employ of the Company or any Affiliate or to limit the rights of the Company or its Affiliates, which are hereby expressly reserved, to discharge an employee at any time, with or without cause, or to adjust the compensation of any employee.

18. MISCELLANEOUS

The use of any masculine pronoun or similar term is intended to be without legal significance as to gender.

FIRST AMENDMENT TO  
FUJITSU INVESTMENT AGREEMENT

This FIRST AMENDMENT TO FUJITSU INVESTMENT AGREEMENT (the "Amendment") is made this 28 day of April, 1995, between FUJITSU LIMITED, a Japanese stock company or kabushiki kaisha ("FUJITSU"), and ADVANCED MICRO DEVICES, INC., a Delaware corporation ("AMD").

RECITALS

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WHEREAS, AMD AND FUJITSU are parties to an agreement entitled Fujitsu Investment Agreement (the "Agreement") dated March 26, 1993, which provides for the purchase by Fujitsu of common stock of AMD; and

Whereas, the parties desire to amend the Agreement as more fully set forth below in this Amendment.

NOW, THEREFORE, it is hereby AGREED that:

1. The first sentence of Section 1.2 of the Agreement is amended in its entirety to read as follows:

The AMD Shares shall be sold and purchased in nine (9) installments, as follows: (i) an initial sale and purchase of 500,000 shares (the "Initial Purchase") which was consummated within thirty (30) business days following the Effective Date of the Joint Venture Agreement, dated March 30, 1993, between the parties ("the Joint Venture Effective Date"); (ii) three (3) additional sales and purchases of 500,000 shares each, which were consummated prior to the last business day of the sixth (6th), twelfth (12th) and eighteenth (18th) months, respectively, following the Joint Venture Effective Date; and (iii) five additional sales and purchases [\*] subject to Section 1.4, to be consummated prior to the last business day of the thirty-

[\* Confidential Treatment Requested]

sixth (36th), forty-second (42nd), forty-eighth (48th), fifty-fourth (54th) and sixtieth (60th) months, respectively, following the Joint Venture Effective Date (all such sales and purchases other than the Initial Purchase being referred to herein and the "Subsequent Purchases," and individually as the "First Subsequent Purchase," through the "Eighth Subsequent Purchase" in accordance with their scheduled order of occurrence).

2. Section 2.2(c) of the Agreement is amended in its entirety to read as follows:

(c) Except as provided in subsections (d) and (e) below, the AMD Shares may not be resold or transferred except in the following manner. Up to [\*] of the AMD Shares purchased in the Initial Purchase or any of the First through the Third Subsequent Purchases may be resold or transferred at any time after the [\*] of the consummation of such purchase. Up to an additional [\*] of such shares may be resold or transferred at any time after the [\*] of the consummation of such purchase. Up to [\*] of the AMD Shares purchased in any of the Fourth through the Eighth Subsequent Purchases may be resold or transferred at any time after the [\*] of the consummation of such purchase. Up to an additional [\*] of such shares may be resold or transferred at any time after the [\*] of the consummation of such purchase.

3. Except as specifically amended by this Amendment, the Agreement shall remain in full force and effect and is hereby ratified and confirmed. On and after the date of this Amendment, each reference to the Agreement in the Agreement itself or in any other agreement or document between the parties shall mean and be a reference to the Agreement as amended by this Amendment.

4. This Amendment may be executed in any number of counterparts, each of which may be executed by fewer than all of the parties, each of which shall



be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

[\* Confidential Treatment Requested]

2

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their duly authorized officers as of the day and year first above written.

FUJITSU LIMITED

By /s/ Masamichi Ogura

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Masamichi Ogura

Group Senior Vice President  
Its Administration & Business Operations  
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Electronic Devices Group

ADVANCED MICRO DEVICES, INC.

By /s/ Marvin D. Burkett

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Marvin D. Burkett  
Senior Vice President  
Chief Administrative Officer  
Chief Financial Officer and  
Treasurer

3

SECOND AMENDMENT TO  
FUJITSU INVESTMENT AGREEMENT

This SECOND AMENDMENT TO FUJITSU INVESTMENT AGREEMENT (the "Amendment") is made this 27 day of February, 1996, between FUJITSU LIMITED, a Japanese stock company or kabushiki kaisha ("FUJITSU"), and ADVANCED MICRO DEVICES, INC., a Delaware corporation ("AMD").

RECITALS

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WHEREAS, AMD and FUJITSU are parties to an agreement entitled Fujitsu Investment Agreement (the "Agreement") dated March 26, 1993, which provides for the purchase by Fujitsu of common stock of AMD; and

WHEREAS, AMD and FUJITSU entered into First Amendment to Fujitsu Investment Agreement (the "First Amendment") on April 28, 1995, which provides for a change of schedule for purchase and resale by Fujitsu of common stock of AMD; and

WHEREAS, the parties desire to amend the Agreement further as more fully set forth below in this Amendment.

NOW, THEREFORE, it is hereby AGREED that:

1. The first sentence of Section 1.4 of the Agreement is amended in its entirety to read as follows:

The purchase price of each installment of the AMD Shares shall be payable in United States dollars by wire transfer or otherwise as AMD shall reasonably request, and: (i) for the Initial Purchase, was equal to the number of AMD Shares acquired in the installment times the average of the closing sales prices of AMD common stock on the New York Stock Exchange for the sixty (60) trading days ending on the Joint Venture Effective Date, (ii) for the First through Third Subsequent Purchases, the average of the closing sales prices on the New York Exchange for the sixty (60) trading days ending on the twentieth day of the month preceding the month in which the purchase was consummated, or if the Exchange was not open for trading on such date, on the trading day

preceding such date, and (iii) for the Fourth through Eighth Subsequent Purchases, the average of the closing sales prices on the New York Exchange for the sixty (60) trading days ending on the twentieth day of the month preceding the month in which the purchase is required by the First Amendment, or if the Exchange is not open for trading on such date, on the trading day preceding such date.

2. Except as specifically amended by this Amendment and the First Amendment, the Agreement shall remain in full force and effect and is hereby ratified and confirmed. On and after the date of this Amendment, each reference to the Agreement in the Agreement itself or in any other agreement or document between the parties shall mean and be a reference to the Agreement as amended by this Amendment and the First Amendment.

3. This Agreement may be executed in any number of counterparts, each of which may be executed by fewer than all of the parties, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their authorized officers as of the day and year first above written.

ADVANCED MICRO DEVICES, INC.

By /s/ Marvin D. Burkett

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Marvin D. Burkett

Senior Vice President  
Its Chief Administrative Officer

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Chief Financial Officer and  
Treasurer

FUJITSU LIMITED

By /s/ Masamichi Ogura

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Masamichi Ogura  
Group Senior Vice President  
Administration & Business Operations  
Electronic Devices Group

EXHIBIT 10.36

1995 STOCK PLAN OF NEXGEN, INC.

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(As Amended October 2, 1996)

TABLE OF CONTENTS  
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		Page -----
SECTION 1.	ESTABLISHMENT AND PURPOSE	1
SECTION 2.	DEFINITIONS	1
SECTION 3.	ADMINISTRATION	4
	(a) Committee Membership	4
	(b) Committee Procedures	5
	(c) Committee Responsibilities	5
SECTION 4.	ELIGIBILITY	6
	(a) General Rules	6
	(b) Outside Directors	6
	(c) Ten-Percent Stockholders	8
	(d) Attribution Rules	8
	(e) Outstanding Stock	8
SECTION 5.	STOCK SUBJECT TO PLAN	8
	(a) Basic Limitation	8
	(b) Additional Shares	9
SECTION 6.	TERMS AND CONDITIONS OF AWARDS OR SALES	9
	(a) Stock Purchase Agreement	9
	(b) Duration of Offers and Nontransferability of Rights	9
	(c) Purchase Price	9
	(d) Withholding Taxes	9
	(e) Restrictions on Transfer of Shares	10
SECTION 7.	TERMS AND CONDITIONS OF OPTIONS	10
	(a) Stock Option Agreement	10
	(b) Number of Shares	10
	(c) Exercise Price	10
	(d) Withholding Taxes	10
	(e) Exercisability	11
	(f) Term	11

(g)	Nontransferability	11
(h)	No Rights as a Stockholder	11
(i)	Modification, Extension and Renewal of Options	11
(j)	Restrictions on Transfer of Shares	12
SECTION 8.	PAYMENT FOR SHARES	12
(a)	General Rule	12
(b)	Surrender of Stock	12
(c)	Exercise/Sale	12
(d)	Exercise/Pledge	13
(e)	Services Rendered	13
(f)	Promissory Note	13
SECTION 9.	ADJUSTMENT OF SHARES	
(a)	General	13
(b)	Reorganizations	14
(c)	Reservation of Rights	14
SECTION 10.	SECURITIES LAWS	14
SECTION 11.	NO RETENTION RIGHTS	14
SECTION 12.	DURATION AND AMENDMENTS	15
(a)	Term of the Plan	15
(b)	Right to Amend or Terminate the Plan	15
(c)	Effect of Amendment or Termination	15

3

4

1995 STOCK PLAN OF NEXGEN, INC.  
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SECTION 1. ESTABLISHMENT AND PURPOSE.  
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The Plan was originally adopted by the Board of Directors of NexGen, Inc. (The "NexGen Board") on March 12, 1995, and thereafter amended by the NexGen Board on May 10, 1995 and December 8, 1995. Effective upon the merger of NexGen, Inc. with and into Advanced Micro Devices, Inc. ("AMD") on January 17, 1996, AMD assumed the Plan as the successor to NexGen. The AMD Board of Directors amended the Plan on February 7, 1996 and April 25, 1996. The purpose of the Plan is to offer selected employees, consultants and promotional representatives an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, by purchasing shares of the Company's Common Stock. The Plan provides both for the direct award or sale of Shares and for the grant of Options to purchase shares. Options granted under the Plan may include Nonstatutory Options as well as ISOs intended to qualify under section 422 of the Code.

The Plan is intended to comply in all respects with Rule 16b-3 (or its successor) under the Exchange Act and shall be construed accordingly.

SECTION 2. DEFINITIONS.  
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(a) "Board of Directors" shall mean the Board of Directors of the  
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Company, as constituted from time to time.

(b) "Change of Control" shall mean the occurrence of any of the  
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following events or as otherwise defined in an Optionee or Offeree's employment  
agreement:

(i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the beneficial owner (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such person any securities acquired directly from the Company or any of its affiliates) representing more than 20% of either the then outstanding shares of the Common Stock of the Company or the combined voting power of the Company's then outstanding voting securities;

(ii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors and any new director (other than a director designated by a person who has entered into an agreement or arrangement with the Company to effect a transaction described in clause (i) or (iii) of this sentence) whose appointment, election, or nomination for election by the Company's stockholders, was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose appointment, election, or nomination for election was previously

5

so approved, cease for any reason to constitute a majority of the Board of Directors;

(iii) there is consummated a merger or consolidation of the Company or a Subsidiary thereof with or into any other corporation, other than a merger or consolidation which would result in the holders of the voting securities of the Company outstanding immediately prior thereto holding securities which represent immediately after such merger or consolidation more than 50% of the combined voting power of the voting securities of either the Company or the other entity which survives such merger or consolidation or the parent of the entity which survives such merger or consolidation; or

(iv) the stockholders of the Company approve a plan of complete liquidation of the Company or there is consummated the sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 80% of the combined voting power of the voting securities of which are owned by persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

Notwithstanding the foregoing (i) no "Change of Control" shall be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the Common Stock of the Company immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in an entity which owns all or substantially all of the assets of the Company immediately prior to such transaction or series of transactions and (ii) "Change of Control" shall exclude the acquisition of securities representing more than 20% of either the then outstanding shares of the Common Stock of the Company or the combined voting power of the Company's then outstanding voting securities by the Company or any of its wholly owned subsidiaries, or any trustee or other fiduciary holding securities of the Company under an employee benefit plan now or hereafter established by the Company.

(c) "Code" shall mean the Internal Revenue Code of 1986, as  
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amended.

(d) "Committee" shall mean a committee of the Board of Directors,

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as described in Section 3(a).

(e) "Company" shall mean NexGen, Inc., a Delaware corporation, its  
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parent corporation, or its successor.

(f) "Employee" shall mean:  
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(i) Any individual who is a common-law employee of the Company or  
of a Subsidiary;

6

(ii) An Outside Director; and

(iii) An independent contractor who performs services for the  
Company or a Subsidiary and who is it not a member of the Board  
of Directors.

Service as an Outsider Director or independent contractor shall be considered  
employment for all purposes of the Plan, except as provided in Section 4(a).

(g) "Exchange Act" shall mean the Securities Exchange Act of 1934,  
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as amended.

(h) "Exercise Price" shall mean the amount for which one Share  
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may be purchased upon exercise of an Option, as specified by the Committee in  
the applicable Stock Option Agreement.

(i) "Fair Market Value" shall mean the market price of Stock,  
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determined by the Committee as follows:

(i) If Stock was traded over-the-counter on the date in question  
but was not traded on the Nasdaq system or the Nasdaq National  
Market System, then the Fair Market Value shall be equal to the mean  
between the last reported representative bid and asked prices quoted  
for such date by the principal automated inter-dealer quotation  
system on which Stock is quoted or, if Stock is not quoted on any  
such system, by the "Pink Sheets" published by the National  
Quotation Bureau, Inc.;

(ii) If Stock was traded over-the-counter on the date in question  
and was traded on the Nasdaq system or the Nasdaq National Market  
System, then the Fair Market Value shall be equal to the last-  
transaction price quoted for such date by the Nasdaq system or the  
Nasdaq National Market System;

(iii) If Stock was traded on a stock exchange on the date in  
question, then the Fair Market Value shall be equal to the closing  
price reported by the applicable composite-transactions report for  
such date; and

(iv) If none of the foregoing provisions is applicable, then the  
Fair Market Value shall be determined by the Committee in good faith  
on such basis as it deems appropriate.

In all cases, the determination of Fair Market Value by the Committee shall be  
conclusive and binding on all persons.

(j) "IPO" means the initial offering of stock to the public  
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pursuant to a registration statement filed with the Securities and Exchange  
Commission on Form S-1.

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(k) "ISO" shall mean an employee incentive stock option described  
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in section 422(b) of the Code.

(l) "Nonstatutory Option" shall mean a stock option not described  
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in sections 422(b) or 423(b) of the Code.

(m) "Offeree" shall mean an individual to whom the Committee has  
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offered the right to acquire Shares under the Plan (other than upon exercise of  
an Option).

(n) "Option" shall mean an ISO or Nonstatutory Option granted under  
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the Plan and entitling the holder to purchase Shares.

(o) "Optionee" shall mean an individual who holds an Option.  
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(p) "Outside Director" shall mean a member of the Board of  
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Directors who is not a common-law employee of the Company or of a Subsidiary.

(q) "Plan" shall mean this 1995 Stock Plan of NexGen, Inc., as it  
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may be amended from time to time.

(r) "Purchase Price" shall mean the consideration for which one  
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Share may be acquired under the Plan (other than upon exercise of an Option), as  
specified by the Committee.

(s) "Service" shall mean service as an Employee.  
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(t) "Share" shall mean one share of Stock, as adjusted in  
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accordance with Section 9 (if applicable).

(u) "Stock" shall mean the Common Stock of the Company.  
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(v) "Stock Option Agreement" shall mean the agreement between the  
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Company and an Optionee which contains the terms, conditions and restrictions  
pertaining to his or her Option.

(w) "Stock Purchase Agreement" shall mean the agreement between the  
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Company and an offeree who acquires Shares under the Plan which contains the  
terms, conditions and restrictions pertaining to the acquisition of such Shares.

(x) "Subsidiary" shall mean any corporation, if the Company and/or  
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one or more other Subsidiaries own not less than 50 percent of the total  
combined voting power of all classes of outstanding stock of such corporation.  
A corporation that attains the status of a Subsidiary on a date after the  
adoption of the Plan shall be considered a Subsidiary commencing as of such  
date.

8

(y) "Total and Permanent Disability" shall mean that the Optionee  
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is unable to engage in any substantial gainful activity by reason of any  
medically determinable physical or mental impairment which can be expected to  
result in death or which has lasted, or can be expected to last, for a  
continuous period of not less than one year.

(z) "Vesting Start Date," in the case of an Outside Director, shall  
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mean the latest of:



(i) The date of the IPO;

(ii) The earliest date when the Outside Director no longer holds unexercisable options to purchase more than 10,000 Shares that were granted to him or her by the Company prior to the IPO: or

(iii) The date when the Outside Director first joins the Board of Directors.

SECTION 3. ADMINISTRATION.  
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(a) Committee Membership. The Plan shall be administered by the Committee. The Committee shall consist of two or more members of the Board of Directors who meet the requirements established from time to time by:

(i) The Securities and Exchange Commission for plans intended to qualify for exemptions under Rule 16b-3 (or its successor) under the Exchange Act; and

(ii) The Internal Revenue Service for plans intended to qualify for an exemption under section 162(m) (4) (C) of the Code.

An Outside Director shall not fail to meet such requirements solely because he or she receives the Nonstatutory Options described in Section 4(b). The Board of Directors may appoint a separate committee, consisting of one or more members of the Board of Directors who need not meet such requirements. Such committee may administer the Plan with respect to Employees who are not officers or directors of the Company, may grant Shares and Options under the Plan to such Employees and may determine the timing, number of Shares and other terms of such grants.

(b) Committee Procedures. The Board of Directors shall designate one of the members of the Committee as chairman. The Committee may hold meetings at such times and places as it shall determine. The act as of a majority of the Committee members present at meetings at which a quorum exists, or acts reduced to or approved in writing by all Committee members, shall be valid acts of the Committee.

(c) Committee Responsibilities. Subject to the provisions of the Plan, the Committee shall have full authority and discretion to take the following actions:

9

(i) To interpret the Plan and to apply its provisions;

(ii) To adopt, amend or rescind rules, procedures and forms relating to the Plan;

(iii) To authorize any person to execute, on behalf of the Company, any instrument required to carry out the purposes of the Plan;

(iv) To determine when Shares are to be awarded or offered for sale and when Options are to be granted under the Plan;

(v) To select the Offerees and Optionees;

(vi) To determine the number of Shares to be offered to each Offeree or to be made subject to each Option;

(vii) To prescribe the terms and conditions of each award or sale of Shares, including (without limitation) the Purchase Price, and to specify the provisions of the Stock Purchase Agreement relating to such award or sale;

(viii) To prescribe the terms and conditions of each Option, including (without limitation) the Exercise Price, to determine whether such Option is to be classified as an ISO or as a Nonstatutory

Option, and to specify the provisions of the Stock Option Agreement relating to such Option ;

(ix) To amend any outstanding Stock Purchase Agreement or Stock Option Agreement, subject to applicable legal restrictions and to the consent of the Offeree or Optionee who entered into such agreement;

(x) To prescribe the consideration for the grant of each Option or other right under the Plan and to determine the sufficiency of such consideration; and

(xi) To take any other actions deemed necessary or advisable for the administration of the Plan.

All decisions, interpretations and other actions of the Committee shall be final and binding on all Offerees, all Optionees, and all persons deriving their rights from an Offeree or Optionee. No member of the Committee shall be liable for any action that he or she has taken or has failed to take in good faith with respect to the Plan, any Option, or any right to acquire Shares under the Plan.

10

#### SECTION 4. ELIGIBILITY.

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(a) General Rules. Only Employees (including, without limitation,

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independent contractors who are not members of the Board of Directors) shall be eligible for designation as Optionees or Offerees by the Committee. In addition, only Employees who are common-law employees of the Company or a Subsidiary shall be eligible for the grant of ISOs. Employees who are Outside Directors shall only be eligible for the grant of the Nonstatutory Options described in Subsection (b) below.

(b) Outside Directors. Any other provision of the Plan

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notwithstanding, Outside Directors shall not participate in the Plan after February 7, 1996, although Options granted to Outside Directors prior to such date shall continue to be governed by the Plan as in effect prior to February 7, 1996.

(c) Ten-Percent Stockholders. An Employee who owns more than 10

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percent of the total combined voting power of all classes of outstanding stock of the Company or any of its Subsidiaries shall not be eligible for the grant of an ISO unless:

(i) The Exercise Price is at least 110 percent of the Fair Market Value of a Share on the date of grant; and

(ii) Such ISO by its terms is not exercisable after the expiration of five years from the date of grant.

(d) Attribution Rules. For purposes of Subsection (c) above, in

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determining stock ownership, an Employee shall be deemed to own the stock owned, directly or indirectly, by or for such Employee's brothers, sisters, spouse, ancestors and lineal descendants. Stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be deemed to be owned proportionately by or for its stockholders, partners or beneficiaries. Stock with respect to which such Employee holds an option shall not be counted.

(e) Outstanding Stock. For purposes of Subsection (c) above,

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"outstanding stock" shall include all stock actually issued and outstanding immediately after the grant. "Outstanding stock" shall not include shares authorized for issuance under outstanding options held by the Employee or by any other person.

#### SECTION 5. STOCK SUBJECT TO PLAN.

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(a) Basic Limitation. Shares offered under the Plan shall be

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authorized but unissued Shares or treasury Shares. The aggregate number of Shares which is issued under the Plan (upon exercise of Options or other rights to acquire Shares) shall not exceed 2,250,741 Shares; provided that the number of Shares which is issued under the Plan upon exercise of ISOs shall in no event exceed 1,200,000 Shares during the entire term of the Plan. All limitations under this Subsection (a) shall be subject to adjustment

11

pursuant to Section 9. The number of Shares which are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares which then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan.

(b) Additional Shares. In the event that any outstanding option  
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granted under this Plan or the 1987 Employee Stock Plan of NexGen, Inc. (the "Prior Plan") for any reason expires or is canceled or otherwise terminated, the Shares allocable to the unexercised portion of such option shall become available for the purposes of this Plan. In the event that Shares issued under this Plan or the Prior Plan are reacquired by the Company pursuant to a forfeiture provision, a right of repurchase or a right of first refusal, such Shares shall become available for the purposes of this Plan.

SECTION 6. TERMS AND CONDITIONS OF AWARDS OR SALES.  
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(a) Stock Purchase Agreement. Each award or sale of Shares under  
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the Plan (other than upon exercise of an Option) shall be evidenced by a Stock Purchase Agreement between the Offeree and the Company. Such award or sale shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Committee deems appropriate for inclusion in a Stock Purchase Agreement. The provisions of the various Stock Purchase Agreements entered into under the Plan need not be identical.

(b) Duration of Offers and Nontransferability of Rights. Any right  
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to acquire Shares under the Plan (other than an Option) shall automatically expire if not exercised by the Offeree within 30 days after the grant of such right was communicated to the Offeree by the Committee. Such right shall not be transferable and shall be exercisable only by the Offeree to whom such right was granted.

(c) Purchase Price. The Purchase Price of Shares to be offered  
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under the Plan shall not be less than the par value of such Shares. Subject to the preceding sentence, the Purchase Price shall be determined by the Committee at its sole discretion. The Purchase Price shall be payable in a form described in Section 8.

(d) Withholding Taxes. As a condition to the award, sale or  
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vesting of Shares, the Offeree shall make such arrangements as the Committee may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that arise in connection with such Shares. The Committee may permit the Offeree to satisfy all or part of his or her tax obligations related to such Shares by having the Company withhold a portion of any Shares that otherwise would be issued to him or her or by surrendering any Shares that previously were acquired by him or her. The Shares withheld or surrendered shall be valued at their Fair Market Value on the date when taxes otherwise would be withheld in cash. The payment of taxes by assigning Shares to the Company, if permitted

12

by the Committee, shall be subject to such restrictions as the Committee may impose, including any restrictions required by rules of the Securities and Exchange Commission.

(e) Restrictions on Transfer of Shares. Any Shares awarded or sold

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under the Plan shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as of the Committee may determine. Such restrictions shall be set forth in the applicable Stock Purchase Agreement and shall apply in addition to any general restrictions that may apply to all holders of Shares.

SECTION 7. TERMS AND CONDITIONS OF OPTIONS.  
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(a) Stock Option Agreement. Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement executed by the Optionee and the Company. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Committee deems appropriate for inclusion in a Stock Option Agreement. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical.

(b) Number of Shares. Each Stock Option Agreement shall specify the number of Shares that are subject to the Option and shall provide for the adjustment of such number in accordance with Section 9. Options granted to an Optionee in a single calendar year shall in no event cover more than 400,000 Shares, subject to adjustment in accordance with Section 9. The Stock Option Agreement shall also specify whether the Option is an ISO or a Nonstatutory Option.

(c) Exercise Price. Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of an ISO shall not be less than 100 percent of the Fair Market Value of a Share on the date of grant, except as otherwise provided in Section 4(c). The Exercise Price of a Nonstatutory Option shall not be less than the par value of a Share. Subject to the preceding two sentences, the Exercise Price under any Option shall be determined by the Committee at its sole discretion. The Exercise Price shall be payable in a form described in Section 8.

(d) Withholding Taxes. As a condition to the exercise of an Option, the Optionee shall make such arrangements as the Committee may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that arise in connection with such exercise. The Optionee shall also make such arrangements as the Committee may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the disposition of Shares acquired by exercising an Option. The Committee may permit the Optionee to satisfy all or part of his or her tax obligations related to the Option by having the Company withhold a portion of any Shares that otherwise would be issued to him or her or by her. Such Shares shall be valued at their Fair Market Value on the date when taxes otherwise would be withheld in cash. The payment of taxes by assigning Shares to the Company, if permitted by the

Committee, shall be subject to such restrictions as the Committee may impose, including any restrictions required by rules of the Securities and Exchange Commission.

(e) Exercisability. Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable. The vesting of any Option shall be determined by the Committee at its sole discretion.

If the employment of any Optionee who is a common law employee of the Company is terminated by the Company for any reason other than Misconduct or if applicable, by Constructive Termination, within one year after a Change of Control has occurred, then all Options held by such Optionee shall become fully vested for exercise upon the date of termination, irrespective of the vesting provisions of the Optionee's Stock Option Agreement unless otherwise provided in an Optionee's employment agreement. For purposes of this paragraph, the following definitions apply unless the following term or terms of similar effect are otherwise defined in an Optionee's employment agreement: (i) "Change of

Control" shall have the meaning assigned by Section 2(b) of the Plan unless a different meaning is defined in an Optionee's Stock Option Agreement or employment agreement, (ii) "Misconduct" shall mean the commission of an act of theft, embezzlement, fraud, dishonesty, breach of fiduciary duty to the Company or any of its Subsidiaries (as determined by the Board of Directors), the deliberate disregard of the rules of the Company or any of its Subsidiaries, any unauthorized disclosure of any of the trade secrets or confidential information of the Company or any of its Subsidiaries, engaging in any conduct which constitutes unfair competition with the Company or any of its Subsidiaries, the inducement of any customer of the company or any of its Subsidiaries, or the inducement of any principal for whom the Company or any of its Subsidiaries acts as agent to terminate such agency relationship; and (iii) "Constructive Termination" shall mean a resignation by an Optionee who has been elected by the Board of Directors as a corporate officer of the Company due to diminution of or adverse change in the circumstances of the Optionee's employment with the Company, as determined in good faith by the Optionee, including, without limitation, reporting relationships, job description, duties, responsibilities, compensation, prerequisites, office or location of employment. Constructive Termination shall be communicated by written notice to the Company, and such termination shall be deemed to occur on the date such notice is delivered to the Company.

A Stock Option Agreement or employment agreement may also provide for accelerated exercisability in the event of the Optionee's death, Total and Permanent Disability, retirement or upon other events.

(f) Term. Each Stock Option Agreement shall specify the term of

the Option. The term of an ISO shall not exceed 10 years from the date of grant, except as otherwise provided in Section 4(c). Subject to the preceding sentence, the Committee at its sole discretion shall determine when an Option is to expire. A Stock Option Agreement may provide that the Option will expire before the end of its normal term in the event that the Optionee's Service terminates.

14

(g) Nontransferability. During an Optionee's lifetime, such

Optionee's Option(s) shall be exercisable only by him or her and shall not be transferable. In the event of an Optionee's death, such Optionee's Option(s) shall not be transferable other than by will, by written beneficiary designation or by the laws of descent and distribution.

(h) No Rights as a Stockholder. An Optionee, or a transferee of an

Optionee, shall have no rights as a stockholder with respect to any Shares covered by his or her Option until the date of the issuance of a stock certificate for such Shares. No adjustments shall be made, except as provided in Section 9.

(i) Modification, Extension and Renewal of Options. Within the

limitations of the Plan, the Committee may modify, extend or renew outstanding Options or may accept the cancellation of the outstanding options (to the extent not previously exercised) in return for the grant of new Options at the same or a different price. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, impair such Optionee's rights or increase his or her obligations under such Option.

(j) Restrictions on Transfer of Shares. Any Shares issued upon

exercise of an Option may be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Committee may determine. Such restrictions shall be set forth in the applicable Stock Option Agreement and shall apply in addition to any general restrictions that may apply to all holders of Shares.

#### SECTION 8. PAYMENT FOR SHARES.

(a) General Rule. The entire Purchase Price or Exercise Price of

Shares issued under the Plan shall be payable in lawful money of the United

States of America at the time when such Shares are purchased, except as follows:

(i) Stock Purchases. In the case of Shares sold under the

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terms of a Stock Purchase Agreement subject to the Plan, payment shall be made only pursuant to the express provisions of such Stock Purchase Agreement. However, the Committee (at its sole discretion) may specify in the Stock Purchase Agreement that payment may be made in one or both of the forms described in Subsections (e) and (f) below.

(ii) ISO's. In the case of an ISO granted under the Plan,

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payment shall be made only pursuant to the express provisions of the applicable Stock Option Agreement. However, the Committee (at its sole discretion) may specify in the Stock Option Agreement that payment may be made pursuant to Subsections (b), (c), (d), or (f) below.

(iii) Nonstatutory Options. In the case of a Non-statutory

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Option granted under the Plan, the Committee (at its sole discretion) may accept payment pursuant to Subsections (b), (c), (d) or (f) below.

15

(b) Surrender of Stock. To the extent that this Subsection (b) is

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applicable, payment may be made all or in part with Shares which have already been owned by the Optionee or his or her representative for more than 12 months and which are surrendered to the Company in good form for transfer. Such Shares shall be valued at their Fair Market Value on the date when the new Shares are purchased under the Plan.

(c) Exercise/Sale. To the extent that this Subsection (c) is

-----  
applicable, payment may be made by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(d) Exercise/Pledge. To the extent that this Subsection (d) is

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applicable, payment may be made by the delivery (on a form prescribed by the Company) of an irrevocable direction to pledge Shares to a securities broker or lender approved by the Company, as security for a loan, and to deliver all or part of the loan proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(e) Services Rendered. To the extent that this Subsection (e) is

-----  
applicable, Shares may be awarded under the Plan in consideration of services rendered to the Company or a Subsidiary prior to the award. If Shares are awarded without the payment of a Purchase Price in cash, the Committee shall make a determination (at the time of the award) of the value of the services rendered by the Offeree and the sufficiency of the consideration to meet the requirements of Section 6(c).

(f) Promissory Note. To the extent that this Subsection (f) is

-----  
applicable, a portion of the Purchase Price or Exercise Price, as the case may be, of Shares issued under the Plan may be payable by a full-recourse promissory note, provided that (i) the part value of such Shares must be paid in lawful money of the United States of America at the time when such Shares are purchased, (ii) the Shares are security for payment of the principal amount of the promissory note and interest thereon and (iii) the interest rate payable under the terms of the promissory note shall be no less than the minimum rate (if any) required to avoid the imputation of additional interest under the Code. Subject to the foregoing, the Committee (at its sole discretion) shall specify the term, interest rate, amortization requirements (if any) and other provisions of such note.

SECTION 9. ADJUSTMENT OF SHARES.

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(a) General. In the event of a subdivision of the outstanding Stock,  
-----  
a declaration of a dividend payable in Shares, a declaration of a dividend payable in a form other than Shares in an amount that has a material effect on the value of Shares, a combination or consolidation of the outstanding Stock (by reclassification or otherwise) into a lesser number of Shares, a recapitalization, a spin-off or a similar occurrence, the Committee shall make appropriate adjustments in one or more of:

16

- (i) The number of Shares available under Section 5 for future grants;
- (ii) The limit set forth in Section 7(b);
- (iii) The number of Nonstatutory Options to be granted to Outside Directors under Section 4(b);
- (iv) The number of Shares covered by each outstanding Option; or
- (v) The Exercise Price under each outstanding Option.

(b) Reorganizations. Unless otherwise provided in an Optionee's  
-----  
employment agreement, in the event that the Company is a party to a merger or other reorganization, outstanding Options shall be subject to the agreement of merger or reorganization. Such agreement may provide, without limitation, for the assumption of outstanding Options by the surviving corporation or its parent, for their continuation by the Company (if the Company is a surviving corporation), for payment of a cash settlement equal to the difference between the amount to be paid for one Share under such agreement and the Exercise Price, or for the acceleration of their exercisability followed by the cancellation of Options not exercised, in all cases without the Optionees' consent. Any cancellation shall not occur until after such acceleration is effective and Optionees have been notified of such acceleration.

(c) Reservation of Rights. Except as provided in this Section 9,  
-----  
an Optionee or Offeree shall have not rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend or any other increase or decrease in the number of share of stock of any class. Any issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option. The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

SECTION 10. SECURITIES LAWS.  
-----

Shares shall not be issued under the Plan unless the issuance and delivery of such Shares complies with (or is exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange on which the Company's securities may then be listed.

17

SECTION 11. NO RETENTION RIGHTS.  
-----

Neither the Plan nor any Option shall be deemed to give any individual a right to remain an employee or consultant of the Company or a Subsidiary. The Company and its Subsidiaries reserve the right to terminate the service of any employee or consultant at any time, with or without cause, subject to applicable laws and a written employment agreement (if any).

SECTION 12. DURATION AND AMENDMENTS.

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(a) Term of the Plan. The Plan, as set forth herein, shall become  
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effective as of May 10, 1995. The Plan, if not extended, shall terminate  
automatically on March 11, 2005. It may be terminated on any earlier date  
pursuant to Subsection (b) below.

(b) Right to Amend or Terminate the Plan. The Board of Directors  
-----  
may amend, suspend or terminate the Plan at any time and for any reason, except  
that the provisions of Section 4(b) relating to the amount, price and timing of  
grants to Outside Directors shall not be amended more than once in any six-month  
period. An amendment of the Plan shall be subject to the approval of the  
Company's stockholders only to the extent required by applicable laws or  
regulations.

(c) Effect of Amendment or Termination. No Shares shall be issued or  
-----  
sold under the Plan after the termination thereof, except upon exercise of an  
Option granted prior to such termination. The termination of the Plan, or any  
amendment thereof, shall not affect any Share previously issued or any Option  
previously granted under the Plan.



CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN DELETED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

EXHIBIT 10.49(a)

DESIGN/BUILD AGREEMENT

BETWEEN

AMD SAXONY MANUFACTURING GmbH

AND

MEISSNER + WURST GmbH + CO.

DATED AS OF NOVEMBER 15TH, 1996

PERTAINING TO  
DESIGN AND CONSTRUCTION OF AMD FAB 30

DRESDEN, GERMANY

INDEX

	Article 1	
	Scope of Work.....	1
1.1	Facility.....	2
1.2	Project.....	2
1.3	Design And Engineering Services.....	2
	1.3.1 Engineering Services.....	2
	1.3.2 Design And Engineering By Contractor.....	2
	1.3.3 Latest Version Of Documents.....	4
	1.3.4 Process Design.....	4
1.4	Construction And Construction Administration And Supervision Services.....	5
	1.4.1 Construction And Construction Management Services By Contractor.....	5
	1.4.2 Standards For Completion.....	6
1.5	Nature Of Company's Approvals.....	6
1.6	Definitions.....	6
	Article 2	
	Personnel.....	8
2.1	Employment By Contractor Of Qualified Personnel.....	8
	2.1.1 Qualified Design Professionals.....	8
	2.1.2 Qualified Construction Professionals.....	8
2.2	Contractor's Superintendents.....	8
	2.2.1 Senior Project Construction Superintendent.....	8
	2.2.2 Appointment Of Superintendents Required By Law.....	9
2.3	Construction Personnel.....	9
	2.3.1 Supervision	
	Of Construction Personnel.....	9
	2.3.2 Contractor's Responsibility For Personnel.....	9
2.4	No Relationship With Company.....	9
2.5	Company's And Contractor's Representatives.....	9
2.6	Personnel Proficiency In English.....	10
2.7	Employment Of Legal Workers.....	10
2.8	Compliance With Law and Promptitude In Hiring And Replacing Personnel.....	10
	Article 3	
	Contract Documents.....	10
3.1	Contract Documents.....	10
3.2	Resolution Of Conflicts.....	10
3.3	Language Of Contract Documents.....	11

	Article 4	
	Design Documents.....	11
4.1	Detailed Design.....	11
4.2	Pre-Contract Design.....	11
4.3	Design Development Phase.....	11
4.4	Final Design Phase.....	12
4.5	Specifications And Drawings.....	12
4.6	Data Sheets.....	12
4.7	Quantities And Recipients Of Design Documents.....	12
4.8	As Built Documents.....	12
4.9	Company Not Approving Or Waiving.....	13
4.10	Operating Manual.....	13
4.11	Ownership Of Documents.....	13
4.12	Obtaining Permits.....	13
4.13	Compliance With Code Requirements.....	14

	Article 5	
	Approval of Design Documents.....	14
5.1	Approval By Company.....	14
5.2	Schedule Of Submittals.....	15

5.3	Bulk Orders.....	15
5.4	Return Of Design Documents To Contractor.....	15
5.5	Nature Of Company's Approval Of Design Documents.....	15
5.6	Delay By Contractor Or Company In Delivery Of Design Documents.....	16
	5.6.1 Delay By Contractor In Delivery.....	16
	5.6.2 Delay By Company In Delivery.....	16

	Article 6	
	Site.....	16
6.1	Easements Provided By Company.....	16
6.2	Condition Of Site.....	16
6.3	Benchmark.....	17
6.4	Underground Utilities.....	17

	Article 7	
	Acceptance of Site.....	17
7.1	Contractor's Inspection Of Site.....	17

	Article 8	
	Conduct of the Construction Work.....	17
8.1	Construction In Accordance With Approved Design Documents.....	17
8.2	Parties' Relationship.....	17
8.3	Efficient Administration.....	17
8.4	"Build Clean" Protocol.....	18
8.5	Equipment Standby.....	18
8.6	Construction By Company.....	18
8.7	Compatible Labor.....	18
8.8	Labor Agreement Practices.....	18
8.9	Overtime Labor.....	18
8.10	Identification.....	18
8.11	Commencement And Prosecution Of Construction Work.....	19
8.12	Contractor Responsible For Construction Means.....	19
8.13	Specialized Construction Manager Required By Law.....	19
8.14	Sanitation.....	19
8.15	Safety And Security.....	19
	8.15.1 Contractor's Responsibility For Safety.....	19
	8.15.2 Safety Program.....	20
	8.15.3 Reporting And Investigating Accidents.....	20
	8.15.4 Reporting Claims.....	20
	8.15.5 Compliance With State Safety Requirements.....	20
	8.15.6 Safety Of Tools.....	20
	8.15.7 Contractor's Safety Requirements In Facility.....	20
	8.15.8 Security.....	21
8.16	Materials.....	21
	8.16.1 New Materials.....	21
	8.16.2 Responsibility For Injury Caused By Equipment.....	21
	8.16.3 Substitution Of Materials.....	21
	8.16.4 Materials Objected To By Contractor.....	22
8.17	Storage Of Materials.....	22
8.18	Cleaning Up.....	22

	Article 9	
	Purchasing Materials, Subcontracting Work and Computers.....	22
9.1	Purchasing Materials.....	22
9.2	Subcontracting Work.....	22
	9.2.1 Third Party Subcontracts And Vendors.....	22
	9.2.2 Contractor Bidding On Subcontracted Work.....	23
9.3	Nature Of Company's Approval.....	23
9.4	Contractor Responsible For Subcontractors.....	23
9.5	Cost-Plus Subcontracts.....	23
9.6	Computers.....	24
9.7	Import Requirements.....	24

	Article 10	
	Changes, Additions, and Omissions in the Work.....	24
10.1	Keeping Account Of Changes.....	24
10.2	Proposing And Approving Changes.....	24
10.3	Effect Of Change Order On Cost And Timing.....	25
10.4	No Effect On Contractor's Other Responsibilities.....	26

	Article 11	
	Inspection and Testing During Construction.....	26
11.1	Contractor's Shop Inspections.....	26
11.2	Measurements And Suitability.....	26
11.3	Inspection Reports.....	26
11.4	Company's Inspections.....	26
11.5	Company's Inspector.....	27
11.6	Inspection Of Fabrication.....	27
11.7	Testing.....	28

	Article 12	
	Progress Reports and Progress Monitoring.....	28
12.1	Progress Schedules.....	28
12.2	Delivery Of Schedules To Company.....	28
12.3	Periodic Progress Reports.....	28
12.4	Superintendent's Report.....	28
12.5	Materials Status Reports.....	29

	Article 13	
	Accounts and Records.....	29
13.1	Detailed Accounts.....	29
13.2	SEMATECH Model.....	29
13.3	Tax Accounting.....	29
13.4	Audit By Company.....	29
13.5	Audit Of Subcontractors And Vendors.....	29

	Article 14	
	Time of Completion.....	30
14.1	Substantial Completion Date.....	30
14.2	Latest Date For Final Completion.....	30
14.3	Delays And Extensions Of Time.....	30
	14.3.1 Delays Caused By Change Order Or By Company Or By Force Majeure....	30
	14.3.2 Standard For Approving Extensions Of Time.....	31
14.4	Delays And Additional Costs.....	31
	14.4.1 Additional Costs Caused By Company's Delay Or By Force Majeure....	31
	14.4.2 Notice Of Claim For Delay.....	31
	14.4.3 Limitation On Costs.....	31
	14.4.4 Delays By Company In Granting Approvals.....	31

	Article 15	
	Substantial Completion, Final Completion and Final Acceptance.....	32
15.1	Substantial Completion.....	32
15.2	Final Completion.....	32
	15.2.1 Completion Of Punch List Items.....	32
	15.2.2 Contractor's Certification Of Completion Of Construction Work.....	33
15.3	Final Acceptance And Final Payment.....	33
	15.3.1 Final Acceptance By Company.....	33
	15.3.2 Final Payment.....	34
15.4	Release Of Company.....	34

	Article 16	
	Cost of the Work.....	34
16.1	Basis Of Fee.....	34
16.2	Reimbursable Costs.....	34
	16.2.1 Office Costs.....	34
	16.2.2 Field Costs.....	37
	16.2.3 Excluded Costs.....	41
	16.2.4 Principles Affecting Reimbursable Costs.....	42
16.3	Contractor's Fee.....	43
	16.3.1 The Fee.....	43
	16.3.2 Calculate Incentive Changes In Fee.....	43
	16.3.3 Fee For Services.....	44
16.4	Total Contract Amount.....	44
16.5	Costs Of Alterations.....	44
16.6	Records Of Reimbursable Costs.....	44
16.7	Discounts And Refunds.....	45
16.8	Surplus.....	45
16.9	Lump Sum Subcontract.....	45
16.10	Adjustment In Fee.....	46
	Article 17	
	Terms of Payment.....	46
17.1	Payment Of Contract Amount.....	46
17.2	Payment of Increases In Fee; Retainage.....	48
17.3	Partial Release Of Retainage.....	48
17.4	Payment Not A Waiver By Company.....	48
17.5	Payment Of Balance Of Retainage.....	48
17.6	Insurance Adjustments.....	49
17.7	Stored Materials.....	49
	Article 18	
	Warranties And Guarantees.....	49
18.1	Contractor's Warranty And Guarantee.....	49
18.2	Company's Right To Repair.....	50
18.3	Liability For Damages.....	51
18.4	Capacities At Operating Conditions.....	51
18.6	Retaining Imperfect Materials.....	51
18.7	No Release Of Other Claims	51
	Article 19	
	Correction of Defective Construction Work.....	51
19.1	Correction Of Work For Which Contractor Is Responsible.....	51
19.2	Using New Materials For Repairs.....	52
19.3	Repair By Company.....	52
	Article 20	
	Indemnity.....	52
20.1	Contractor's Indemnity.....	52
20.2	Indemnification By Subcontractors And Vendors.....	53
20.3	Company's Indemnity.....	53
20.4	Consequential Damages.....	54
	Article 21	
	Insurance And Bank Guarantees.....	54
21.1	Contractor To Carry Insurance.....	54
21.2	Contractor's Liability Insurance.....	55
	21.2.1 Liability Coverage.....	55
	21.2.2 Liability Limits.....	55
21.3	Insurance Certificates.....	56
21.4	Company As Additional Insured.....	56
21.5	Builders All Risk Insurance.....	56
21.6	Performance And Warranty Bank Guarantees.....	56
21.7	Advance Payment Bank Guarantees.....	57
21.8	Assignment Of Subcontractors' Warranties And Bank Guarantees.....	57

	Casualty Causing Damage to the Facility.....	58
22.1	Damage Before Substantial Completion Of Facility.....	58
22.2	Damage After Substantial Completion Of Facility.....	58
	Article 23	
	Protection of Property.....	58
23.1	Contractor's Protection Of Facility.....	58
	Article 24	
	Preparation of the Facility for Occupancy and Testing.....	58
24.1	Contractor's Preparation Of Facility.....	58
24.2	Calibration Of Instrumentation.....	59
24.3	Take Over For Installation Or Testing.....	59
	Article 25	
	System Performance Tests.....	60
25.1	Conduct Of System Performance Tests; Repairs.....	60
25.2	Notice Of Satisfactory Completion.....	60
25.3	Coordination Of Systems.....	60
25.4	Standards Of Operation.....	60
25.5	Shut Down Procedure.....	61
	Article 26	
	Use of Completed Portions of the Facility.....	61
26.1	Use Of Completed Construction Phases.....	61
	Article 27	
	Closing Report on Cost of the Facility.....	61
27.1	Closing Report.....	61
	Article 28	
	Record Documents.....	61
28.1	Description Of Record Documents.....	61
28.2	Information On Record Documents.....	62
28.3	Recording Data.....	62
28.4	Conduits, Pipes, Etc.....	62
28.5	Finalization Of Documents Other Than Drawings.....	62
28.6	Finalization Of Drawings.....	62
28.7	Remedies Regarding Record Documents.....	62
	Article 29	
	Operation and Maintenance Data.....	63
29.1	Submittal Of Operation And Maintenance Data.....	63
29.2	Contents Of Data.....	63
29.3	Data For Equipment And Systems.....	63
	Article 30	
	Taxes.....	64
30.1	Taxes Assessed Against Facility.....	64
30.2	Taxes Affecting Employees.....	64
30.3	Taxes Not Part of Budgeted Cost.....	64
	Article 31	
	Liens [Pfandrecht].....	64
31.1	Liens [Pfandrecht].....	64
	Article 32	
	Patents and Confidentiality.....	65
32.1	Contractor's Responsibility.....	65
32.2	Design Process.....	65
32.3	Replacement Of Infringing Item.....	65
32.4	Confidentiality.....	65
	32.4.1 Proprietary Information.....	66
	32.4.2 Hold In Confidence.....	66
	32.4.3 Announcements.....	66
	Article 33	
	Company's Right to Take Over the Work.....	67
33.1	Company's Option.....	67
33.2	Reimbursement Of Contractor.....	67
33.3	Guarantees.....	67

	Article 34	
	Company's Right to Suspend Work.....	67
34.1	Company's Right To Suspend Project.....	67
34.2	Suspension Upon Company's Notice.....	67
34.3	Compensation For Suspension.....	68
34.4	Resumption Of Work.....	68
34.5	Termination Following Suspension.....	68
	Article 35	
	Termination for Convenience of Company.....	69
35.1	Termination By Company.....	69
35.2	Actions Upon Receipt Of Notice.....	70
35.3	Guarantees Following Termination.....	70
	Article 36	
	Default by the Contractor.....	70
36.1	Events Of Default.....	70
36.2	Company's Right To Take Over Work.....	71
36.3	Company's Right To Complete Work.....	71
36.4	Contractor's Action Upon Receipt of Notice.....	71
36.5	Remedies Cumulative.....	72
36.6	Limits On Amount Payable To Contractor.....	72
	Article 37	
	Penalty Clause.....	72
37.1	Damages For Delay In Substantial Completion Of Facility.....	72
37.2	Payment Of Contract Penalty.....	72
37.3	Subcontract Penalty Clauses.....	72
37.4	Set-Off Of Contract Penalties.....	72
	Article 38	
	Compliance with Laws, Choice of Law, Choice of Forum, Contract Language....	73
38.1	Compliance With Applicable Law.....	73
38.2	Indemnity For Violation.....	73
38.3	Choice of Law.....	73
38.4	Disputes; Arbitration.....	74
	38.4.1 Resolution Of Disputes By Arbitration.....	74
	38.4.2 Place Of Arbitration.....	74
	38.4.3 Exclusive Jurisdiction.....	74
	38.4.4 Selection Of Arbitrators.....	74
	38.4.5 Language Of Proceedings.....	75
	38.4.6 Applicable Law.....	75
	38.4.7 Arbitration Award.....	75
	38.4.8 Provisional Remedies.....	75
38.5	Contract Made In English.....	75
	Article 39	
	Financing of Project.....	75
39.1	Take Over By Project Lender.....	75
39.2	Approvals By Project Lender.....	75
39.3	Audit By Project Lender.....	75
39.4	Amendment of Agreement.....	76
	Article 40	
	Force Majeure.....	76
40.2	Effect On Time For Performing Obligation.....	76
40.3	Effect On Compensation.....	77
40.4	Obligation To Mitigate.....	77
40.5	Notification.....	77
40.6	Failure to Notify.....	77
	Article 41	
	Waiver, Severability and Remedies.....	77
41.1	Company's Rights Not Affected.....	77
41.2	Contractor's Waiver.....	77
41.3	No Waiver Of Breach.....	77
41.4	Written Changes.....	77
41.5	Severability.....	77
41.6	Cumulative Remedies.....	78

41.7	Captions.....	78
	Article 42	
	Notices and Addresses.....	78
42.1	Notices.....	78
42.2	Change Of Address.....	79
	Article 43	
	Entire Agreement; Successors.....	79
43.1	Entire Agreement.....	79
43.2	Successors And Assigns.....	79

vii

EXHIBITS AND SCHEDULES

Exhibit A	Facility Performance Criteria
Schedule 7.1	Site Studies Furnished By Company To Contractor
Schedule 16.2.1.1	Range Of Hourly Rates Of Contractor's Employees And Contractor's Established Travel And Living Expenses Reimbursement Policies
Schedule 16.2.2.3	Schedule Of Equipment Rental Rates [To Be Attached Upon The Parties' Mutual Agreement On Such Rates And To Be Revised From Time To Time]
Schedule 16.2.4	Examples Of Qualifying And Non-Qualifying Reimbursable Costs
Schedule 21.6&21.7	Criteria For Bank Guarantees

viii

INDEX OF DEFINED TERMS  
-----

Defined Term - -----	Section -----
"Adjusted Multiplier".....	16.10
"Advisors".....	32.4.1
"Affiliate".....	32.4.1
"Budgeted Cost of the Work".....	16.3.1
"Budgeted Fee".....	16.3.1
"Change Order".....	10.1
"Company".....	Preamble
"Company's Inspector".....	11.5
"Company's Project Manager".....	2.5
"construction outfit".....	1.6.1
"Construction Phase".....	1.3.2.2
"Construction Work".....	1.4.1
"Contract".....	Recitals
"Contract Amount".....	16.1
"Contract Documents".....	3.1
"Contractor".....	Preamble
"Cost of the Work".....	1.3.2.2
"Default".....	36.1
"Delay Week".....	37.2, 37.3
"Design Documents".....	1.3.2.1
"Estimate of Project Cost".....	1.3.2.2
"Event of Default".....	36.1
"Fab 30 Preliminary Design".....	1.1
"Facility".....	1.1
"Fee".....	16.3
"Final Acceptance".....	15.3.1
"Final Completion Date".....	15.2
"Latest Date For Substantial Completion Of The Facility".....	14.1
"materials".....	1.6.2
"Operation and Maintenance Data".....	29.1
"Original Multiplier".....	16.10
"outfit".....	1.6.1
"person".....	1.6.3

"Project".....	1.2
"Project Budget".....	1.3.2.4
"Project Schedule".....	1.3.2.3
"Proprietary Information".....	32.4.1
"Punch List".....	15.1
"reasonable period of time".....	1.6.4
"Reimbursable Costs".....	16.1
"Representative".....	1.6.5
"Retainage".....	17.2
"ROM".....	14.4.2
"Schedule Recovery Plan".....	1.4.1.1
"service the Facility".....	1.6.6
"servicing the Facility".....	1.6.6
"Site".....	Recitals
"Site Boundary Lines".....	1.6.7
"Stored Materials".....	17.1
"Subcontract Retainage".....	17.1
"subcontractor".....	1.6.8
"supplies".....	1.6.9
"system".....	1.6.10
"System Performance Test".....	25.1
"vendor".....	1.6.10
"Wafer Process Equipment".....	1.3.2
"Warranty Commencement Date:.....	18.1
"work".....	1.6.11, 1.6.12
"working days".....	1.6.13

DESIGN/BUILD AGREEMENT

BETWEEN

AMD SAXONY MANUFACTURING GmbH

AND

MEISSNER + WURST GmbH + CO.

PERTAINING TO

DESIGN AND CONSTRUCTION OF AMD FAB 30, DRESDEN, GERMANY

Preamble

THIS DESIGN/BUILD AGREEMENT is made and entered into as of the 15th day of November, 1996 by and between AMD SAXONY MANUFACTURING GmbH, having its home office at AMD European Microelectronics Center, Grossehainer Strasse 92, 01127 Dresden, Germany, hereinafter referred to as "COMPANY", and MEISSNER + WURST GmbH + CO., having its home office at Rossbachstrasse 38, 70499 Stuttgart, Germany, hereinafter referred to as "CONTRACTOR".

R E C I T A L S

-----

A. COMPANY owns certain land located in the City of Dresden, State of Saxony, Germany (the "SITE").

B. COMPANY desires to obtain new state-of-the-art wafer fabrication and associated support facilities to be located on the Site for the design and production of integrated circuits.

C. CONTRACTOR desires to plan, design, construct, erect, install, equip, start up, test, calibrate, adjust and turn over the facilities in accordance with this Agreement and the Contract Documents (defined in Section 3.1 below) (this Agreement and the Contract Documents are collectively called the "CONTRACT").

NOW, THEREFORE, for and in consideration of the payments hereinafter specified to be made by COMPANY, and in consideration of the promises and mutual



covenants and agreements of the parties herein contained, the parties hereto do hereby agree as follows:

ARTICLE 1  
SCOPE OF WORK

1.1 FACILITY. The improvements and equipment to be planned, designed, -----  
engineered, developed, fabricated, constructed, furnished and/or installed, started up, tested, calibrated, adjusted and turned over under the Contract (which improvements and equipment are herein sometimes referred to collectively as the "FACILITY") are as follows:

The Facility known as AMD European Microelectronics Center, located in Dresden, Germany.

The Facility shall include the buildings, structures, building systems, site improvements, roads, utilities, wastewater disposal, sewer and other

1

improvements but shall exclude the acquisition and installation of the Wafer Process Equipment (defined in Section 1.3.2 below). The Preliminary Design of -----

the Facility is represented or described in documents described in List of Mechanical Drawings dated November 14, 1996 and List of Architect's Drawings dated November 14, 1996 and in Preliminary Design Report dated November 14, 1996, which are incorporated herein by this reference (collectively referred to as the "FAB 30 PRELIMINARY DESIGN"). In the event that any changes are made in the scope of the Facility, any corresponding changes in the Fab 30 Preliminary Design shall be made by Change Order (defined in Section 10.1 below). -----

CONTRACTOR shall provide the design development, engineering, construction management and all ancillary construction services, and appurtenances of every description which are necessary to construct and start the Facility in accordance with the Fab 30 Preliminary Design and the Contract.

1.2 PROJECT. The Project for which CONTRACTOR shall be responsible is the -----  
design development, engineering, construction management, furnishing, fabrication, construction, erection, installation, equipping, starting up, testing, calibrating, and adjusting of the Facility, including without limitation all design services, all construction management services and all construction services, together with all necessary appurtenances (collectively, the "PROJECT"). The Project comprises the completed construction of the Facility as designed by CONTRACTOR and approved by COMPANY and includes without limitation (i) all labor, tools, construction equipment, fuel, transportation, utilities, water and all other facilities and services necessary to ready the Site for construction and to complete all site work (including without limitation installation of all utilities, wastewater disposal and sewage disposal systems) and to complete such construction and (ii) all materials incorporated and to be incorporated in such construction and (iii) all building systems and building equipment to be installed as an integral part of the buildings, structures and other improvements comprising the Facility as described in the Fab 30 Preliminary Design.

1.3 DESIGN AND ENGINEERING SERVICES.  
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1.3.1 ENGINEERING SERVICES. CONTRACTOR shall furnish structural, -----  
mechanical, electrical, plumbing, civil engineering and landscaping services as part of CONTRACTOR'S design services.

1.3.2 DESIGN AND ENGINEERING BY CONTRACTOR. Except for the process -----  
design referred to in Section 1.3.4, based upon the Fab 30 Preliminary Design, -----

CONTRACTOR shall furnish the completed design for the Facility. CONTRACTOR shall make detailed checks of the design information furnished by COMPANY to satisfy itself as to the accuracy thereof and shall be responsible for the complete mechanical and electrical design of the Facility and of all systems necessary for a complete and operational Facility with the exception of furnishing tooling, equipment and machinery to be furnished and installed by

COMPANY for the manufacture and design of integrated circuits (the "WAFER PROCESS EQUIPMENT"). CONTRACTOR shall be responsible for:

1.3.2.1 DESIGN DOCUMENTS. Developing and preparing for  
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COMPANY'S approval complete and coordinated plans, specifications, working drawings, data sheets and other construction documents for the Project which are necessary for the construction of the Facility (the "DESIGN DOCUMENTS"). Each time the Design Documents are revised, the revised Design Documents shall: (1) bear a sequential number (indicating the numerical sequence of such revision), (2) show the changes from the prior revision, (3) show the date of the revision, (4) show the date of COMPANY'S and CONTRACTOR'S mutual approvals and (5) show the name(s) of COMPANY'S and CONTRACTOR'S Representative(s) who approved the revision. The development of the design of the Facility and the preparation of the Design Documents are described in more detail in Article 4 below.

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1.3.2.2 ESTIMATES OF PROJECT COST. Developing and preparing  
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for COMPANY'S review and approval at each stage of design development of design estimates that define the estimated cost of the Project setting forth the total estimated design / engineering and complete construction cost of each of the following components of the Project and including as to each component the common system costs:

Design/Engineering, Site Development, Office Design Center, Central Utilities Building, Fab and Clean Room, Fab Support, Chemical and Bulk Storage, and Construction Administration and Supervision (each referred to as a "CONSTRUCTION PHASE").

These estimates (each an "ESTIMATE OF PROJECT COST") will be exclusive of acquisition and installation cost for the Wafer Process Equipment but shall include building support equipment acquisition and installation as necessary or appropriate to implement the Fab 30 Preliminary Design and the Contract. Each estimate shall be provided to COMPANY in the level of detail mutually agreed upon by and between CONTRACTOR and COMPANY and shall be reconciled with previously prepared design estimates. The estimates shall set forth the estimated total of all Reimbursable Costs (the "COST OF THE WORK ") (as described in Article 16 below), and the CONTRACTOR'S estimated Budgeted Fee (as defined in Article 16 below).

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1.3.2.3 PROJECT SCHEDULE. Developing for COMPANY'S approval a  
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detailed Critical Path Method Schedule for the performance of the engineering and design work and the construction of each Construction Phase (the "PROJECT SCHEDULE"), which Project Schedule is incorporated herein by this reference. With respect to the Project Schedule, COMPANY'S approval will be required for every change in the Project Schedule which may affect the Critical Path of any Construction Phase or may affect any milestone established for any part of the Project. Additionally, COMPANY shall have the right to change the Critical Path of any Construction Phase, and CONTRACTOR shall thereupon revise the Project Schedule for COMPANY'S approval, and CONTRACTOR shall submit all additional costs resulting from such change to COMPANY and shall obtain COMPANY'S approval (including approval of changes in the Project Budget) before such change in such critical path is implemented. However, COMPANY'S approval shall not be construed to relieve CONTRACTOR of any responsibility and/or liability which CONTRACTOR may have with respect to delays and/or additional costs not encompassed by COMPANY'S approval. The Project Schedule shall be prepared, updated and revised in Primavera Project Planner for Windows (P3 Win) or equivalent acceptable to both CONTRACTOR and COMPANY. The Project Schedule shall be developed so as to permit CONTRACTOR and COMPANY to monitor the progress and monetary cost of all aspects of the work including without limitation each Construction Phase, to identify the points in time at which specified events must occur and to anticipate potential problems in achieving scheduled completion dates. The Project Schedule shall show the respective dates upon which CONTRACTOR proposes to commence and complete the following sub-phases of each Construction Phase: Phase Summary, Phase Milestones, Delays Encountered, Conceptual Design, Schematic Design, Construction Design Development, Preparation of Tenders, Tendering-Negotiation & Award, Notice to

Proceed, Submittals and Shop Drawings and Review and Approval thereof by COMPANY, Fabrication and Delivery, Site Mobilization, Construction, Punchlist, Calibration, Adjustment, Turnover to COMPANY, and Site Demobilization. Each Construction Phase will be further detailed to reflect the elements of the Project Schedule and the logical activities or line items planned to accomplish each Construction Phase in accordance with the Project Schedule. Each schedule activity or line item will be identified, along with the estimated quantity of units of work and the cost thereof, to be

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accomplished or installed, man hours planned per unit, together with the cost thereof, any special construction equipment or other constraining appurtenances required for construction (e.g., heavy-lift cranes, site concrete batching plants, wide-load road permits, etc.), and scheduled progress anticipated on each of said items in order to complete the entire Facility within the contract time in accordance with the Project Schedule. Each schedule activity or line item will be identified as a direct work or indirect work activity and have the planned equipment, material, labor, and equipment rental cost associated with the activity identified separately.

1.3.2.4 PROJECT BUDGET. Developing and preparing for COMPANY'S  
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approval a detailed budget for the Project based on the latest Estimate of Project Cost approved by COMPANY that reflects the elements of the Project Schedule and sets forth separately the projected costs for each Construction Phase and breaks down those projected costs into each element of the Project Schedule applicable to such Construction Phase (the "PROJECT BUDGET"), which Project Budget is incorporated herein by this reference. The Project Budget will be coded and identify quantifiable elements to relate directly to the Project Schedule and Project work breakdown structure for cash flow and progress monitoring. The Project Budget will be capable of being summarized by phase and in total to the SEMATECH Facility Cost Model. After the Project Budget is finalized, it will not be changed except pursuant to a Change Order approved and signed by the two Representatives of COMPANY described in Clause (x) of Section 10.2 and by  
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the COMPANY Representative described in Clause (y) of Section 10.2 hereof,  
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as well as approved and signed by CONTRACTOR'S Representative described in  
Clause (z) of Section 10.2. The Project Budget will be maintained  
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continuously, and the status of the Project Budget and a forecast shall be reported to COMPANY on a monthly basis, in such format as COMPANY and CONTRACTOR mutually agree upon, and the Project Budget will monitor the following categories of data: planned budget, approved changes, operating budget, commitments against operating budget, cost incurred to date, cost to complete commitment, current Estimate of Project Cost, variance of operating budget to Budgeted Cost of the Work (defined in Section 16.3.1  
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below), earned value of work completed to date, quantity of units budgeted, estimated cost per unit, actual cost per unit and such other information as COMPANY may request or CONTRACTOR recommend and COMPANY accept. Additionally, COMPANY may request simplified interim status reports and forecasts on a weekly or bi-weekly basis in such other format or formats as COMPANY may prescribe, and any associated, additional cost shall be reimbursed by COMPANY either as office costs pursuant to Section 16.2.1 if  
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prepared in CONTRACTOR'S home office or as field costs pursuant to Section  
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16.2.2 if prepared in CONTRACTOR'S field office.  
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1.3.3 LATEST VERSION OF DOCUMENTS. For purposes of this Agreement,  
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the defined terms "DESIGN DOCUMENTS", "ESTIMATE OF PROJECT COST", "PROJECT SCHEDULE" and "PROJECT BUDGET" shall mean the latest version of each of these developed and approved by COMPANY in accordance with this Agreement.

1.3.4 PROCESS DESIGN. COMPANY shall supply certain process design  
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requirements for the tools used in the manufacturing process in the form of performance requirements and certain other design information as shown

in the Contract Documents, including the Facility Performance Criteria described in Exhibit A attached hereto and made a part hereof. Any additional sizing and

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selection of materials not specified by COMPANY is to be furnished by CONTRACTOR with COMPANY'S approval in the form of prescribed specifications. Except for the process design requirements, CONTRACTOR shall make detailed checks of the design information furnished by COMPANY to satisfy itself as to the accuracy thereof and shall be responsible for the complete design of the Facility and all building systems, with the exception of the

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Wafer Process Equipment, the procurement and installation of which shall be determined by COMPANY.

1.4 CONSTRUCTION AND CONSTRUCTION ADMINISTRATION AND SUPERVISION SERVICES.  
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1.4.1 CONSTRUCTION AND CONSTRUCTION MANAGEMENT SERVICES BY  
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CONTRACTOR. The acquisition and installation of the Wafer Process Equipment is  
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COMPANY'S responsibility. Except for the Wafer Process Equipment and other things that the provisions of the Contract expressly require or provide for COMPANY to furnish for the Facility, CONTRACTOR shall furnish and provide all construction management services and all construction for the entire Facility, including without limitation all require) at least monthly providing such updated reports, invoices and materials to be incorporated into the buildings, structures and other improvements and all labor, fuel, transportation, construction equipment, tools, utilities, water, wastewater disposal, sewage disposal, supplies, outfit, and appurtenances of every sort which may be necessary for or in connection with the scheduling, delivery, handling, construction, erection, installation, performance, calibration, adjustment and turnover of the Facility, and for the start up and performance testing of the Facility and for the execution of all other construction work included as a part of the Project. All such construction management services and all construction work are collectively referred to as the "CONSTRUCTION WORK". CONTRACTOR shall be responsible for all Construction Work, including without limitation the following:

1.4.1.1 UPDATING BUDGET AND SCHEDULE. During construction,  
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revising and updating continuously, and reporting to COMPANY on a monthly basis the Project Budget and the Project Schedule, as described in Section

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1.3.2.4 and Article 12, subject to COMPANY'S approval and effected by  
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issuance of a Change Order; submitting CONTRACTOR'S monthly Application for Payment (described in Section 17.1 below) and invoices and other

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supporting documentation, as required herein at least monthly; and providing COMPANY with a summary of the status of the Project and a report on the percentage of completion of the Project (both in such form and containing such information, including then current aerial photographs, as COMPANY may reasonably require) at least monthly. Providing such updated reports, invoices and documents on a timely basis shall be a condition precedent to payment of CONTRACTOR'S Budgeted Fee. Should the Project fall behind schedule or be projected to fall behind schedule, CONTRACTOR shall prepare and submit for COMPANY'S approval, a plan or plans for recovering the lost time showing such actions as may be required to restore the Project Schedule to the complete satisfaction of COMPANY and showing the costs associated with such actions (a "SCHEDULE RECOVERY PLAN"). A Schedule Recovery Plan may include, without limitation, one or more of the following courses of action:

- Increase the size of the work force; or
- Place activities on shift work; or
- Provide and utilize additional equipment; or
- Place activities on overtime for a specified period of time but only if approved by COMPANY.

The party who shall bear any additional costs to the Project occurring as a result of such delay(s) or the effort(s) necessary to recover therefrom shall be determined in accordance with Sections 10.3, 14.4 and 16.2.4. The

Budgeted Cost of the Work shall be increased only by means of Change Order approved by COMPANY in writing pursuant to Article 10 or Article 14.

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1.4.1.2 SUPPORT EQUIPMENT PROCUREMENT. Developing a support

equipment procurement schedule and plan so as to obtain the support equipment required for the Project in accordance with the Project Schedule and the Project Budget.

1.4.1.3 SELECTING SUBCONTRACTORS AND VENDORS. Selecting

subcontractors and vendors in accordance with this Agreement and supervising and enforcing the requirements of the Contract on the performance of subcontracts and purchase orders (exclusive of litigation, unless first approved in writing by COMPANY or unless the cost of such litigation is paid for entirely by CONTRACTOR). Ensuring that as a condition of all subcontracts and purchase orders that subcontractors and vendors are required to comply with all scheduling procedures, accounting and auditing procedures, billing procedures, performance reporting procedures, safety procedures, dispute resolution procedures and procedures established in the Project Procedures Manual established for the Contract between CONTRACTOR and COMPANY. CONTRACTOR will coordinate construction schedules and shop and working drawing development, and insure that same are communicated to all of CONTRACTOR'S subcontractors.

1.4.2 STANDARDS FOR COMPLETION. It is the intent of the Contract that the

Facility shall be complete with all needful appurtenances for satisfactory operation as identified in the Design Documents, including, without limitation, comfort-controlled interior environment, proper coordination and control, safety, reasonably easy access and maintenance, fire defense, life safety, and the like. Any work or materials not specifically described in or expressly covered by the Contract but which may be fairly implied as being required thereby or necessary to make the Facility complete as aforesaid shall be considered within the purview of the Contract and all such work shall be performed and all such materials shall be furnished by CONTRACTOR the same as if specifically described in or expressly covered by the Contract. Such work and such materials shall be of a quality comparable to the remainder of the Facility and subject to COMPANY'S approval.

1.5 NATURE OF COMPANY'S APPROVALS. Notwithstanding any review, revision,

testing, comment or approval by COMPANY of any Design Document, Construction Work, materials or other aspect of the Project, CONTRACTOR is and shall remain solely responsible for the plan, design, construction, erection, installation, equipping, start up, testing, calibration, adjustment and turning over of the completed Facility to COMPANY in accordance with the terms of the Contract. The provisions of Sections 4.9, 5.5 and 9.3 shall apply to all such review,

revision, testing, comment or approval by COMPANY.

1.6 DEFINITIONS.

1.6.1 The terms "CONSTRUCTION OUTFIT" and "OUTFIT" where used herein shall be understood to refer to the equipment, tools, and implements (whether already owned by CONTRACTOR or rented or purchased by CONTRACTOR expressly for this job) needed for or in connection with the performance of CONTRACTOR'S work on the Site, but which do not enter permanently into the construction of the Facility and will not be needed by COMPANY for or in connection with the servicing, operation, or protection of the completed Facility.

1.6.2 The word "MATERIALS" where used herein shall mean those goods or commodities (including equipment) which are intended to enter directly and permanently into the construction of the Facility, or are required for or in connection with the servicing, operation, or protection of the completed Facility as, for example: cement, stone, sand, lumber, millwork, hardware,

brick, concrete, mortar, pipe, tubing, valves, fittings,

6

castings, structural steel, steel plate, exchangers, condensers, coolers, insulation, paint, welding rod, instruments, instrument charts, pumps, motors, compressors, generators, furnaces, air conditioning, ventilating, fans, transformers, conduit, wiring, switch gear, panel boards, hoists, tube cleaners, wrenches, fire extinguisher, and the like.

1.6.3 The term "PERSON" where used herein shall mean an individual, corporation, association, partnership, joint venture, limited liability company, trust or other business entity or government or governmental agency, court, department or officer.

1.6.4 The term "REASONABLE PERIOD OF TIME" when used herein in connection with any testing by, or any consent or approval of COMPANY shall mean a period of time equal to ten (10) working days or, if the circumstances then prevailing require a longer period of time, COMPANY will justify to CONTRACTOR such longer period of time in which COMPANY may commence its testing or grant or deny its consent or approval.

1.6.5 The term "REPRESENTATIVE" when used herein shall mean a person designated by one of the parties hereto as its representative and authorized to represent or act on behalf of, and to make decisions that are binding on, the party such person is representing for the purposes for which such person has been appointed and when used herein as applying to COMPANY, for purposes of inspection and approval of Construction Work, shall include any person representing or acting on behalf of any lender of COMPANY. A person designated as a representative for a limited purpose, e.g., to conduct audits, shall not be

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a representative for any other purpose. COMPANY'S Representatives shall include any independent Person retained by COMPANY to implement financial and cost controls or to examine and advise COMPANY regarding financial or cost matters.

1.6.6 Expressions such as "SERVICE THE FACILITY" and "SERVICING THE FACILITY" where used herein shall be understood as requiring or referring to the performance of such work as is normally needed to recondition the equipment for resuming operation after a shutdown thereof as, for example, routine purging, unplugging, cleaning or plating up of equipment; installing fresh operating supplies; making such routine pressure tests as are needed before resuming operation; and the like.

1.6.7 The term "SITE BOUNDARY LINES" where used herein shall be understood to refer to the boundaries of the Site designated as such in the Contract Documents.

1.6.8 The term "SUBCONTRACTOR" where used herein shall mean a corporation, association, partnership, joint venture, limited liability company, trust or other business entity or individual (other than an employee) who contracts with CONTRACTOR (or with any subcontractor) to (i) perform part of CONTRACTOR'S work, whether at the Site or elsewhere, or (ii) furnish materials for the Facility and also erect or install same at the Site.

1.6.9 The term "SUPPLIES" where used herein shall mean those goods or commodities which enter into the construction of the temporary structures or temporary lines that are needed at the Site in connection with work on the Facility, and goods or commodities of a rapidly consumable nature that are used by the mechanical or building trades at the Site for work on the Facility.

1.6.10 The term "SYSTEM" where used herein shall include, without limitation (i) a functionally related group of elements, such as a group of interacting mechanical or electrical components such as the ultra pure water system or the HVAC system for the Fab and Clean Room, or (ii) a structurally related group of elements, such as a building.

7

1.6.11 The term "VENDOR" where used herein shall mean a corporation, association, partnership, joint venture, limited liability company, trust or other business entity or individual (other than an employee) who furnishes, or is qualified to furnish, materials or construction supplies for the Facility but does not erect or install said materials at the job site. However, vendors may

in some cases furnish erection engineers to supervise such erection or installation.

1.6.12 The term "WORK" where used herein shall mean all design development work, engineering work and Construction Work necessary or desirable to perform the Contract and complete the Facility.

1.6.13 The term "WORKING DAYS" where used herein shall mean Monday through and including Friday of each week but excluding all such days that are recognized as holidays by the State of Saxony.

ARTICLE 2  
PERSONNEL

2.1 EMPLOYMENT BY CONTRACTOR OF QUALIFIED PERSONNEL. CONTRACTOR shall  
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assign its senior personnel and professional and technical staff to the Project to the extent necessary to assure that CONTRACTOR'S obligations under the Contract are carried out. These personnel shall be identified in the Project Procedures Manual. CONTRACTOR shall not remove or replace such individuals without COMPANY'S prior written consent unless COMPANY requests such removal or replacement. Company shall not unreasonably withhold its consent to such removal or replacement.

2.1.1 QUALIFIED DESIGN PROFESSIONALS. Design services shall be  
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performed by qualified architects, engineers and other professionals licensed (if required by the laws of Saxony or of Germany) to provide such services in the State of Saxony, Germany.

2.1.2 QUALIFIED CONSTRUCTION PROFESSIONALS. Construction services  
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shall be performed by qualified subcontractors and vendors licensed (if required by the laws of Saxony or of Germany) to provide such services and materials in the State of Saxony, Germany.

2.2 CONTRACTOR'S SUPERINTENDENTS  
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2.2.1 SENIOR PROJECT CONSTRUCTION SUPERINTENDENT. CONTRACTOR shall  
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appoint the individual identified in the Project Procedures Manual as the senior Project construction superintendent to act as the full-time senior Project construction superintendent on the Project, fully authorized to give such orders as may be necessary for the proper execution and continuance of the Construction Work. CONTRACTOR'S senior Project construction superintendent shall have the authority to make decisions that are binding on Contractor, and all decisions made by CONTRACTOR'S senior Project construction superintendent shall be binding on CONTRACTOR. Written notice from COMPANY to said senior Project construction superintendent of the existence of any imperfections in workmanship or materials, or of the use by CONTRACTOR of any unsafe methods in any or all of its various activities in connection with the Construction Work at the Site, or of any other matter relating to the performance of the Construction Work, shall be considered to be notice to CONTRACTOR. The individual acting as CONTRACTOR'S senior Project construction superintendent shall not be changed during the course of the Construction Work, except with the written consent or at the request of COMPANY. COMPANY shall not unreasonably withhold its consent to such change. If such individual proves to be unsatisfactory to CONTRACTOR or ceases to be employed by CONTRACTOR, COMPANY agrees to act reasonably in consenting to his replacement. Any individual acting as senior Project construction superintendent shall be experienced and competent. The senior Project construction

superintendent shall act as a Representative of CONTRACTOR, and shall have complete authority to represent and to act for CONTRACTOR.

2.2.2 APPOINTMENT OF SUPERINTENDENTS REQUIRED BY LAW. CONTRACTOR  
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directly or by subcontractor acceptable to COMPANY shall provide a respective superintendent [Bauleiter] and technical superintendent [Fachbauleiter] as required by the law applicable to the Site.

2.3 CONSTRUCTION PERSONNEL.  
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2.3.1 SUPERVISION OF CONSTRUCTION PERSONNEL. CONTRACTOR shall give  
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efficient supervision to the work, using its best skill and attention. CONTRACTOR shall keep on the Construction Work, during its progress, competent supervisory personnel. COMPANY shall have the right to approve the assignment of supervisory personnel to the Project, and COMPANY shall not unreasonably withhold its approval of any such assignment.

2.3.2 CONTRACTOR'S RESPONSIBILITY FOR PERSONNEL. CONTRACTOR shall be  
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responsible to COMPANY for CONTRACTOR'S employees and for the subcontractors, vendors and other persons retained by CONTRACTOR, including their agents, subcontractors and employees. CONTRACTOR shall replace any officer, employee or agent of CONTRACTOR, or any officer, employee or agent of any subcontractor or vendor, assigned to the Project upon COMPANY'S reasonable request. CONTRACTOR shall remove any individual from the Project when requested to do so by COMPANY'S Representative. CONTRACTOR shall employ in the Construction Work only competent persons fit and skilled for the work assigned and shall at all times enforce strict discipline and good order. Whenever any person shall appear to be incompetent or to act in a disorderly or improper manner, CONTRACTOR shall immediately or within the shortest reasonable time remove such person from the Construction Work.

2.4 NO RELATIONSHIP WITH COMPANY. Nothing contained in the Contract shall  
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create any obligation or contractual relationship between COMPANY on the one hand and the architects, engineers, subcontractors, vendors and other persons retained or employed by CONTRACTOR on the other hand. COMPANY shall not have any right under this Agreement or the other Contract Documents (defined in Section 3.1) to direct subcontractors or vendors to take or omit to take any  
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action. COMPANY shall deal only with CONTRACTOR, and CONTRACTOR shall be responsible for determining whether or not any subcontractor or vendor is required to take or omit to take any action and for determining the nature of any action that must be taken or omitted by any subcontractor or vendor. CONTRACTOR shall assure that every subcontractor and vendor is aware of these limitations on COMPANY. If any provision of the Contract requires any subcontractor, vendor or other third person to take, or refrain from taking some action, such provision shall be interpreted to mean that CONTRACTOR shall cause such third person to take, or refrain from taking, such action.

2.5 COMPANY'S AND CONTRACTOR'S REPRESENTATIVES. CONTRACTOR and COMPANY  
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shall each designate in writing one Representative who shall have the full authority to represent and to act on behalf of, and to make decisions that are binding on CONTRACTOR or COMPANY, respectively, in all matters arising under the Contract. COMPANY'S Representative is sometimes referred to herein as "COMPANY'S PROJECT MANAGER." CONTRACTOR and COMPANY shall each notify the other of the name of their respective Representative and of any changes in the individual who holds that position. CONTRACTOR'S and COMPANY'S respective Representatives shall have the authority to delegate to other individuals all or part of their full authority (except that COMPANY'S Project Manager may not  
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delegate his authority to approve increases or decreases in the Budgeted Cost of the Work (defined in Section 16.3.1 hereof)). If Contractor's senior Project  
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construction superintendent is not Contractor's

Representative, then Contractor's Representative shall delegate to the senior Project construction superintendent the authority specified in Section 2.2.1. It  
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is understood that only one Representative of COMPANY shall have authority to approve increases or decreases in the Budgeted Cost of the Work.

2.6 PERSONNEL PROFICIENCY IN ENGLISH. The senior Project construction  
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superintendent, the superintendent [Bauleiter], the technical superintendent [Fachbauleiter] and all other senior construction personnel shall be able to



speak and write English with a reasonable degree of fluency considering the nature and requirements of the Project.

2.7 EMPLOYMENT OF LEGAL WORKERS. CONTRACTOR shall be responsible for

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assuring that all of CONTRACTOR'S and its subcontractors' and vendors' employees have necessary visas and have the legal right to be present at the Site or anywhere else where the work is being performed and to be employed in the work and that none of such employees are illegal immigrants.

2.8 COMPLIANCE WITH LAW AND PROMPTITUDE IN HIRING AND REPLACING PERSONNEL.

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The removal, replacement and hiring of personnel by CONTRACTOR shall be done in accordance with the laws of the State of Saxony or other applicable law. Replacements for removed personnel shall be hired for the Project within a period of time that does not affect the Cost of the Work or the Project Schedule.

ARTICLE 3  
CONTRACT DOCUMENTS

3.1 CONTRACT DOCUMENTS. The "CONTRACT DOCUMENTS" consist of this

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Agreement (including the Exhibit and Schedules attached or to be attached hereto and the documents incorporated herein by reference), the Project Schedule, the Project Budget, each Estimate of Project Cost, the Project Safety Manual and the Project Procedures Manual which are currently being prepared, the Design Documents to be prepared by CONTRACTOR and approved by COMPANY pursuant to Article 4 hereof, any Addenda to this Agreement entered into between COMPANY and

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CONTRACTOR and any Change Orders pursuant to Article 10 hereof. This Agreement

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and the other Contract Documents shall constitute the Contract between the parties. The Project Safety Manual and the Project Procedures Manual and the Estimate of Project Cost and the Design Documents to be prepared by CONTRACTOR and approved by COMPANY pursuant to Article 4 hereof and any Change Orders

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pursuant to Article 10 hereof, are hereby made a part hereof as effectively as

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if actually set forth herein in full. It is understood and agreed that whenever the term "CONTRACT DOCUMENTS" is used in this Agreement, it shall mean the Contract Documents as approved by COMPANY except that, in the event the parties hereto mutually agree to any modifications of the Contract Documents, it shall mean the Contract Documents as so modified.

3.2 RESOLUTION OF CONFLICTS. If any of the other Contract Documents

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(other than any Addenda to this Agreement) are found to conflict with this Agreement, then this Agreement shall control. Furthermore, should there be a conflict between any of the other Contract Documents (other than any Addenda to this Agreement), the Contract Document bearing the later date shall control. Notwithstanding the foregoing, if a document with a later date adversely affects another portion of the Facility covered by a document with an earlier date, the parties shall cooperate to remove the adverse effect. In cases where a conflict exists between any parts of the Contract Documents after application of the foregoing provisions, and adoption of one of the conflicting alternatives would jeopardize CONTRACTOR'S warranties and guarantees hereunder while adoption of the other would not, the alternative which would not jeopardize CONTRACTOR'S warranties and guarantees shall control unless the construction involved therein would be unsafe in which case the parties hereto shall cooperate in revising one of the aforesaid alternatives to remove the objections of jeopardy to warranties and guarantees

10

and hazards to safety and such revised alternative shall then control.

3.3 LANGUAGE OF CONTRACT DOCUMENTS. The Contract Documents shall be in

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English. CONTRACTOR may utilize a German translation of the Contract Documents, but, as provided in Section 38.5 below, the English version shall be

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controlling.

ARTICLE 4  
DESIGN DOCUMENTS

4.1 DETAILED DESIGN. CONTRACTOR shall prepare a detailed design of the  
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Facility based on the Fab 30 Preliminary Design and conforming to the requirements set forth in the Contract. It is agreed that, in regard to matters which are not covered in the Contract, the design and specifications for the Facility shall be based on and conform to COMPANY'S Facility Performance Criteria and the Fab 30 Preliminary Design.

4.2 PRE-CONTRACT DESIGN. CONTRACTOR commenced its design services prior  
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to execution of this Agreement. For all of such work performed prior to the date of this Agreement, CONTRACTOR shall be paid on the basis of CONTRACTOR'S cost, determined pursuant to Article 16, plus a fee as set forth in Article 16.  
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All design work performed prior to the execution of this Agreement shall be incorporated into and become a part of the design development work to be performed by CONTRACTOR under this Agreement. CONTRACTOR'S obligations contained in the Contract, including without limitation CONTRACTOR'S warranties and guarantees, shall encompass such pre-Contract design work.

4.3 DESIGN DEVELOPMENT PHASE. CONTRACTOR shall review the Fab 30  
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Preliminary Design to ascertain the requirements of the Facility and shall review the understanding of such requirements with COMPANY. CONTRACTOR shall submit to COMPANY a proposal based upon the Fab 30 Preliminary Design that shall consist of preliminary design drawings, outline specifications and other documents to preliminarily describe the size and character of the entire Facility, its architectural, structural, plumbing, mechanical and electrical systems, and the materials and such other elements of the Facility as may be appropriate. During the design development phase, CONTRACTOR shall prepare for COMPANY'S approval: (i) overall site plans and building layouts indicating the location, placement and interrelationship of proposed structures, parking facilities, on-site egress and ingress, service areas, utilities, water, wastewater disposal, sewage disposal and other applicable site improvements to establish the basic scope of the Facility; (ii) typical floor plans, major building sections, and elevations in sufficient detail to indicate the layout, basic architectural character, and design treatment of the Facility; (iii) an itemized gross area tabulation for all structures, site development, and other improvements included in the Facility; (iv) perspective renderings delineating the overall design concept of the Facility; and (v) if COMPANY requests, a block study model of the Facility as a means of further illustrating the general layout and design intent. The foregoing shall be provided for each Construction Phase. At that time, CONTRACTOR shall also submit on a preliminary basis an Estimate of Project Cost, a proposed Project Budget, a proposed Project Schedule for completion of the Construction Work and other preliminary information necessary to design and budget the Facility.

4.3.1 CONTRACTOR shall provide a preliminary evaluation of the program and the Project Budget requirements.

4.3.2 CONTRACTOR shall review with COMPANY alternative approaches to design and construction of the Project. CONTRACTOR shall engage in such "Value Engineering" with reasonable diligence and effort throughout the duration of the Project. However, COMPANY shall not be obligated to accept changes resulting from CONTRACTOR'S Value Engineering.

11

Based on the approved design documents, approved program and approved Project Budget requirements, and any adjustments authorized by COMPANY in the program or Project Budget or Project Schedule, CONTRACTOR shall prepare, for approval by COMPANY, design documents to fix and describe the size, quality and character of the entire Facility, its architectural, structural, plumbing, mechanical and electrical systems, materials and such other elements of the Facility as may be appropriate. CONTRACTOR shall submit to COMPANY a further Estimate of Project Cost.

4.4 FINAL DESIGN PHASE. Based on the approved design documents and any  
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further adjustments in the scope or quality of the Facility or in the Project Budget and Project Schedule, CONTRACTOR shall prepare, for approval by COMPANY,

construction documents consisting of specifications, drawings and data sheets setting forth in detail the requirements for the construction of the Facility. Drawings shall be in sufficient detail to define layouts and routings of the required work for all construction disciplines involved so as to avoid field construction conflicts and field rework. CONTRACTOR shall advise COMPANY of any adjustments to previously submitted Project Schedule, Project Budget and Estimate of Project Cost indicated by changes in requirements or changes in market conditions. CONTRACTOR shall consult with and coordinate the preparation of the Project Schedule, Project Budget and Estimate of Project Cost with COMPANY.

4.5 SPECIFICATIONS AND DRAWINGS. CONTRACTOR shall prepare or obtain any  
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and all specifications and drawings that are needed for obtaining proper materials and constructing and erecting the Facility. In addition to all other requirements of the Contract relating to specifications and drawings, CONTRACTOR shall submit to COMPANY two sets in electronic media form of all drawings and specifications developed by CONTRACTOR or any subcontractor or vendor. COMPANY shall review and approve CONTRACTOR'S job specifications, CONTRACTOR'S planning drawings, plot plans, process flow diagrams, instrumentation drawings, equipment layout sketches, mechanical diagrams, electrical diagrams, instrument control drawings, and any other plans, drawings, and diagrams as well as all equipment data sheets and specifications. As far as possible, the use of untried or unproved innovations in design, materials and construction shall be avoided and in no event shall such innovations be incorporated in the Facility without the written consent of COMPANY, which consent may be withheld in COMPANY'S business judgment exercised in good faith.

4.6 DATA SHEETS. CONTRACTOR shall furnish to COMPANY the data sheets  
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(including subcontractors' and vendors' drawings, design data, etc.) that may be needed for COMPANY'S use in checking or approval of specifications and drawings pertaining to the Facility. These data sheets and related material shall be subject to COMPANY'S approval and shall be delivered to COMPANY along with or in advance of the specifications and drawings to which they apply. However, the parties understand that data sheets are a part of the specifications to which they apply.

4.7 QUANTITIES AND RECIPIENTS OF DESIGN DOCUMENTS. CONTRACTOR shall  
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furnish to COMPANY all plans, specifications, drawings, data sheets, reports, requisitions, purchase orders, subcontracts, calculations, etc., as listed in COMPANY'S "DISTRIBUTION SUMMARY SHEET" and in the quantities specified therein. The Distribution Summary Sheet shall be jointly developed by CONTRACTOR and COMPANY and included in the Project Procedures Manual.

4.8 AS BUILT DOCUMENTS. Upon completion of the Facility, and prior to  
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Final Acceptance (as defined in Section 15.3.1 below), CONTRACTOR shall deliver  
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to COMPANY the final plans, specifications, drawings and data sheets on paper and in electronic media form; the said final plans, specifications, drawings and data sheets shall be the complete and correct description of all

workmanship and materials as finally installed in the Facility. CONTRACTOR shall also furnish a complete set of "as built" reproducible tracings on paper and in electronic media form of all drawings which CONTRACTOR has prepared specifically for and used on this job. CONTRACTOR shall also furnish to COMPANY all other plans, specifications, drawings, data sheets, manuals, reports and other documents required by the Articles 28 and 29 below.  
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4.9 COMPANY NOT APPROVING OR WAIVING. Neither COMPANY'S receipt of Design  
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Documents or of copies of purchase orders, subcontracts or other documents nor its failure to comment on provisions thereof shall be construed as an approval of any such provisions or operate as a waiver of, or in any way modify, any of CONTRACTOR'S obligations and responsibilities hereunder or thereunder. However, COMPANY shall respond to all Design Documents within the time periods specified in Article 5 and to all purchase orders and subcontracts within the time periods  
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specified in Section 9.2.1.

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4.10 OPERATING MANUAL. CONTRACTOR shall furnish COMPANY as soon as

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possible (but in any event at least 30 calendar days prior to the System  
Performance Test (defined in Section 25.1) for each system within the Facility)

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the material relating to such system required from CONTRACTOR for the operating  
manual which COMPANY shall prepare for use in the operation of the Facility -C  
said material to be of the kind and in the quantities specified in COMPANY'S  
DISTRIBUTION SUMMARY SHEET which shall be part of the Project Procedures Manual.  
The drawings for the operating manual shall be made from CAD and text files  
furnished by CONTRACTOR. It is understood that CONTRACTOR shall review the  
operating manual and either approve it or offer suggestions for improving it.

4.11 OWNERSHIP OF DOCUMENTS. CONTRACTOR hereby transfers to COMPANY and

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any Affiliate (defined in Section 32.4.1) of COMPANY the right to use or modify,

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during or after the term of this agreement and free of charge, all documents,  
electronic media and other design items prepared or developed by CONTRACTOR in  
connection with or associated with the performance of the Contract, including  
but not limited to all Design Documents, plans, specifications, drawings, data  
sheets, photos, negatives, film, diskettes, programs, copies, reports,  
calculations, summaries, maps, models and samples, in connection with the  
Facility or any other facility owned by COMPANY or any Affiliate of COMPANY, for  
any purpose, including without limitation, construction, modification or  
reconstruction of the Facility or other facilities. COMPANY'S or COMPANY'S  
Affiliate's use shall include the right to make copies or reproductions. Any  
intellectual property provided by CONTRACTOR, including but not limited to know  
how, copyrights, or other legally protectable rights, used or developed by  
Contractor in connection with or in the course of the performance of the  
Contract shall remain the property of CONTRACTOR and CONTRACTOR may elect to  
seek protection for such intellectual property at its discretion. In particular,  
CONTRACTOR may use such intellectual property in connection with the  
construction of other facilities. To the extent any subcontractor or vendor  
shall be preparing or developing documents, electronic media or other design  
items referenced in this Section, CONTRACTOR shall use its best efforts to  
include in all such subcontracts or purchase orders and consulting agreements  
entered into by CONTRACTOR appropriate clauses to ensure COMPANY'S foregoing  
rights of use. (For example, but without limiting the foregoing, CONTRACTOR  
shall use its best efforts to ensure that all subcontractors and vendors convey  
and grant to COMPANY the foregoing rights of use of the documents, electronic  
media or other design items developed in connection with or associated with the  
performance of the Contract.)

4.12 OBTAINING PERMITS. CONTRACTOR shall apply for, secure and pay for the

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building permit and any other permits, governmental approval of Design  
Documents, licenses and inspections by governmental agencies with jurisdiction  
over the Project as may be necessary to commence, prosecute and complete the

13

Construction Work and use and occupy the Facility. CONTRACTOR shall comply with  
and give notices required by law and lawful orders of public authorities bearing  
on performance of the Construction Work. CONTRACTOR shall apply for the  
building permit and other permits in sufficient time to receive them by the time  
called for in the Project Schedule. Any delay in the Project Schedule caused by  
CONTRACTOR'S late application for a permit (that CONTRACTOR has the  
responsibility of obtaining) that results in an increase in the Cost of the Work  
shall be paid by CONTRACTOR.

4.13 COMPLIANCE WITH CODE REQUIREMENTS. CONTRACTOR shall review

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applicable zoning ordinances and building codes and shall prepare the Design  
Documents in conformance to all applicable legal requirements and design  
restrictions.

ARTICLE 5  
APPROVAL OF DESIGN DOCUMENTS

5.1 APPROVAL BY COMPANY. COMPANY will designate in writing one

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Representative who shall have full authority to approve or disapprove on behalf of COMPANY all Design Documents which CONTRACTOR is required to submit to COMPANY for approval in accordance with the provisions of Article 4 hereof.

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Except as provided to the contrary in Section 5.3 below, CONTRACTOR shall not

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release orders to vendors, to subcontractors, to CONTRACTOR'S shops, or to CONTRACTOR'S field construction department until COMPANY has approved all specifications, drawings, and data sheets that apply to such orders. CONTRACTOR shall furnish to COMPANY plans, specifications, drawings, data sheets, Project Schedule, Project Budget and Estimate of Project Cost not later than the dates set forth in the document entitled "AMD Fab 30 Dresden", plot date 10/10/96, which by this reference is made a part hereof. COMPANY shall have ten (10) working days after its receipt of plans, specifications, drawings and data sheets to approve or comment on such plans, specifications, drawings and data sheets submitted by CONTRACTOR to COMPANY for approval or comment. COMPANY shall have ten (10) working days after its receipt of the Project Schedule, Project Budget and then current Estimate of Project Cost to approve or comment thereon. In the event of force majeure, the time for approval shall be extended by the period of time COMPANY has been prevented from acting. In cases where COMPANY submits comments on any such plans, specifications, drawings, data sheets or other documents, CONTRACTOR shall make the revisions necessary to obtain COMPANY'S approval thereof and shall submit in writing the amount of any additional costs associated with the changes requested by COMPANY. Such revised plans, specifications, drawings, data sheets and other documents shall be submitted to COMPANY for approval currently as the revisions are made. In the event that COMPANY fails to approve or comment on any of the aforesaid plans, specifications, drawings, data sheets or other documents within ten (10) working days and CONTRACTOR has fulfilled all its obligations in connection with securing approval thereof, then CONTRACTOR may notify COMPANY in writing if COMPANY'S delay would have an effect on the critical path set forth in the Project Schedule or would increase the Budgeted Cost of the Work set forth in the Project Budget. In such a case, if COMPANY requests, CONTRACTOR shall prepare a Schedule Recovery Plan (including associated costs) for COMPANY'S consideration. COMPANY may authorize CONTRACTOR to begin Construction Work depicted on those Design Documents as to which Company's approval has been delayed and any rework costs caused by COMPANY'S delay in approval shall become Reimbursable Costs (defined in Section 16.1), and the Budgeted Cost of the Work

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shall be adjusted pursuant to Section 14.4. If COMPANY is delayed in acting on

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any plans, specifications, drawings, or data sheets by reason of CONTRACTOR'S failure to fulfill any of its obligations in connection with securing approval thereof, COMPANY shall notify CONTRACTOR of such failure within the aforesaid allotted time; and the aforesaid time allowed COMPANY for acting on the plans, specifications, drawings, and data sheets involved in the delay shall then be

14

deemed to commence after CONTRACTOR rectifies such failure. The periods herein allowed COMPANY for acting on plans, specifications, drawings and data sheets shall be understood to refer to the time during which such plans, specifications, drawings, and data sheets are actually in the possession of the Representative designated by COMPANY to act on such matters (or in possession of his office or deputy, in case of said Representative's absence); and shall not include any time during which said plans, specifications, drawings, data sheets, or notices of approval or disapproval of them, are in transit. CONTRACTOR is deemed to have included sufficient time periods for review and approval by COMPANY, of all Design Documents and shop drawings and submittals within the Project Schedule. As regards all other engineering work performed by CONTRACTOR hereunder, COMPANY shall have the right to review said engineering work currently to the extent COMPANY finds desirable, and if any question shall arise as to design adequacy, CONTRACTOR shall satisfy COMPANY of the soundness of its proposed design and specifications. CONTRACTOR shall make such modifications in its engineering work as are necessary to conform with the approved plans, specifications, drawings, and data sheets and to correct errors or faulty design.

5.2 SCHEDULE OF SUBMITTALS. To avoid overtaxing COMPANY'S facilities for

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reviewing and checking plans, specifications, drawings, data sheets, Project Schedule, Project Budget and Estimate of Project Cost, CONTRACTOR shall plan and publish a schedule defining when CONTRACTOR will submit said plans, specifications, drawings, data sheets, Project Schedule, Project Budget and

Estimate of Project Cost. Such plan shall be consistent with the document entitled "AMD Fab 30 Dresden" referred to in Section 5.1. To expedite such

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work, as rapidly as CONTRACTOR prepares or obtains said documents, CONTRACTOR shall, when and if requested to do so, furnish COMPANY (for information purposes only) preliminary issues of those documents that CONTRACTOR is preparing, in advance of their final completion.

5.3 BULK ORDERS. Any provision in Section 5.1 of this Article 5 to the  
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contrary notwithstanding, CONTRACTOR may release bulk orders for such materials as pipe, ordinary valves and fittings, reinforcing steel, electrical wire, conduit and fittings, brick, and the like without COMPANY'S prior approval of the drawings and data sheets applying to said materials, provided COMPANY  
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shall have approved such bulk orders and their release in writing prior to the release and said materials are ordered in accordance with applicable specifications approved by COMPANY.

5.4 RETURN OF DESIGN DOCUMENTS TO CONTRACTOR. One copy each of all plans,  
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specifications, drawings, and data sheets submitted to COMPANY for approval shall be returned to CONTRACTOR marked either "APPROVED," "APPROVED AS MARKED," or "REVISE AS INDICATED." However, CONTRACTOR shall not release orders or begin work covered by any plans, specifications, drawings, or data sheets that are returned to it marked "REVISE AS INDICATED"; and all such plans, specifications, drawings, and data sheets shall be first revised by CONTRACTOR and resubmitted to COMPANY for its approval and such approval obtained before any orders are released or work is begun thereunder. All requirements hereinbefore set forth pertaining to the approval of plans, specifications, drawings, and data sheets shall apply with equal force to any and all revisions of plans, specifications, drawings, and data sheets. COMPANY'S marking any plans, specifications, drawings and data sheets as aforesaid shall not relieve CONTRACTOR of its responsibilities under the Contract, and all approvals or revisions by COMPANY shall be subject to the limitations expressed in Section 5.5.  
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5.5 NATURE OF COMPANY'S APPROVAL OF DESIGN DOCUMENTS. COMPANY'S approval  
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or revision of plans, specifications, drawings, or data sheets, or of any other material submitted to it for approval pursuant to Article 4 hereof, is not  
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intended to replace or supersede in any way CONTRACTOR as the architect

and engineer of the Project, will not relieve CONTRACTOR of its full and sole responsibility to provide the design and engineering services for the Project, will not operate as a waiver of, or in any modify, any of CONTRACTOR'S obligations and responsibilities hereunder or thereunder and will not in any way alter the complete and sole responsibility of CONTRACTOR to design and engineer a Facility of lawful, satisfactory design, construction, and operation. If COMPANY insists upon a design that CONTRACTOR states in writing is unsuitable and states CONTRACTOR'S reasons for so concluding, CONTRACTOR shall not be liable for any problems caused by such design. As stated in Section 1.3.4,  
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CONTRACTOR is not responsible for the design of the Wafer Process Equipment.

5.6 DELAY BY CONTRACTOR OR COMPANY IN DELIVERY OF DESIGN DOCUMENTS.  
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5.6.1 DELAY BY CONTRACTOR IN DELIVERY. In the event CONTRACTOR fails to  
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deliver any Design Documents or other items, including without limitation submittals or shop drawings, to COMPANY by the dates agreed upon, CONTRACTOR shall develop a Schedule Recovery Plan. Should any additional costs to the Project occur as a result of such delay(s) or the effort(s) necessary to recover therefrom, all such costs shall be solely for CONTRACTOR'S account. Such delays shall not result in a change in the Project Schedule.

5.6.2 DELAY BY COMPANY IN DELIVERY. In the event COMPANY fails to respond  
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to such Design Documents or other items within ten (10) working days in accordance with Section 5.1, then (a) CONTRACTOR shall have the right to give

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COMPANY'S Representative 24-hours notice of such failure in accordance with  
Section 14.4.4.  
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ARTICLE 6  
SITE

6.1 EASEMENTS PROVIDED BY COMPANY. Subject to the understanding that  
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CONTRACTOR shall procure all business licenses and business permits that it may need in connection with its work under the Contract, and will obtain all building permits and other governmental authorizations and approvals, COMPANY shall obtain all rights and easements required in connection with the development of the Site; and CONTRACTOR shall comply with all the provisions thereof insofar as said provisions apply to the execution of CONTRACTOR'S work under the Contract. Both parties shall cooperate in assisting in the other party's efforts to obtain such permits, licenses and easements.

6.2 CONDITION OF SITE. The Site upon which the Facility is to be located  
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will be turned over to CONTRACTOR "As Is" in the condition it is in on the date of such delivery. CONTRACTOR shall perform such geotechnical, meteorological, soil and other tests as CONTRACTOR deems necessary during the design of the Facility. CONTRACTOR shall be responsible for all conditions which are known, or reasonably should have been known, to be affecting the Site, except pre-existing environmental contaminants, pollutants and hazardous and solid wastes, located on or under the Site, unless CONTRACTOR or any of its subcontractors, vendors, agents or representatives released or otherwise caused any environmental contaminants, pollutants or waste to be present at the Site, in which case CONTRACTOR'S indemnity set forth in Section 20.1 shall apply to such  
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environmental contaminants, pollutants or waste. In the course of performing the Construction Work, CONTRACTOR shall execute all work related to the Site such as excavating, trenching, back-filling, filling, compacting, grading and landscaping. If CONTRACTOR is requested by COMPANY to perform the work, such work shall also include any work necessary to remedy environmental problems which may be discovered in the course of carrying out the project (such as, e.g., the removal of contaminated soil and the removal of underground tanks, chemicals or munitions). The public law responsibility of COMPANY as owner of the Site vis-a-vis the State of Saxony and the City of

16

Dresden shall not be affected hereby. To the extent that additional fill material is needed for this work, CONTRACTOR shall provide same. CONTRACTOR shall remove the excess spoil and back-fill material from the job site and dispose of it, in a manner satisfactory to COMPANY, as required by law applicable to the Site and as specified in the Contract Documents. All net proceeds from the disposition of soil taken from the Site shall be applied to pay CONTRACTOR'S excavation and other costs hereunder and shall be shown as a credit on the next Application for Payment submitted by CONTRACTOR pursuant to Section 17.1 below.  
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6.3 BENCHMARK. COMPANY and CONTRACTOR shall agree on a suitable bench-  
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mark and reference points for locating the Facility and the Site boundary lines. CONTRACTOR shall thereafter establish from said bench-mark and reference points the elevations and lines required for the proper location of all materials to be installed by CONTRACTOR. It shall be CONTRACTOR'S responsibility to preserve the aforesaid bench-mark and reference points in an undisturbed condition.

6.4 UNDERGROUND UTILITIES. CONTRACTOR shall determine the exact locations  
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of existing underground utility and service lines indicated on the drawings before starting work and shall make suitable provisions for their protection. CONTRACTOR shall install all utility and service lines and facilities required as a part of the Facility.

7.1 CONTRACTOR'S INSPECTION OF SITE. CONTRACTOR'S delivery to COMPANY of

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the Design Documents, the Project Schedule and the Project Budget shall be deemed an acknowledgment that it has examined and is familiar with the Site upon which the Facility is to be erected and has, by careful investigation satisfied itself as to the location of the Site and the areas assigned to it for its uses, the conformation of the ground, sub-surface, environmental and other soil conditions, the difficulties attending the execution of the Construction Work, the general and local labor conditions, and all other matters which can in any way affect the execution of the Construction Work. A list of the site studies furnished by COMPANY to CONTRACTOR, which CONTRACTOR has reviewed, is attached hereto as Schedule 7.1 and made a part hereof. CONTRACTOR shall be

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responsible for all conditions which is known, or reasonably should have been known, to exist below the surface of the ground, excluding pre-existing environmental contaminants, pollutants and waste.

ARTICLE 8  
CONDUCT OF THE CONSTRUCTION WORK

8.1 CONSTRUCTION IN ACCORDANCE WITH APPROVED DESIGN DOCUMENTS. CONTRACTOR

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shall construct the Facility on the Site and in accordance with the Design Documents approved by COMPANY.

8.2 PARTIES' RELATIONSHIP. Both parties hereto undertake to cooperate

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with each other. CONTRACTOR will therefore furnish its best skill and judgment in fulfillment of its contractual obligations.

8.3 EFFICIENT ADMINISTRATION. CONTRACTOR shall furnish efficient business

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administration and supervision, shall use every effort to keep engaged in the Construction Work at all times an adequate supply of qualified workmen and materials, and shall execute the Construction Work in the most expeditious manner consistent with the interests of COMPANY and the provisions of the Contract. If the services of vendors' erection engineers are required for supervising the installation of any materials, CONTRACTOR shall arrange for said services promptly as needed.

17

8.4 "BUILD CLEAN" PROTOCOL. CONTRACTOR shall prepare an effective and

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efficient "Build Clean" protocol that shall insure that all clean areas of the Facility shall meet COMPANY'S requirements for particulate-free, clean areas during construction and after completion of construction. CONTRACTOR shall submit the Build Clean protocol to COMPANY for approval, shall make such changes in the protocol as COMPANY may require, and after COMPANY has approved the protocol, shall implement and observe this protocol at all times. CONTRACTOR shall comply with the Build Clean protocol at all times during construction of the Facility.

8.5 EQUIPMENT STANDBY. In the event of a suspension of Construction Work

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pursuant to Article 34, CONTRACTOR shall submit to COMPANY, by 12:00 noon of

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each working day, a complete listing of all equipment on standby. Said listing is to specify the exact location of each item of equipment. All items of equipment shall be made available for inspection by COMPANY on the same day as listed. Items not listed on the standby equipment listing and/or items not available for inspection and/or items not in a condition to be used in pursuit of completion of the construction activities on the same day as listed shall not be eligible for standby consideration.

8.6 CONSTRUCTION BY COMPANY. COMPANY reserves the right to enter the Site

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for the purpose of constructing, with its own forces or through other contractors, such collateral work for the Facility as COMPANY may desire to construct. Such collateral work shall be carried on in such manner and constructed at such times that it will not unreasonably interfere with the work of CONTRACTOR; and, subject to this proviso, CONTRACTOR hereby agrees that it will not interfere with or prevent (nor allow its subcontractors to interfere



with or prevent) the construction of such collateral work. In the event the construction of such collateral work causes CONTRACTOR to incur additional costs, COMPANY shall pay such additional costs.

8.7 COMPATIBLE LABOR. CONTRACTOR shall undertake reasonable efforts to  
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furnish labor that is compatible with other labor in the area of the Facility.

8.8 LABOR AGREEMENT PRACTICES. CONTRACTOR shall keep itself and COMPANY  
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fully advised as to all pertinent local and regional labor agreement practices, including any labor contract negotiations occurring during the term of this Contract. In the event CONTRACTOR has a collective bargaining agreement, either locally or nationally with a labor union engaged in local negotiations or if CONTRACTOR will be affected, either directly or indirectly, by the outcome of said local negotiations, CONTRACTOR agrees to join in said negotiations, if legally permissible, and participate or associate itself with any local contractors involved in said negotiations in an endeavor to resolve the labor dispute.

8.9 OVERTIME LABOR. In case COMPANY requests CONTRACTOR in writing to  
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employ any overtime labor at the Project, CONTRACTOR shall comply with such request provided the requisite labor and materials are available. However, except at the written request of COMPANY or with COMPANY'S prior written approval, neither CONTRACTOR nor any of its subcontractors shall adopt any schedule of wages and hours for work on the Project which involves the routine use of overtime labor or the payment of bonuses in addition to the prevailing wage scales. Such request for prior approval will not be a prerequisite for the performance of unscheduled overtime work in those non-routine situations which may arise from time to time requiring the use of overtime (as, for example, finishing a pour of concrete). COMPANY acknowledges that the current Project Budget anticipates some overtime and shift work.

8.10 IDENTIFICATION. CONTRACTOR'S and all subcontractors' and vendors'  
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officers and employees shall display proper identification at all times when entering the Site and while on the Site. CONTRACTOR shall establish a system

that permits only those persons with proper identification to enter or to remain upon the Site.

8.11 COMMENCEMENT AND PROSECUTION OF CONSTRUCTION WORK. CONTRACTOR shall  
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commence the Construction Work not later than the date scheduled for commencement in the Project Schedule and shall prosecute the Construction Work to completion in accordance with the Project Schedule. The Construction Work on the Project as a whole and on each Construction Phase shall be prosecuted at such time, and in or on such part or parts of the Project or a Construction Phase as may be required, to complete the Project or such Construction Phase as contemplated in the Contract Documents and as prescribed by the Project Schedule. Prosecution of the Construction Work to completion shall be monitored with reference to the Project Schedule. In the event any part of the Construction Work falls in arrears of the Project Schedule, CONTRACTOR shall prepare a Schedule Recovery Plan and present it to COMPANY for discussion and review. If requested by COMPANY, CONTRACTOR shall implement a Schedule Recovery Plan. CONTRACTOR shall remain on such course of action until such time as the degree of completion of the Construction Work complies with the Project Schedule. Increased costs associated with the Schedule Recovery Plan shall be Reimbursable Costs, except that (i) the Budgeted Cost of the Work and the  
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Project Budget shall not be increased, and (ii) any increased costs attributable to delay caused by the mismanagement or willful act or neglect of CONTRACTOR, its subcontractors or vendors or their respective officers, agents, representatives or employees shall be paid by CONTRACTOR.

8.12 CONTRACTOR RESPONSIBLE FOR CONSTRUCTION MEANS. CONTRACTOR shall be  
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solely and completely responsible for all construction means, methods, techniques, and procedures, and for providing adequate safety precautions and coordinating all portions of the Construction Work under the Contract. CONTRACTOR shall perform all tasks in a skilled and workman-like manner and

shall supervise the Construction Work in an efficient and skillful manner. CONTRACTOR shall be responsible for coordinating work done by the various trades involved and for the installation of equipment and special items as specified. In no event shall the lack of objection by COMPANY to any action or inaction upon the part of CONTRACTOR, be construed to make COMPANY in any manner whatsoever responsible for CONTRACTOR'S construction means, methods, techniques, procedures or impose any other liability or responsibility on COMPANY whatsoever.

8.13 SPECIALIZED CONSTRUCTION MANAGER REQUIRED BY LAW. CONTRACTOR assumes,  
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with respect to the services to be provided by CONTRACTOR hereunder, the function of a responsible specialized construction manager in accordance with the provisions of the Building Code of Saxony.

8.14 SANITATION. CONTRACTOR shall erect and maintain sanitary conveniences  
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conforming to state and local codes at all times while workers are employed at the Site.

8.15 SAFETY AND SECURITY.  
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8.15.1 CONTRACTOR'S RESPONSIBILITY FOR SAFETY. CONTRACTOR shall be  
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solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during performance of the Construction Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to those applicable within the framework of social insurance for occupational accidents, and all other applicable federal, state, and local laws, ordinances, codes, the requirements set forth below, and any regulations that may be detailed in other parts of the Contract Documents. Where any of these are in conflict, the more stringent requirement shall be followed.

19

8.15.2 SAFETY PROGRAM. CONTRACTOR shall develop and maintain for the  
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duration of the Contract, a safety program that will effectively incorporate and implement all required safety provisions. CONTRACTOR, as a part of the safety program, shall maintain at its office or other well-known place at the Site, safety equipment applicable to the Construction Work as prescribed by the aforementioned authorities, all articles necessary for giving first aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the Site. CONTRACTOR shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program. Such employee shall report directly to CONTRACTOR'S senior Project construction superintendent who shall assure that the safety program is implemented and observed. Any duty of COMPANY to conduct a construction review of CONTRACTOR'S performance is not intended to include a review or approval of the adequacy of CONTRACTOR'S safety supervisor, the safety program, or any safety measures taken in, on, or near the Site.

8.15.3 REPORTING AND INVESTIGATING ACCIDENTS. If death or serious  
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injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to COMPANY. In addition, CONTRACTOR must promptly (but in not less than five (5) calendar days after the occurrence of the accident) report in writing to COMPANY all accidents whatsoever arising out of, or in connection with, the performance of the Construction Work whether on, or adjacent to, the Site, giving full details and statements of witnesses. Contractor shall investigate any such accident and provide to COMPANY a written report within thirty (30) calendar days after the occurrence of the accident describing in full detail the corrective actions that Contractor has implemented to avoid or reduce the likelihood of a recurrence of the accident.

8.15.4 REPORTING CLAIMS. If a claim is made by anyone against  
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CONTRACTOR or any subcontractor on account of any accident, CONTRACTOR shall promptly report the facts in writing to COMPANY, giving full details of the claim.

8.15.5 COMPLIANCE WITH STATE SAFETY REQUIREMENTS. The completed

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Facility shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items required by the state or federal authorities and applicable local and national codes or requirements, or the safety requirements of a recognized agency. Further, any features of the Construction Work subject to such safety regulations shall be fabricated, furnished and installed in compliance with these requirements. CONTRACTOR shall require all subcontractors and vendors to comply with these requirements.

8.15.6 SAFETY OF TOOLS. CONTRACTOR'S equipment and tools used on

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the Construction Work shall be of a capacity and a type that will safely perform the work specified, and shall be maintained and used in a manner that will not create a hazard to persons or property, or cause a delay in the progress of the Construction Work.

8.15.7 CONTRACTOR'S SAFETY REQUIREMENTS IN FACILITY. From and after

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the time CONTRACTOR begins preparing and conditioning the Facility or any system within the Facility for testing or operation pursuant to the provisions of Article 24 hereof, CONTRACTOR and its subcontractors, while engaged in any  
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activity in the Facility, shall observe and abide by all of CONTRACTOR'S safety requirements applicable in the Facility, which shall be reviewed and reasonably approved in advance by COMPANY.

20

8.15.8 SECURITY. CONTRACTOR shall be solely and completely

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responsible for the security of the job site, including protection of personnel, the work and materials.

8.16 MATERIALS.

8.16.1 NEW MATERIALS. All materials (including equipment) shall be

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new, unless otherwise agreed by COMPANY in writing.

8.16.2 RESPONSIBILITY FOR INJURY CAUSED BY EQUIPMENT. CONTRACTOR

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shall be responsible for injury or claims resulting from failure of the equipment (other than equipment procured by COMPANY) to comply with applicable safety requirements of state or federal authorities and applicable local and national safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.

8.16.3 SUBSTITUTION OF MATERIALS. Whenever any material or equipment

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process is indicated or specified by patent or proprietary name, by name of manufacturer, or by catalog number, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and facilitating the description of the material, equipment or process desired. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design. CONTRACTOR may, after completing its design services, recommend to COMPANY the consideration of another material, equipment or process which shall be substantially equal in every respect to that so indicated or specified. Substitute materials, equipment or processes shall not be used unless approved in writing by COMPANY. Such approval shall be pursuant to Section 4.3.2. If

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CONTRACTOR recommends a substitute material, equipment or process, CONTRACTOR shall be deemed to have agreed with, and represented and warranted to COMPANY, the following:

8.16.3.1 The proposed substitute will perform adequately the functions required by the design, is of substance equal to that specified, and is suited to the same use and capable of performing the same function as that specified, and will provide the same degree of capacity and performance flexibility as indicated by the scheduled or specified performance data.

8.16.3.2 Required connections (electrical, piping, and other) can be properly made and adjunctive work can be properly accomplished.

8.16.3.3 The item can be installed in the space available and in the manner shown or CONTRACTOR will provide at no cost to COMPANY an acceptable redesign and all modifications necessary to accommodate the substitute item.

8.16.3.4 CONTRACTOR shall assume full responsibility for any and all problems arising from the use of the substitute material, equipment or process.

8.16.3.5 CONTRACTOR shall assume full responsibility for any delay in the Project Schedule resulting from the use of the substitution.

8.16.3.6 CONTRACTOR shall pay all costs of changes in other elements or parts of the Construction Work which result from the installation of the substitution.

21

8.16.3.7 CONTRACTOR shall provide the same guarantees and warranties for the substitute as for the specified product.

8.16.3.8 Motors for proposed alternate equipment shall have the same minimum differential between motor brake horsepower and motor name plate horsepower as for specified equipment.

8.16.4 MATERIALS OBJECTED TO BY CONTRACTOR. If COMPANY insists upon -----  
the use of certain materials or processes that CONTRACTOR states in writing is unsuitable and states CONTRACTOR'S reasons for so concluding, CONTRACTOR shall not be liable for any defects caused by such materials or processes.

8.17 STORAGE OF MATERIALS. CONTRACTOR shall store materials delivered -----  
to the Site in an orderly and suitable manner and shall protect them against theft and damage.

8.18 CLEANING UP. CONTRACTOR shall, at all times, keep the Site and all -----  
adjacent property free from accumulations of waste material or rubbish caused by CONTRACTOR'S or any subcontractor's employees or by the Construction Work. Upon completion of the Construction Work, CONTRACTOR shall remove all temporary structures, rubbish, and waste materials resulting from its operations. CONTRACTOR shall adhere to and implement the Clean Build protocol. Should CONTRACTOR, in COMPANY'S opinion, not comply in this matter, COMPANY may give CONTRACTOR written notice of such non-compliance. If CONTRACTOR fails to cure its non-compliance within ten (10) working days, COMPANY reserves the right to deduct any and all costs incurred in maintaining cleanliness from the next monthly payment.

ARTICLE 9  
PURCHASING MATERIALS, SUBCONTRACTING WORK AND COMPUTERS

9.1 PURCHASING MATERIALS. CONTRACTOR shall notify COMPANY if any purchase -----  
of materials will increase the cost of the work beyond the amount approved by COMPANY in the Project Budget.

9.2 SUBCONTRACTING WORK.  
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9.2.1 THIRD PARTY SUBCONTRACTS AND VENDORS. CONTRACTOR and COMPANY -----  
shall each submit to the other the names of all subcontractors and vendors which either party proposes for the Construction Work and information regarding them as COMPANY or CONTRACTOR may reasonably request. CONTRACTOR and COMPANY shall mutually approve the list of prospective subcontractors and vendors from whom CONTRACTOR shall solicit bids. CONTRACTOR shall select the subcontractors and vendors for the Project that CONTRACTOR intends to utilize from the approved bidders list. As described below in this Section, COMPANY shall review and approve the subcontractors and vendors selected by CONTRACTOR. If COMPANY

requests CONTRACTOR to enter into a subcontract or purchase order with a person whose bid exceeded the bid of a person that CONTRACTOR desires to employ, and CONTRACTOR would not otherwise agree to award a subcontract or purchase order to such higher bidder, the parties shall issue a Change Order for the amount of the difference between the two bids, the Budgeted Cost of the Work and the Project Budget shall be increased by the amount of such difference, and CONTRACTOR shall utilize such higher bidder. CONTRACTOR and COMPANY shall mutually agree on the vendors of the systems for chemicals, specialty gases and ultra pure water who shall be included on the approved bidders list, but COMPANY shall have the sole right to select the vendor of each such system. CONTRACTOR shall not employ any subcontractors and vendors that are not on the list of approved bidders. CONTRACTOR shall not enter into any purchase orders or subcontract any work pertaining to the Project, nor permit any of its subcontractors to do so, without first

22

obtaining COMPANY'S written approval as to the kind and extent of the Construction Work to be included in the purchase order or subcontract; the type of purchase order or subcontract and payment schedule; the person to be favored with the Construction Work; and the amount or amounts to be paid under each purchase order or subcontract. COMPANY'S approval shall be granted or denied within ten (10) working days after receipt of the purchase order or subcontract. If COMPANY fails to approve or disapprove within said period of ten (10) working days, CONTRACTOR shall have the right to give COMPANY'S Representative 24-hours notice of COMPANY'S failure in accordance with Section

14.4.4. CONTRACTOR will require and insure that all vendors and

subcontractors, and their subcontractors, comply with and participate in, all schedule reporting, performance reporting, cost reporting and dispute resolution requirements of this Agreement. All subcontracts and purchase orders shall contain provisions requiring the subcontractors and vendors, upon receipt of COMPANY'S written demand, or the written demand of any lender providing part or all of the financing for the Facility, to perform their obligations under such subcontracts and purchase orders for COMPANY or for such lender, if COMPANY or such lender takes over the work or terminates the Contract, as hereinafter provided. CONTRACTOR shall provide to COMPANY or such lender and shall update, at least monthly, a list of all subcontractors and vendors involved in the Project.

#### 9.2.2 CONTRACTOR BIDDING ON SUBCONTRACTED WORK. If CONTRACTOR

desires to perform any part of the Construction Work (including without limitation supplying any materials) on a cost plus fee basis, CONTRACTOR shall do so and the provisions of this Agreement shall apply thereto. If CONTRACTOR desires to perform any part of the Construction Work (including without limitation supplying any materials) on a lump sum basis, CONTRACTOR may submit a bid to COMPANY but only upon the following conditions: (i) all other persons bidding on such part of the Construction Work shall be informed that CONTRACTOR will also be bidding; and (ii) COMPANY alone shall select the bidder who shall perform such part of the Construction Work. If COMPANY selects a bidder other than CONTRACTOR, CONTRACTOR shall enter into a subcontract or purchase order with such bidder and shall manage that part of the Construction Work as if CONTRACTOR had not participated in such bidding. If COMPANY selects CONTRACTOR, CONTRACTOR shall perform such part of the Construction Work in accordance with CONTRACTOR'S bid and, to the extent not inconsistent with CONTRACTOR'S bid, in accordance with the Contract. All warranties and guarantees contained herein shall apply to such work, whether or not performed by CONTRACTOR.

#### 9.3 NATURE OF COMPANY'S APPROVAL. COMPANY'S approval of any purchase

order or subcontract shall be construed to apply only to the items mentioned in Sections 9.1 and 9.2 above, unless otherwise expressly stated in such approval,

and such approval shall not be construed to alter, amend, or waive any provision of the Contract.

#### 9.4 CONTRACTOR RESPONSIBLE FOR SUBCONTRACTORS. CONTRACTOR shall be fully

responsible to COMPANY for the acts and omissions (including without limitation negligence) of its vendors and subcontractors and of persons either directly or indirectly employed by them. Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor or vendor and COMPANY.

9.5 COST-PLUS SUBCONTRACTS. Subcontracts and purchase orders may be

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compensated on a "cost reimbursable" basis only with the prior written consent of COMPANY. COMPANY may grant or deny its consent based upon COMPANY'S business judgment exercised in good faith. COMPANY shall grant or deny its consent within a reasonable period of time.

23

9.6 COMPUTERS. All of CONTRACTOR'S personal computers, work stations and

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printers shall operate in the same computing environment that COMPANY maintains, including without limitation PCs running Microsoft Windows, MS Word and MS Excel. The version of any software used by CONTRACTOR shall be totally compatible with COMPANY'S software and equipment. CONTRACTOR must insure that all computer files and other data and disks given to COMPANY, and all computer files used in the field, are virus-free by routine, daily use of a virus-detecting program.

9.7 Import Requirements. Contractor shall be responsible for securing all

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necessary import licenses and permits and for complying with all applicable customs and other import requirements applicable to the Construction Work.

ARTICLE 10  
CHANGES, ADDITIONS, AND OMISSIONS IN THE WORK

10.1 KEEPING ACCOUNT OF CHANGES. The Fab 30 Preliminary Design, including

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all documents which have been agreed upon by the parties on or before the date of execution of this Contract and that define modifications to the Fab 30 Preliminary Design, shall serve as the basis for keeping account of changes, additions, and omissions in the Facility. The effect of all changes, additions and omissions on the Project Budget and the Project Schedule shall be accounted for separately so that a record will be maintained of the initial Project Budget and the initial Project Schedule. As to any change, addition or omission that must be incorporated into the Project Budget or Project Schedule, the effect on the Project Budget and Project Schedule (and on CONTRACTOR'S Budgeted Fee) will be reflected in the document reflecting COMPANY'S approval of the change, addition or omission (the "CHANGE ORDER").

10.2 PROPOSING AND APPROVING CHANGES. Both parties hereto may from time to

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time suggest modifications in the design of the Facility or the performance of the Construction Work which (i) involve changes or additions in the construction (which as used in this Article 10 shall mean materials or work to be performed)

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required by the Contract, or (ii) involve the omission of certain work or materials from said construction, or (iii) involve acceleration or delay of the milestones for substantial completion of one or more Construction Phases set forth in the Project Schedule. However, no such change, addition, or omission shall be made in the construction unless authorized in writing by COMPANY at the time when the suggested modification in design or performance of the work or acceleration or delay of the Project Schedule is under consideration except in an emergency endangering life or property. In case COMPANY authorizes any such change, addition, or omission as aforesaid, COMPANY shall execute a Change Order, and CONTRACTOR shall incorporate same in the final construction unless CONTRACTOR can show, and it is mutually agreed, that said change, addition, or omission would (a) place CONTRACTOR'S guarantees in jeopardy, (b) make it impossible for CONTRACTOR to comply with other provisions of the Contract relating to the original construction not disturbed by nor involved in said change, addition, or omission, or (c) make the Facility or any part thereof unsafe. If it is agreed that said change, addition, or omission would jeopardize CONTRACTOR'S guarantees or would make it impossible for CONTRACTOR to comply with said other provisions of the Contract (but would not make the Facility or any part thereof unsafe), COMPANY may, at its option, authorize the substitution of mutually acceptable revised guarantees or mutually acceptable revised provisions for the existing ones and insist that the change, addition, or omission be made in the construction. However, if it is agreed that said change, addition, or omission would make the Facility or any part thereof unsafe and cannot be satisfactorily modified to eliminate the hazard to safety, the matter shall be dropped. In order to be binding on COMPANY and CONTRACTOR, (x) every Change Order, whether or not it increases or decreases the Budgeted Cost of the

Work or accelerates or delays the Project Schedule,

24

must be signed by two COMPANY Representatives who are expressly authorized to approve all changes, additions or omissions, and (y) every Change Order that increases or decreases the Budgeted Cost of the Work must be signed by the two COMPANY Representatives referred to in Clause (x) of this sentence, and also by

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the single COMPANY Representative having express authority to approve increases or decreases in the Budgeted Cost of the Work and (z) every Change Order, whether or not it increases or decreases the Budgeted Cost of the Work or accelerates or delays the Project Schedule, must be signed by CONTRACTOR'S Representative. COMPANY shall negotiate in good faith all of CONTRACTOR'S requests to change the Project Budget or the Project Schedule.

10.3 EFFECT OF CHANGE ORDER ON COST AND TIMING. Whenever either party

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proposes a change, addition, or omission which would make the Facility more or less expensive than the construction required by the Contract, or would accelerate or delay the milestones for substantial completion of one or more Construction Phases set forth in the Project Schedule or accelerate or extend the Latest Date For Substantial Completion Of The Facility (defined in Section

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14.1 below) or otherwise affect the critical path set forth in the Project

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Schedule, CONTRACTOR shall thereupon submit a detailed estimate to COMPANY showing what effect the proposed change, addition, or omission is estimated to have on the cost of the Facility reflected in the Project Budget and on the time for substantial completion and final completion of the Facility or any Construction Phase reflected in the Project Schedule or otherwise have on the critical path; and, if COMPANY does not concur therewith, the parties hereto shall cooperate to develop an estimate on which both parties do agree. However, it shall be understood that the aforesaid estimates are intended to be for COMPANY'S use in considering the desirability of the proposed change, addition, or omission and for use in determining the adjustment in CONTRACTOR'S Budgeted Fee (defined in Section 16.3.1 below) on account thereof or in determining an

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acceleration or extension of the Latest Date For Substantial Completion Of The Facility or of the latest date by which the Facility shall be finally completed (as set forth in Section 14.2) or a revision of the Project Schedule -- and for

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such use only. If such change, addition, or omission is authorized by COMPANY and actually incorporated in the construction, then: (x) all costs added or eliminated thereby which are of the character of Reimbursable Costs shall be added to or deducted from the Budgeted Cost of the Work (defined in Section

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16.3.1) set forth in the Project Budget, and any adjustment of CONTRACTOR'S

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Budgeted Fee by reason of such changes, additions, or omissions shall be effected by COMPANY and CONTRACTOR pursuant to Section 16.10 and shall be

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subject to the provisions of this Contract relating thereto, and (y) any acceleration or delay in the progress of the Construction Work that affects the critical path as set forth in the Project Schedule shall be deducted from or added to the Project Schedule, and any adjustment in the Latest Date For Substantial Completion Of The Facility and the latest date by which the Facility shall be finally completed shall be mutually agreed upon by COMPANY and CONTRACTOR. Agreements as to the amount and nature (i.e., whether an increase or a decrease) of the effect on the Budgeted Cost of the Work set forth in the Project Budget or on the critical path set forth in the Project Schedule or the Latest Date For Substantial Completion Of The Facility or the latest date by which the Facility shall be finally completed shall be made when the change, addition, or omission constituting the basis for the adjustment is under consideration; and said agreements shall be confirmed in writing by COMPANY'S Representatives and CONTRACTOR'S Representative when the change, addition, or omission is authorized. A proposal for a change, addition, or omission shall be accepted, rejected, or returned for correction within the time periods specified in Article 5 for review and approval of Design Documents or such other time as

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the parties may mutually agree upon in any particular instance. No extension of time shall be granted in connection with a change, addition or omission unless the change, addition or omission affects the critical path or extends the amount of time required to substantially complete or finally complete the Facility as

described in Section 14.3.

10.4 NO EFFECT ON CONTRACTOR'S OTHER RESPONSIBILITIES. Unless expressly

agreed to the contrary and confirmed in writing at the time when any change, addition, or omission is authorized, it is understood that with respect to all changes, additions and omissions in the Construction Work, and all modifications in the design of the Facility or work thereon from that described in the final Design Documents, Project Schedule and Project Budget, (i) any and all work and materials required for said change or addition (or, in the case of an omission, required to accomplish said omission) shall be subject to the same warranties and guarantees as the balance of the work and materials covered by the Contract; and (ii) all other obligations and responsibilities of CONTRACTOR with respect to the construction originally planned shall be held to apply to the work and materials required for, or to accomplish, said change, addition, or omission.

ARTICLE 11  
INSPECTION AND TESTING DURING CONSTRUCTION

11.1 CONTRACTOR'S SHOP INSPECTIONS. CONTRACTOR shall inspect at its own

shops or at the shops of subcontractors and vendors those materials for the Facility that are designated in the Contract Documents to be tested by non-destructive means pursuant to a testing plan that will be developed by COMPANY and CONTRACTOR. CONTRACTOR shall insure that the testing plan is developed prior to CONTRACTOR'S purchasing materials or equipment that would reasonably require testing or entering into any subcontracts or purchase orders. CONTRACTOR shall upon COMPANY'S request provide the test results to COMPANY. CONTRACTOR shall also make necessary field inspections of materials after same are delivered to the job site and while field fabrication operations are being performed thereon.

11.2 MEASUREMENTS AND SUITABILITY. CONTRACTOR'S inspection shall in all

cases include making all necessary measurements and records for establishing the suitability and soundness of the materials.

11.3 INSPECTION REPORTS. CONTRACTOR shall furnish COMPANY or COMPANY'S

Inspector (defined in Section 11.5 below) if one is appointed, six (6) copies each of (i) certified results of all tests, (ii) certificates of inspection, and (iii) routine inspection reports for all materials which CONTRACTOR inspects. These shall in each case be delivered to COMPANY or COMPANY'S Inspector as soon as possible (preferably, within six (6) working days) after CONTRACTOR'S inspection of the materials involved is made.

11.4 COMPANY'S INSPECTIONS. COMPANY shall have the right to inspect, at

its own expense, any and all materials which CONTRACTOR furnishes and provides for the Facility; and, at its election, may exercise said right either at CONTRACTOR'S shops or, subject to Section 11.5 below, subcontractors' or vendors' shops or at the Site or both at CONTRACTOR'S shops or, subject to Section 11.5 below, subcontractors' or vendors' shops and at the Site.

CONTRACTOR shall, and shall require its subcontractors and vendors to, at all times, provide COMPANY and COMPANY'S Inspector (defined in Section 11.5 below)

with safe access to the Construction Work wherever it is in preparation or progress, including maintenance of temporary and permanent access, and CONTRACTOR shall, and shall require its subcontractors and vendors to, at all times, furnish COMPANY'S Inspector sufficient, safe, and proper facilities for the inspection of work that they perform and materials that they furnish; and shall also furnish COMPANY'S Inspector with test reports, analyses, and the like pertaining to the materials involved in the inspection not later than the times when such work and materials are submitted to COMPANY'S Inspector for inspection. CONTRACTOR shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining the same, as detailed in the specifications. When required, CONTRACTOR shall furnish



certificates of tests of materials made at the point

26

of manufacture by a recognized testing laboratory. COMPANY, COMPANY'S Inspector or any other authorized Representative of COMPANY, may reject improper, inferior, defective, or unsuitable workmanship or materials at any stage of the Construction Work; and, in accordance with the provisions of Article 19 hereof,

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all workmanship and materials so rejected shall be repaired or replaced forthwith by CONTRACTOR. If any work should be covered up without approval or consent of COMPANY, it shall, if required by COMPANY, be uncovered for examination at CONTRACTOR'S expense. Reexamination of questioned Construction Work, not specifically required to be tested or approved, may be ordered by COMPANY and, if so ordered, the Construction Work shall be uncovered by CONTRACTOR. If such Construction Work is found to be in accordance with the Contract Documents, COMPANY will pay the cost of reexamination and replacement. If such Construction Work is found to be not in accordance with the Contract Documents, CONTRACTOR shall correct the defective Construction Work, and the cost of reexamination and correction of the defective Construction Work shall be paid by CONTRACTOR. Any defective Construction Work, performed or furnished by CONTRACTOR, that may be discovered by COMPANY before the Final Acceptance of the Facility or before final payment has been made, shall be removed and replaced or patched, in a manner as approved by COMPANY at the expense of CONTRACTOR and prior to Final Acceptance and payment for all work. COMPANY'S exercise of its right of inspection shall not relieve CONTRACTOR of any of its obligations set forth herein above in this Article 11.

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11.5 COMPANY'S INSPECTOR. COMPANY may select one or more persons to act as

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its Representative in matters of inspection ("COMPANY'S INSPECTOR"); and COMPANY'S Inspector shall have free entry to the shops of CONTRACTOR, and to the Site at all times while any work on the Facility or on materials therefor is being performed. CONTRACTOR shall direct its subcontractors and vendors to provide such free entry to the shops of any subcontractors or vendors for COMPANY'S Inspector. All work and materials furnished under the Contract shall be subject to the approval of COMPANY'S Inspector, but his approval shall not relieve CONTRACTOR of any responsibility for improper, inferior, defective, or unsuitable workmanship or materials. Furthermore, no failure or omission of COMPANY'S Inspector to condemn any improper, inferior, defective, or unsuitable workmanship or materials shall release CONTRACTOR from its obligations to correct same as soon as discovered. Neither COMPANY nor COMPANY'S Inspector shall have any right under Section 11.4 or this Section 11.5 to direct

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subcontractors or vendors to take or omit to take any action. COMPANY and COMPANY'S Inspector shall deal only with CONTRACTOR, and CONTRACTOR shall be responsible for determining whether or not any subcontractor or vendor is required to take or omit to take any action and for determining the nature of any action that must be taken or omitted by any subcontractor or vendor. CONTRACTOR shall assure that every subcontractor and vendor is aware of these limitations on COMPANY and COMPANY'S Inspector.

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11.6 INSPECTION OF FABRICATION. Except in cases where COMPANY shall have

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previously waived in writing its inspection at the point of manufacture or supply, CONTRACTOR shall give COMPANY'S Inspector not less than ten (10) working days' notice in advance of the start of fabrication, and such additional notices as he may need regarding the progress of fabrication and intended shipping dates for materials which CONTRACTOR is to furnish hereunder in order to allow him ample time in which to witness any part of the fabrication or manufacture, make any measurements, witness any tests and carry out any other inspection which he deems advisable. No materials which COMPANY inspects at the point of manufacture or supply shall be shipped without the prior written approval of COMPANY'S Inspector. COMPANY'S Inspector shall grant or deny his approval, based upon his good faith business judgment that the requirements of the Contract have been achieved, within a reasonable period of time. If COMPANY'S Inspector fails to approve or disapprove inspected materials within a reasonable period of time, CONTRACTOR shall have

27

the right to give COMPANY'S Inspector 24-hours notice of such failure in

accordance with Section 14.4.4.

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11.7 TESTING. CONTRACTOR shall make or cause to be made all chemical,  
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physical, hydrostatic, air, structural, magnetic, radiographic, welders'  
qualifications, and other tests required by the Contract Documents or by  
specifications approved by COMPANY which apply to the Facility, in accordance  
with approved Design Documents and other Contract Documents. In addition, if  
any question shall arise as to the acceptability of any materials for the  
Facility from the standpoint of safety or mechanical integrity, CONTRACTOR shall  
make such additional tests as are necessary for determining the acceptability of  
said materials.

ARTICLE 12  
PROGRESS REPORTS AND PROGRESS MONITORING

12.1 PROGRESS SCHEDULES. CONTRACTOR shall furnish COMPANY periodic  
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progress schedules (at the frequency described in Section 12.2 below) showing  
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Critical Path Method logic and updating the information contained in the Project  
Schedule to show the respective dates upon which CONTRACTOR proposes to commence  
and complete engineering, drafting, purchasing, and construction on each  
Construction Phase. Each Construction Phase will be defined to reflect the  
logical activities required to execute the work. This definition shall be in  
sufficient detail to allow monitoring of progress on a daily basis. Each  
schedule will be developed reflecting a planned logical approach which will  
identify critical path, near term activities in detail, and activities that are  
farther out on the schedule in broader terms, if they cannot be completely  
defined. As the work progresses, the schedules will be continuously refined, on  
a monthly basis, to define detailed short interval activities planned for the  
next twelve week period. Each schedule activity or line item will be identified  
by CONTRACTOR or the responsible subcontractor, along with the estimate of the  
quantity of units of work to be accomplished or installed, man hours planned per  
unit, and scheduled progress anticipated on each of said items in order to  
complete the entire Facility within the contract time in accordance with the  
Project Schedule. Each schedule activity or line item will be identified as a  
direct work or indirect work activity and have the required resources, material,  
and labor costs associated with the activity identified separately.

12.2 DELIVERY OF SCHEDULES TO COMPANY. The schedules described in Section  
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12.1 shall be made available to COMPANY as soon as practical.  
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12.3 PERIODIC PROGRESS REPORTS. Subsequent to the release of the schedules  
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referred to in Section 12.1 above, CONTRACTOR shall furnish COMPANY monthly  
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progress reports in a form satisfactory to COMPANY. Progress reports will  
update progress schedules and will indicate actual man hours expended by  
activity and show the work units or man hours of progress earned in relation to  
the planned total amount of work or man hours in each of the various  
subdivisions shown in said schedules which CONTRACTOR and its subcontractors  
have completed up to the last day of each reporting period. The monthly  
progress reports will indicate actual progress accomplished during the month.  
The beginning and cut off dates of the monthly progress reports will be the same  
dates as used for CONTRACTOR'S monthly progress billing and as used for the  
Project Cost Report referred to in Section 13.1 below. COMPANY shall have the  
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right to require CONTRACTOR to submit simplified interim progress reports on a  
weekly or bi-weekly basis in such other format or formats as COMPANY may  
require. Additionally, CONTRACTOR shall give COMPANY interim notice of all  
significant changes in the progress of the work.

12.4 SUPERINTENDENT'S REPORT. CONTRACTOR shall furnish COMPANY, by mid-day  
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of the first working day following the last day worked, a copy of CONTRACTOR'S  
senior Project construction superintendent's daily works report

and the Project engineer's works report, showing the total number of men engaged

by CONTRACTOR and the subcontractors under the Contract at the job site or in the engineering office during such last day worked, itemized by crafts or work classifications.

12.5 MATERIALS STATUS REPORTS. In addition to the purchasing progress

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reports which are furnished by CONTRACTOR, CONTRACTOR shall furnish COMPANY, currently as issued, copies of all Materials Status Reports that it prepares covering materials for the Facility.

ARTICLE 13  
ACCOUNTS AND RECORDS

13.1 DETAILED ACCOUNTS. CONTRACTOR shall keep full and detailed accounts

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and records and exercise such controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be satisfactory to COMPANY. A monthly Project Cost Report will be issued by CONTRACTOR with beginning and cut off dates that are the same as the monthly progress report referred to in Section 12.3 above.

13.2 SEMATECH MODEL. Accounts will be maintained in such detail as to

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comply with and directly relate to the SEMATECH Facilities Cost Model, current as of the date of this Agreement. The accounts will also be maintained to directly relate to the schedule activities required in Article 12 above.

13.3 TAX ACCOUNTING. All value added taxes, sales taxes, use taxes, excise

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taxes and other taxes charged to COMPANY'S account shall be separately stated and broken out as separate line items on all invoices, Applications For Payment and accounting reports. CONTRACTOR shall require all subcontractors and vendors to comply with this requirement.

13.4 AUDIT BY COMPANY. The COMPANY, and any Person retained by COMPANY to

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act as one of the COMPANY'S Representatives and COMPANY'S accountants shall have the right at any time, including without limitation following final payment to CONTRACTOR, to audit the books and records of CONTRACTOR, and of all subcontractors and vendors with whom CONTRACTOR has entered into a subcontract or purchase order on a cost reimbursable basis, and shall be afforded access to CONTRACTOR'S records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Agreement and to the Project, and CONTRACTOR shall preserve these for a period of three years after final payment, or for such longer period as may be required by tax law. In the event COMPANY conducts an audit of CONTRACTOR'S Project cost accounting information, and such audit reveals that CONTRACTOR has billed COMPANY on any one billing an amount which exceeds the actual amount which CONTRACTOR should have billed COMPANY on such billing, by five percent (5%) or more of the amount Contractor should have billed COMPANY, then CONTRACTOR shall be responsible for reimbursing COMPANY for the cost of the audit. In other events, COMPANY shall be responsible for the cost of the audit. In all events, CONTRACTOR shall be responsible for reimbursing COMPANY for any overpayment, regardless of the amount of the overpayment. In the event that the audit reveals that CONTRACTOR has under-billed COMPANY, COMPANY shall reimburse CONTRACTOR for the amount under-billed.

13.5 AUDIT OF SUBCONTRACTORS AND VENDORS. CONTRACTOR shall provide in each

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subcontract entered into with a subcontractor and in each purchase order entered into with a vendor on a cost reimbursable, service or unit price basis the right for COMPANY or COMPANY'S Representatives to audit all books, records, accounts and other data relating to Reimbursable Costs or to work of any kind done by the subcontractor or materials provided by the vendor in respect of the Project. CONTRACTOR will not enter into any subcontract or

purchase order on a cost reimbursable basis which does not contain this right to audit.

TIME OF COMPLETION

14.1 SUBSTANTIAL COMPLETION DATE. The Project Schedule shall set forth

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milestone dates which shall be the dates that the parties determine shall be the dates by which the Facility and each Construction Phase and other aspects of the Project shall be substantially completed as described in Section 15.1. The

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latest date for substantial completion of the Facility (excluding substantial completion of the Site Development Construction Phase) shall be 15 May, 1998, as adjusted pursuant to the provisions of this Agreement (the "LATEST DATE FOR SUBSTANTIAL COMPLETION OF THE FACILITY"). CONTRACTOR shall prosecute all phases of the work to be performed hereunder with all possible promptness and diligence and shall use its best efforts to substantially complete the entire Facility and each Construction Phase on or ahead of the Project Schedule, but CONTRACTOR shall substantially complete the Facility not later than the Latest Date For Substantial Completion Of The Facility. The Latest Date For Substantial Completion Of The Facility may be extended only for COMPANY'S delay or for force

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majeure pursuant to Section 14.3 or for changes, additions or omissions in the  
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Project pursuant to Section 10.3 and Section 14.3.  
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14.2 LATEST DATE FOR FINAL COMPLETION. The Project Schedule shall set

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forth the date upon which the Facility shall be finally completed (as described in Section 15.2.1). As of the date of this Agreement, the latest date by which

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the Facility shall be finally completed shall be June 15, 1998.

14.3 DELAYS AND EXTENSIONS OF TIME.

14.3.1 DELAYS CAUSED BY CHANGE ORDER OR BY COMPANY OR BY FORCE MAJEURE.

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If any change, addition or omission would affect the critical path set forth in the Project Schedule or extend the amount of time required to substantially complete or finally complete the Facility, the effect on the Project Schedule and on the Latest Date For Substantial Completion Of The Facility and on the latest date by which the Facility shall be finally completed as set forth in Section 14.2 shall be acknowledged in writing and incorporated into the Project

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Schedule by approved Change Order in accordance with Section 10.3 above. If

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CONTRACTOR is delayed in the progress of the Construction Work by any act or neglect of COMPANY, including any delay by COMPANY in commenting upon or approving Design Documents or in granting or denying its consent or approval, and such delay would affect the critical path, CONTRACTOR shall, within 72 hours of the start of the occurrence, give notice to COMPANY of the cause of the potential delay, the reasons why the delay will affect the critical path set forth in the Project Schedule and an estimate of the duration of the delay and the possible time extension involved. Within seven (7) working days after the cause of delay has been remedied, in the case of a delay caused by COMPANY'S act or neglect, CONTRACTOR shall give notice to COMPANY of any actual time extension requested as a result of the aforementioned occurrence and any additional costs incurred as a result of such delay. The corresponding change in the Project Schedule shall be implemented by an approved Change Order pursuant to Section

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10.3 above. Failure to give either of the above notices shall be sufficient

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ground for denial of an extension of time hereunder on account of any act or neglect of COMPANY. If CONTRACTOR is delayed in the progress of the Construction Work by force majeure, and such delay would affect the critical path, CONTRACTOR shall, within 72 hours of the start of the occurrence, give notice to COMPANY of the cause of the potential delay, the reasons why the delay will affect the critical path set forth in the Project Schedule and an estimate of the duration of the delay. Within seven (7) working days after the cause of delay has been remedied, in the case of a delay caused by force majeure, CONTRACTOR

shall prepare a Schedule Recovery Plan for COMPANY'S approval to recover the

time lost as a result of such force majeure for COMPANY'S approval. If COMPANY approves such Schedule Recovery Plan, COMPANY shall pay the additional Reimbursable Costs incurred in carrying out such Schedule Recovery Plan, and the Budgeted Cost of the Work shall be increased by the amount of such additional Reimbursable Costs.

14.3.2 STANDARD FOR APPROVING EXTENSIONS OF TIME. No extension of time

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shall be granted to CONTRACTOR for delays that do not affect the critical path set forth in the Project Schedule nor for delays caused by CONTRACTOR'S mismanagement or caused by the willful act or neglect of CONTRACTOR, its subcontractors or vendors or any of their respective officers, agents or employees. Changes in the Project Schedule shall be effected only by approved Change Order in accordance with Section 10.3 above.  
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14.4 DELAYS AND ADDITIONAL COSTS.

14.4.1 ADDITIONAL COSTS CAUSED BY COMPANY'S DELAY OR BY FORCE MAJEURE.

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COMPANY shall pay additional Reimbursable Costs incurred by CONTRACTOR and caused by COMPANY'S delay only if COMPANY'S delay affects the critical path set forth in the then current Project Schedule. The Budgeted Cost of the Work shall not be adjusted for any delay caused by COMPANY except in accordance with Section 14.4.2. COMPANY shall pay additional Reimbursable Costs incurred by

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CONTRACTOR and caused by force majeure except to the extent that the delay resulting from the force majeure event is caused by CONTRACTOR, any subcontractor or vendor or any of their respective agents or representatives. The Budgeted Cost of the Work shall be increased by the amount of additional Reimbursable Costs incurred for any delay caused by force majeure, except to the extent that the delay resulting from the force majeure event is caused by CONTRACTOR, any subcontractor or vendor or any of their respective officers, agents, representatives or employees.

14.4.2 NOTICE OF CLAIM FOR DELAY. If CONTRACTOR intends to file a claim

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for an increase in the Budgeted Cost of the Work for a delay caused by COMPANY that affects the critical path, CONTRACTOR shall file a notice of claim with COMPANY within seven (7) working days of the beginning of the occurrence or event giving rise to such delay. The notice of claim shall be in duplicate, in writing, shall state the circumstances and the reasons for the claim, and shall provide a Rough Order of Magnitude ("ROM") for the amount of the claim. No claim for an increase in the Budgeted Cost of the Work will be considered unless the notices from CONTRACTOR required by Section 14.3 have been delivered, and a

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notice of claim has been filed with COMPANY in writing. CONTRACTOR and COMPANY shall act reasonably in presenting and satisfying any such claim. Any increase in the Budgeted Cost of the Work shall be implemented by an approved Change Order.

14.4.3 LIMITATION ON COSTS. In no event shall CONTRACTOR be entitled to

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collect or recover any costs, damages, losses, or expenses incurred by reason of any delay other than delay caused by COMPANY in accordance with this Section

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14.4 or as agreed upon by COMPANY and CONTRACTOR pursuant to Section 10.3.  
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14.4.4 DELAYS BY COMPANY IN GRANTING APPROVALS. In the event COMPANY

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fails to respond to any Design Documents within the time period prescribed by

Section 5.6.2 or delays in granting or denying its approval beyond the time

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period prescribed by Section 9.2 or COMPANY'S Inspector fails to approve or

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disapprove inspected materials within the time period prescribed by Section 11.6

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or COMPANY otherwise fails to grant or deny its consent or fails to approve or disapprove within any other time period prescribed by this Agreement, then (i) CONTRACTOR shall have the right to give COMPANY'S Representative (or COMPANY'S Inspector where COMPANY'S Inspector has caused

the delay) 24-hours notice of such failure, and (ii) if COMPANY'S failure continues beyond one working day after receipt of said 24-hour notice, (a) COMPANY shall pay all additional costs incurred by CONTRACTOR as a result of COMPANY'S delay if (but only if) COMPANY'S delay affected the critical path set forth in the Project Schedule and the Budgeted Cost of the Work set forth in the then current Project Budget shall be adjusted, and (b) if COMPANY'S delay affects the critical path set forth in the then current Project Schedule, CONTRACTOR shall obtain an extension of the then current Project Schedule pursuant to Section 14.3 above.

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#### ARTICLE 15

##### SUBSTANTIAL COMPLETION, FINAL COMPLETION AND FINAL ACCEPTANCE

###### 15.1 SUBSTANTIAL COMPLETION. The Facility or a system within the Facility

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 shall be substantially complete when (i) construction of the Facility or of such system shall have been sufficiently completed in accordance with the Contract Documents and temporary occupancy permits have been issued, so COMPANY can occupy or utilize the Facility or such system for the use for which it is intended, (ii) all Construction Work (including Punch List items as described in Section 15.2.1, other than minor cosmetic matters which do not require the shut

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 down of any system to correct) shall have been completed in accordance with the Contract Documents, (iii) CONTRACTOR shall have fully performed its obligations under Article 24 hereof, and (iv) the System Performance Test (as defined in

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 Article 25) for such system shall have been completed pursuant to Article 25.

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 CONTRACTOR shall give COMPANY written notice at least sixty (60) days prior to the dates when each system and each Construction Phase within the Facility and when the entire Facility shall have been substantially completed, except for conducting the System Performance Test for such system, and COMPANY'S Representative or Inspector shall inspect the Construction Work. If COMPANY'S Inspector confirms that the system within the Facility is ready for the System Performance Test, then the parties shall prepare for and conduct the System Performance Test. Substantial completion of any system within the Facility shall not have occurred until after completion of the System Performance Test for such system and after CONTRACTOR shall have fulfilled all of its obligations with respect to the System Performance Test for such system. COMPANY agrees to start the System Performance Test for each system within a reasonable period of time after CONTRACTOR turns such system over to COMPANY for testing, except that if COMPANY is prevented from doing so by any cause or causes for which CONTRACTOR is responsible, then said reasonable period of time shall be extended by such period of time as is attributable to such cause or causes. Substantial completion of the Facility shall not have occurred until after completion of the System Performance Tests for all systems constituting the Facility and after CONTRACTOR shall have fulfilled all of its obligations with respect to the System Performance Tests for all systems constituting the Facility.

###### 15.2 Final Completion.

###### 15.2.1 COMPLETION OF PUNCH LIST ITEMS. Following substantial

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 completion of each system within the Facility and of all of the Construction Work under this Contract, including without limitation, completion of the System Performance Tests, CONTRACTOR shall notify COMPANY, in writing, that it has substantially completed each system or the Facility and shall request final inspection of such system or of the Facility. Upon receipt of CONTRACTOR'S request for a final inspection, CONTRACTOR and COMPANY will inspect such system or the Facility and prepare a list of items not completed or needing repair or replacement (the "PUNCH LIST"). CONTRACTOR will correct the deficient Construction Work on the Punch List. This Punch List may not be exhaustive and the failure to include an item on it does not relieve CONTRACTOR of the responsibility to complete all of the Construction Work in accordance with the Contract Documents. CONTRACTOR shall notify COMPANY in writing when all items on the Punch List have been completed. If, after

COMPANY'S inspection of the Punch List items, it is found that CONTRACTOR has not completed all of the items listed, or other Construction Work not listed is found to be deficient, COMPANY shall prepare a further Punch List and submit to CONTRACTOR. This list may not be exhaustive and the failure to include an item on it does not relieve CONTRACTOR of the responsibility to complete all of the Construction Work in accordance with the Contract. If, after inspection of the further Punch List items, it is found that CONTRACTOR has not completed all of the items listed, or other Construction Work not listed is found to be deficient, the cost of all further inspections required by COMPANY to determine if the Construction Work has been completed in accordance with the Design Documents and authorized Change Orders will be charged to CONTRACTOR. Punch List items that could not lead to malfunction of a system or could not limit any of such system's functions or could not affect COMPANY'S continuous use of such system shall not delay COMPANY'S acceptance of such system. COMPANY may have the beneficial or partial use of a system prior to substantial completion and acceptance of such system due to Punch List items that affect the system's functions or the system's ability to meet specifications or Facility criteria, but such beneficial or partial use shall not relieve CONTRACTOR of its obligation to correct or complete such Punch List items, shall not trigger the Warranty Commencement Date (defined in Section 18.1) applicable to such system

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and shall not constitute acceptance of such system.

15.2.2 CONTRACTOR'S CERTIFICATION OF COMPLETION OF CONSTRUCTION WORK.  
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When CONTRACTOR has completed all of the Construction Work, including the items of the Punch List(s), on each system or on the Facility, CONTRACTOR shall certify to COMPANY (i) that such Construction Work has been completed in accordance with the approved Design Documents and (ii) that all materials and workmanship are in accordance with the Design Documents. If COMPANY'S Representative or Inspector agrees with CONTRACTOR'S certification, then such Construction Work shall be deemed to have been completed. If COMPANY'S Representative or Inspector disagrees, COMPANY'S Representative or Inspector shall identify the matters that have not yet been completed, and CONTRACTOR shall complete such matters. When CONTRACTOR has completed such Construction Work to COMPANY'S satisfaction, then such Construction Work shall be deemed to have been completed.

15.2.3 CONDITIONS CONSTITUTING FINAL COMPLETION. The Facility shall  
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be finally complete when (i) CONTRACTOR shall have completed the Construction Work as described in Section 15.2.1 above, (ii) CONTRACTOR shall have certified

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such completion as described in Section 15.2.2 above and COMPANY'S Inspector

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shall have determined in accordance with Section 15.2.2 that all of the

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Construction Work (including Punch List items) to be performed in connection with the Facility has been performed to the satisfaction of COMPANY'S Inspector, (iii) the construction of the Facility shall have been completed free of liens and free of retention of title to any materials, and (iv) the Facility is undamaged and has been available for regular use and occupancy. The date upon which such matters have been completed to COMPANY'S satisfaction shall be the "FINAL COMPLETION DATE". The parties shall enter into a written memorandum memorializing the Final Completion Date. It is understood that COMPANY'S Final Acceptance of the Facility pursuant to Section 15.3 hereof shall occur after the

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Final Completion Date.

15.3 FINAL ACCEPTANCE AND FINAL PAYMENT.  
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15.3.1 FINAL ACCEPTANCE BY COMPANY. When all of the conditions  
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hereinafter set forth in this Section 15.3.1 shall have been fulfilled, COMPANY

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shall give CONTRACTOR its final acceptance of the Facility (the "FINAL ACCEPTANCE") in writing. The aforesaid Final Acceptance shall be contingent upon the following conditions: (i) the Final Completion Date shall have

occurred; (ii) CONTRACTOR shall have delivered to COMPANY all documents required by Article 27, Article 28 and Article 29; and (iii) CONTRACTOR has performed all

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other tasks, furnished all other materials, if any, and rendered all services required of it by the Contract, but excluding those tasks, materials, or services necessary for the correction (in compliance with the provisions of Article 18 hereof) of imperfections or other unsatisfactory qualities which may  
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be discovered after the date of Final Completion. Final Acceptance of the Facility by COMPANY shall in no way relieve CONTRACTOR of any obligations under the Contract which extend beyond the date of Final Acceptance.

15.3.2 FINAL PAYMENT. Following Final Acceptance, CONTRACTOR shall  
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submit its final Application for Payment. COMPANY shall make the final payment after COMPANY has reviewed and approved the final Application for Payment. Payment of the Retainage and the unpaid portion of the increases in the Fee shall be made thirty (30) calendar days following receipt of the final Application for Payment if the final Application for Payment satisfies all prerequisites for payment pursuant to Section 17.5.  
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15.4 RELEASE OF COMPANY. The acceptance by CONTRACTOR of the final payment  
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shall release COMPANY from all claims and all liability to CONTRACTOR for all things done or furnished in connection with the Project, and every act of COMPANY and others relating to or arising out of Project. No payment, however, final or otherwise, shall operate to release CONTRACTOR from obligations under this Contract, including without limitation, subsequent audits, and warranties and guarantees, as herein provided.

ARTICLE 16  
COST OF THE WORK

16.1 BASIS OF FEE. COMPANY shall pay CONTRACTOR for CONTRACTOR'S  
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performance of the Contract an amount (the "CONTRACT AMOUNT") consisting of (i) the CONTRACTOR'S Fee described in Section 16.3 below plus (ii) the actual and  
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reasonable and documented costs necessarily incurred by CONTRACTOR in the performance of the Contract, including performance of Pre-Contract design services, as detailed in Section 16.2 below (the "REIMBURSABLE COSTS"), plus  
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(iii) all value added taxes due upon (i) and (ii) above.

16.2 REIMBURSABLE COSTS. Subject to (i) the understanding that  
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reimbursement for any cost or expense or payment of any charge under the provisions of any one of the items herein below enumerated shall preclude reimbursement of such cost or expense or payment of such charge under the provisions of any other of said items, and (ii) the principles set forth in Section 16.2.4, COMPANY shall reimburse CONTRACTOR for the following items, all  
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of which shall be subject to COMPANY'S rights of audit:

16.2.1 OFFICE COSTS.  
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16.2.1.1 HOME OFFICE WAGES AND SALARIES. Reimbursement for the  
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services performed hereunder by CONTRACTOR'S permanent employees in CONTRACTOR'S home office Engineering, Purchasing, Construction, and Estimating Departments for the time actually and necessarily expended in performing the work hereunder in CONTRACTOR'S home offices for the time such employees are directly engaged in the work hereunder including time spent by said employees at the job site or on trips in connection with the work hereunder will be at the hourly rates established for the job classification for the service such employees are providing as set forth in Schedule 16.2.1.1 attached hereto and made a part  
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hereof, as said Schedule is revised from time to time, but as to those employees who are members of an organized collective bargaining unit, shall not exceed the level of wages collectively bargained for in the area in which the work is being performed. These hourly rates were calculated for each job



classification using the weighted average actual hourly salary and social benefits costs of all employees assigned to the work hereunder within each job classification, and the application of an overhead rate to this weighted actual hourly salary and social benefits cost. The method followed in calculating this overhead rate is included herein as an addendum to Schedule 16.2.1.1. The

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initial hourly rates and job classifications and all revisions of Schedule

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16.2.1.1 shall be based on CONTRACTOR'S current salary schedules and job

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classifications and shall in each instance be approved by COMPANY before establishing or revising Schedule 16.2.1.1. COMPANY shall have the right to

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audit such of CONTRACTOR'S books and records as may be reasonably necessary to enable COMPANY to approve such salary schedules and job classifications. Included as part of the hourly rates set forth in Schedule 16.2.1.1 are amounts

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paid by CONTRACTOR for sick leave, vacation and holiday pay, CONTRACTOR'S contributions to its employee pension and medical hospitalization plans, if any, and any other statutory social security expenditure such as employer's contribution to social insurance and unemployment insurance as well as social expenditure on the basis of collective bargaining agreements. Also included in the hourly rates are all overhead costs provided for in Clause 16.2.1.4 (Prints

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and Reproductions), Clause 16.2.1.6 (Shipping And Providing Offices), Clause

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16.2.1.7 (Communications), (Clause 16.2.1.8 (Indirect Overhead) and Clause

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16.2.1.10 (Other Direct Home Office Costs). The standard work week schedule at

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CONTRACTOR'S home office is eight (8) hours per day, forty (40) hours per week. COMPANY shall reimburse CONTRACTOR for those employees who are paid on an hourly basis, where applicable, for all hours worked over forty (40) hours per week on a scheduled overtime basis per Schedule 16.2.1.1. Furthermore, CONTRACTOR shall

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be reimbursed at the applicable hourly rate for all scheduled overtime hours worked by CONTRACTOR'S salaried employees on the work hereunder but only if those employees customarily receive overtime payments. Any additional overtime shall be subject to COMPANY'S prior approval. It is understood that if established rates for overtime are not available for any of CONTRACTOR'S employees, the wages or salaries which are paid to employees therefor shall be subject to COMPANY'S prior written approval.

16.2.1.2 HOME OFFICE TRAVEL. The actual and reasonable amounts paid

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by CONTRACTOR for traveling and living expenses to employees whose salaries and wages are chargeable to COMPANY under the provisions of Clause 16.2.1.1 above,

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for trips made in connection with the work hereunder-- it being understood that (i) payment of such traveling and living expenses shall be in accordance with CONTRACTOR'S travel reimbursement policies, which are detailed on Schedule

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16.2.1.1 attached hereto, and which shall in all cases be consistent with

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COMPANY'S policies on travel and on traveling and living expenses and said expenses shall be approved by the senior Project construction superintendent or his designee in CONTRACTOR'S organization before being billed to COMPANY, (ii) in those cases where an employee divides his time between this and other jobs, the aforesaid expenses for the period involved shall be prorated to the respective jobs on the basis of the number of such employee's working hours properly chargeable to each job, and this job shall be charged only its proper share of such expenses, and (iii) all such trips shall be subject to COMPANY'S prior written approval. The traveling and living expenses for any individual or classification of employee shall in no event exceed the corresponding amounts authorized by COMPANY'S policy for individuals or classifications of employees at the same or an equivalent level. If any expense of CONTRACTOR at any time exceeds COMPANY'S authorized amount, the expense of CONTRACTOR shall be retroactively reduced to an amount not exceeding COMPANY'S authorized amount.

16.2.1.3 CONSULTANTS. The actual and reasonable amounts paid by

CONTRACTOR to outside consultants and/or temporary employees for services furnished by them on the work hereunder, with COMPANY'S prior written approval.

16.2.1.4 PRINTS AND REPRODUCTIONS. Charges for direct prints and reproductions produced in CONTRACTOR'S home office for the work hereunder are included in the hourly rates set forth in Schedule 16.2.1.1.

16.2.1.5 MODEL. Actual and reasonable out-of-pocket costs to CONTRACTOR for supplies and materials necessary to construct a model of the Facility, if such a model is authorized by COMPANY.

16.2.1.6 SHIPPING AND PROVIDING OFFICES. Out-of-pocket costs to CONTRACTOR for shipping drawings, specifications, and the like in connection with the work hereunder, as well as CONTRACTOR'S out-of-pocket costs for CONTRACTOR providing office services and facilities for COMPANY'S employees in residence in CONTRACTOR'S home office are included in the hourly rates set forth in Schedule 16.2.1.1.

16.2.1.7 COMMUNICATIONS. Out-of-pocket costs for (i) postage charges, (ii) home office stationery and equipment, and (iii) telephone and facsimile charges are included in the hourly rates set forth in Schedule 16.2.1.1.

16.2.1.8 INDIRECT OVERHEAD. CONTRACTOR'S indirect home office and overhead costs are included in the overhead rate used to establish the hourly rates set forth in Schedule 16.2.1.1. The Addendum to Schedule 16.2.1.1 sets forth the method used to calculate the overhead rate. Foreign branch office selling expenses are excluded from this calculation. These costs include, but not by way of limitation, (i) costs of office rent, furniture, light, heat, and depreciation, and (ii) wages and salaries of CONTRACTOR'S executive management personnel, sales personnel, janitors, messengers and other personnel, having job classifications other than those included in Schedule 16.2.1.1.

16.2.1.9 FEES, PREMIUMS, LEGAL COSTS, PROTECTIVE WORK. The actual and reasonable out-of-pocket costs incurred for: (i) premiums for insurance and bonds required under the Contract; (ii) fees and assessments for the building permit and for other permits, licenses and inspections for which CONTRACTOR is required by the Contract Documents to pay; (iii) fees of testing laboratories for tests required by the Contract Documents, except those related to defective or non-conforming work; (iv) royalties and license fees approved in writing by COMPANY and paid for the use of a particular design, process or product required by the Contract Documents; and (v) taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in the Contract.

16.2.1.10 OTHER DIRECT HOME OFFICE COSTS. The out-of-pocket amounts paid by CONTRACTOR for such other direct home office costs necessarily incurred in the performance of the work hereunder but not specifically mentioned above are included in the hourly rates set forth in Schedule 16.2.1.1.

16.2.1.11 LIMITS ON OVERTIME PAY. Overtime premium pay which is not a result of CONTRACTOR'S failure to meet the Project Schedule shall be considered as a valid cost to be reimbursed under Article 16 if CONTRACTOR has received COMPANY'S prior written approval to incur such overtime. Such approval shall specify a maximum number of overtime hours CONTRACTOR shall be allowed to incur before additional approval is required.

16.2.2 FIELD COSTS.

16.2.2.1 MATERIALS. The actual and reasonable amounts paid by

CONTRACTOR to vendors for materials furnished by CONTRACTOR which enter directly into the construction of the Facility or which are furnished for construction but are left over as surplus on COMPANY'S premises when construction is completed (excluding the cost of surplus remaining from unreasonably large orders and excluding the cost of surplus ordered in bulk), and including such materials as may be furnished by CONTRACTOR as accessories or spare parts for use with, or maintenance of, the completed Facility. Also, the actual and reasonable cost for materials manufactured or fabricated by CONTRACTOR in its shops and furnished for the Facility. Surplus material will be disposed of according to Section 16.8.

16.2.2.2 CONSTRUCTION EQUIPMENT AND TOOLS EXCLUSIVE TO THE SITE. The

actual and reasonable cost to CONTRACTOR of all construction equipment and tools (but not small tools, i.e., those having a value when new of less than DEM800)

and other items in CONTRACTOR'S construction outfit which are purchased by CONTRACTOR for use exclusively at the Site for or in connection with the construction of the Facility and that are not usable in the construction of other plants and facilities but not to exceed the reasonable value of such equipment and tools. CONTRACTOR shall not purchase any such construction equipment and tools until CONTRACTOR has obtained COMPANY'S written consent. Such items purchased by CONTRACTOR shall become COMPANY'S property when construction is completed.

16.2.2.3 CONSTRUCTION EQUIPMENT AND TOOLS NOT EXCLUSIVE TO THE SITE.

Rental charges on construction equipment and tools (but not small tools) and other items in CONTRACTOR'S construction outfit that are owned by CONTRACTOR and furnished for the job in first-class working condition, computed on the basis of rental rates mutually agreed upon before the items involved are furnished, but in no event more than the then prevailing rates in the general area of the Site for such items. Upon reaching agreement on such rental rates, the parties shall set forth such rental rates in a schedule and attach that schedule to this Agreement as Schedule 16.2.2.3. Whenever such rental rates are revised, the

parties shall revise Schedule 16.2.2.3 and attach such revised schedule to this

Agreement. The rental term of any such item owned by CONTRACTOR shall commence when said item is shipped to the Site and shall terminate when said item is shipped away from the Site or at such time as the item is no longer needed or necessarily kept at the Site for the proper and economical prosecution of the job, except that the periods when the item is out of use for making major overhauls or major repairs shall not be included in such rental term. If the rental rates exclude the costs of minor repairs, then COMPANY will reimburse CONTRACTOR for the actual and reasonable amounts paid by CONTRACTOR for minor repairs to, and minor repair parts for, any such construction equipment and tools owned by CONTRACTOR as shall be made necessary during the rental term of said equipment on this job (such as routine replacement of spark plugs, distributor points, oil filters, or other parts), but CONTRACTOR shall bear all costs for major repairs to, and major repair parts for said items (such as replacement of the generator or alternator on an automotive vehicle, an engine overhaul, replacement of tractor treads, or other equipment reconditioning). CONTRACTOR shall not furnish any of the aforesaid items owned by it on a rental basis without having secured COMPANY'S prior written approval in each instance and CONTRACTOR shall also keep COMPANY advised as to when each such item of rented construction equipment and tools used on the Construction Work is not in usable condition or is no longer required for the job, and the

dates on which rental charges begin and end. Also, the actual and reasonable rentals paid by CONTRACTOR to others for such construction equipment and tools for the time said items are actually used or necessarily maintained at the job site for the prosecution of the work hereunder, but in no event more than the then prevailing rates in the general area of the Site for such items, including in the case of such construction equipment and tools which are rented from

others on a "bare rental" basis, the actual and reasonable amounts necessarily paid by CONTRACTOR for repairs to, and repair parts for, said construction equipment and tools as shall be necessary to keep and maintain them in good working order during the period of their use on the job, provided such items are delivered to the Site in first-class working condition. If the total projected or actual rental costs for a given item are equal to or greater than seventy-five percent (75%) of the purchase cost of such item in its then present condition, CONTRACTOR shall extend to COMPANY the opportunity to purchase such item in lieu of rental.

16.2.2.4 BASIS FOR FURNISHING CONSTRUCTION OUTFIT. CONTRACTOR shall

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recommend to COMPANY from time to time the basis upon which the various items in the construction outfit are to be furnished, (i.e., whether purchased outright, furnished by CONTRACTOR on a rental basis, or rented from a third party), and COMPANY shall, in each case, be privileged to choose the basis most advantageous to it under the prevailing circumstances.

16.2.2.5 TEMPORARY STRUCTURES. The actual and reasonable cost to

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CONTRACTOR of procuring, constructing, moving, maintaining and operating buildings, structures, and facilities erected at the Site by or on behalf of CONTRACTOR and required for the storage and protection of materials and construction equipment and tools, for the field office, or for other purposes in connection with the work at the job site, including all temporary structures, such as, but not limited to, scaffolding, forms, cribbing, temporary supports, and other items of indirect materials required for the job but excluding temporary living quarters for foreign workers.

16.2.2.6 SUPPLIES. The actual and reasonable cost to CONTRACTOR of

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construction supplies (other than those included under Clause 16.2.2.5 above)  
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and utilities, gasoline, oil, and grease used at and around the Site for the Construction Work and testing, and the cost of fire-fighting facilities furnished by CONTRACTOR and required for the protection of the Construction Work during the course of construction, including any items of the kinds covered in this Clause 16.2.2.6 that are left over at the Site as surplus when construction  
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is complete.

16.2.2.7 FIELD CRAFT WAGES. The actual and reasonable straight-time

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wages, including the actual straight-time portion of overtime wages, paid by CONTRACTOR to craft foreman, craftsmen, and other craft employees hired specifically for this job and used by CONTRACTOR at the Site for or in connection with the construction of the Facility, for the time said employees are engaged in the field construction hereunder, including the wages paid to workmen for making repairs to construction equipment furnished on a bare rental basis during their period of use on the job, provided such construction equipment is delivered to the Site in first-class working condition, and also provided such repairs are not reimbursable by insurance. Also, any reasonable fringe benefits actually paid by CONTRACTOR either directly to the aforesaid employees or to their unions, pursuant to collective bargaining agreements, or to any governmental agency. Such wages and benefits shall not exceed the levels established by collective bargaining agreements in effect in the area in which the work is being performed and shall be within the range of rates set forth in Schedule 16.2.1.1 attached hereto, subject to  
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adjustment of those rates as provided in Clause 16.2.1.1 above.  
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16.2.2.8 FIELD WAGES AND SALARIES. The services performed by

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CONTRACTOR'S field staff employees who are permanent employees of CONTRACTOR, including, but not limited to, Field Construction Superintendent, Assistant Superintendent, Construction Engineer, Field Office Manager, Field Accountant, Material Supervisor, Construction Planner, Field Inspector, Craft Supervisor, Field Buyer, Safety Engineer, and Clerical personnel who are from CONTRACTOR'S home office and are permanently assigned to the job site for the actual time such employees reasonably devote to the work hereunder, shall be reimbursed at

the hourly rates set forth in Schedule 16.2.1.1 attached hereto, subject to  
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adjustment of these rates as provided in Clause 16.2.1.1 above. All such  
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employees shall be identified on a list entitled "Field Assigned Personnel"  
provided by CONTRACTOR to COMPANY and updated as necessary to keep the list  
current.

16.2.2.9 LOCALLY HIRED FIELD STAFF. The actual and reasonable  
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straight-time wages and salaries, subject to COMPANY'S review and approval,  
including the actual straight-time portion of overtime wages and salaries paid  
by CONTRACTOR to field supervisory and other field staff employees who are hired  
locally specifically for this Project, as distinguished from those who are  
permanent employees of CONTRACTOR as mentioned in Clause 16.2.2.8 above, for the  
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time said employees are directly and necessarily engaged in the Construction  
Work hereunder. Also, any reasonable employee benefits actually paid by  
CONTRACTOR either directly to the aforesaid employees pursuant to CONTRACTOR'S  
established personnel policies or, if they are union members, to their unions  
pursuant to collective bargaining agreement, or to any governmental agency.

16.2.2.10 FIELD TRAVEL. The actual and reasonable amounts paid by  
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CONTRACTOR for travel and living expenses of the personnel in Clause 16.2.2.8  
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above, but not to exceed the amounts specified in Schedule 16.2.1.1 attached  
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hereto for each classification of employee, to the extent that it has been  
CONTRACTOR'S normal practice to pay such allowances and not to exceed the levels  
of allowances which are the normal practice to pay in the area in which the  
employee who is traveling is based. All of the provisions of Clause 16.2.1.2  
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applicable to travel and living expenses of home office employees shall apply to  
travel and living expenses of field staff employees.

16.2.2.11 UNEMPLOYMENT TAXES. The actual amounts paid by CONTRACTOR  
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under the Gesetzliche Sozialaufwendungen, wie Arbeitgeberbeiträge zur  
Sozialversicherung und zur Arbeitslosenversicherung, und tarifliche  
Sozialaufwendungen [statutory social security expenditure such as employer's  
contribution to social insurance and unemployment insurance as well as social  
expenditure on the basis of collective bargaining agreements] in connection with  
the salaries and wages included under Clauses 16.2.2.7 and 16.2.2.9, but  
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excluding (i) all contributions assessed under such laws if not computed  
directly on said salaries or wages, (ii) interest and penalties of all kinds  
connected with such taxes and contributions, and (iii) any such contributions  
and taxes based on salaries or wages for which CONTRACTOR is reimbursed by an  
insurance carrier.

16.2.2.12 OVERTIME FIELD WAGES. The premium portion of overtime  
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wages and salaries paid by CONTRACTOR to the employees referred to in Clauses  
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16.2.2.7, 16.2.2.8 and 16.2.2.9 above, for overtime worked by CONTRACTOR  
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pursuant to the provisions of Clause 16.2.1.11 hereof. It is understood that if  
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established rates for overtime are not available for any of CONTRACTOR'S  
employees, the wages or salaries which are paid to

employees therefor shall be subject to COMPANY'S prior written approval.

16.2.2.13 SMALL TOOLS. An allowance to cover the cost of providing  
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small tools in an amount equal to one and three-tenths percent (1.3%) of the  
field craft wages (excluding fringe benefits) paid by CONTRACTOR to CONTRACTOR'S  
employees engaged in field construction (excluding supervisory and clerical  
personnel and excluding laborers employed by subcontractors and vendors).

16.2.2.14 FIELD OVERHEAD. The actual and reasonable amounts paid by

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CONTRACTOR for temporary field offices located on the Site suitable for housing CONTRACTOR'S field engineering and construction management staff and for a reasonable number of COMPANY'S field engineering staff. Also, the actual and reasonable cost to CONTRACTOR of all necessary items of office furniture and equipment such as desks, tables, filing cabinets, chairs, waste baskets, personal computers, work stations, software, printers and copiers all of a reasonable number and cost and capability but only as approved by COMPANY prior to their acquisition, fire extinguisher, and the like which are purchased by CONTRACTOR for equipping and maintaining its construction office and other temporary buildings needed at the Site for or in connection with the work to be performed hereunder-- it being understood that such office furniture and equipment purchased by CONTRACTOR shall become COMPANY'S property when construction is completed; the actual and reasonable rentals paid by CONTRACTOR to others for such office furniture and equipment used at the Site for equipping and maintaining said buildings; and actual and reasonable rental charges for such office furniture and equipment, owned by CONTRACTOR and furnished by it for use as aforesaid at the Site. Also, the actual and reasonable cost to CONTRACTOR of miscellaneous office expenses and supplies in said construction office, including medical supplies for a first-aid room (if required), telephone calls made and courier deliveries sent from the construction office at the Site; postage and other transportation costs on outgoing correspondence, or other such matter sent out from said construction office; Post Office box rental; and blueprinting and photocopying costs at the rates specified in Clause 16.2.1.4

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above. The costs of any medical supplies for which CONTRACTOR is reimbursed by an insurance carrier shall be excluded from the above costs. The rental rates for office furniture and equipment owned by CONTRACTOR and used on the work hereunder as aforesaid shall be subject to COMPANY'S approval and the rental terms of any such item shall commence when said item goes into service at the Site and shall terminate upon shipment of the item away from the Site. It is agreed that all costs and rentals under this Clause 16.2.2.14 shall be subject

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to COMPANY'S prior approval. In no event shall COMPANY be liable for tools and equipment lost or damaged due to CONTRACTOR'S negligent or intentional actions or inactions.

16.2.2.15 FREIGHT CHARGES. The actual and reasonable freight,

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express and trucking charges paid by CONTRACTOR for delivering to the Site, the materials, construction supplies, construction equipment and tools (including repair parts for construction equipment and tools furnished on a "bare rental" basis), office furniture and equipment, medical supplies, office supplies, and other things which are included under the provisions of Clauses 16.2.2.1,

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16.2.2.2, 16.2.2.3, 16.2.2.5, 16.2.2.6, and 16.2.2.14 above; and for returning

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construction equipment and tools and office furniture and equipment owned by CONTRACTOR or rented from others to the warehouse or storage places or other places of origin from which said items of equipment were brought to the job site (it being understood that insofar as equipment owned by CONTRACTOR is concerned, CONTRACTOR shall be reimbursed only for transporting such equipment from its equipment storage yard or if from another job for a distance not to exceed transportation from said storage yard, to the job

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site, and for return to said storage yard). Also, in cases where transportation costs on construction equipment, tools and other items are chargeable to COMPANY as aforesaid, the actual and reasonable costs incurred by CONTRACTOR for crating and loading such items at the point of shipment.

16.2.2.16 SUBCONTRACTS. The actual amounts paid by CONTRACTOR to

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subcontractors approved by COMPANY pursuant to Article 9 hereof in connection

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with the construction of the Facility pursuant to subcontracts entered into by CONTRACTOR; also, the actual and reasonable amounts paid by CONTRACTOR to vendors for the services of vendors' service representatives in cases where same are required at the Site and are not included in the purchase price of the materials involved.

16.2.2.17 INSURANCE. The amounts paid by CONTRACTOR for insurance

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which is a unique requirement of this Contract, which M&W does not normally carry and which COMPANY has approved in writing before CONTRACTOR procures such insurance. The amounts paid by CONTRACTOR for all other insurance to be maintained by CONTRACTOR as specified in this Contract are included in the hourly rates set forth in Schedule 16.2.1.1.

16.2.2.18 OTHER DIRECT FIELD COSTS. The actual and reasonable

amounts paid by CONTRACTOR for such other direct field costs and expenses necessarily incurred in the performance of the Construction Work hereunder, but not specifically mentioned above as the parties may mutually agree are reimbursable by COMPANY.

16.2.2.19 SALES, USE AND OTHER TAXES The actual amounts necessarily

paid by CONTRACTOR for sales taxes, use taxes and excise taxes on the materials and other commodities chargeable to COMPANY under the above provisions, and such other taxes and governmental charges described in Article 30, but excluding any

interest or penalties in connection with any such taxes and other charges, any taxes on motor fuels used in construction equipment to the extent recoverable from the State by reason of the fact that the equipment is not operated on public thoroughfares, and also excluding taxes set forth in Section 16.2.3.10.

The preceding sentence shall apply only to the extent that the Project or

COMPANY is not exempt from such taxes. CONTRACTOR shall (and shall require each subcontractor and vendor to) account for all taxes separately as individual line items on each invoice, on each Application For Payment and in each Project cost report submitted to COMPANY.

16.2.3 EXCLUDED COSTS. Reimbursable Costs shall not include:

16.2.3.1 OTHER OVERHEAD. Overhead and general expenses of

CONTRACTOR'S principal office and offices other than the Site office, except as may be expressly included in Sections 16.2.1 and 16.2.2.

16.2.3.2 CAPITAL EXPENSES. CONTRACTOR'S capital expenses, including

interest on CONTRACTOR'S capital employed for the Project, excepting capital expenses incurred solely due to COMPANY'S delay.

16.2.3.3 NEGLIGENCE. Costs due to the fault or negligence of

CONTRACTOR, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or non-conforming work, disposal and replacement of materials incorrectly ordered or supplied, and making good damage to property not forming part of the Construction Work.

16.2.3.4 OTHER COSTS. Any cost not specifically and expressly

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described in Sections 16.2.1 and 16.2.2.

16.2.3.5 OVERTIME TO MEET PROJECT SCHEDULE. Cost of overtime premium

required to meet the Project Schedule if the delay was caused by the mismanagement or willful act or neglect of CONTRACTOR, its subcontractors and vendors, or their respective officers, agents, representatives or employees.

16.2.3.6 DELINQUENT CHARGES. Any kind of late charge, interest,

penalty, taxes or extra charge for late payments, excepting late charges, interest, penalties, taxes or extra charges incurred solely due to COMPANY'S delay.

16.2.3.7 HOME OFFICE COMPUTERS. Costs of personal computers, work

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stations, printers, software and related computer equipment used in CONTRACTOR'S home office. Depreciation related to such computer equipment is included in the hourly rates set forth in Schedule 16.2.1.1.

16.2.3.8 SECTION 648A, BGB. The cost of any bond obtained by  
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CONTRACTOR under Section 648a of the German Civil Code (Bauhandwerkersicherung) shall, in the relationship between CONTRACTOR and COMPANY, be borne by CONTRACTOR, up to a maximum of two percent (2%) of the Face Value of the bond, pursuant to Section 648a, subparagraph 3 of the German Civil Code. This cost shall not be a Reimbursable Cost.

16.2.3.9 VIOLATIONS OF LAW. Any cost incurred as a result of the  
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failure of CONTRACTOR or any subcontractor or vendor or their respective officers, agents, representatives or employees comply with applicable law.

16.2.3.10 TAXES. Income taxes or taxes based on income paid by  
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CONTRACTOR, all value added taxes (including the Import Turnover Tax) paid by CONTRACTOR to its subcontractors and vendors, net assets taxes, trade capital taxes and real property taxes.

16.2.4 PRINCIPLES AFFECTING REIMBURSABLE COSTS. COMPANY shall  
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reimburse Contractor for the items described in Sections 16.2.1 and 16.2.2,  
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subject, however, to the following principles.

16.2.4.1 QUALIFYING COSTS. COMPANY shall pay all Reimbursable Costs  
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actually incurred that were set forth in the original Project Budget as part of the original Budgeted Cost of the Work and all additional Reimbursable Costs actually incurred that were necessary to plan, design, construct, erect, install, equip, start up, test, calibrate, adjust and turn over the Facility in accordance with the Contract, assuming proper design and construction. A cost incurred due to force majeure shall be a Reimbursable Cost. A cost incurred due to a change in the scope of the work approved by Change Order shall be a Reimbursable Cost. The cost of procuring and installing a part of the Facility that was inadvertently omitted (excluding redesign and re-engineering costs) shall be a Reimbursable Cost. A cost incurred to increase the capacity or size of a part that was inadvertently designed with a capacity or size insufficient for the Facility (excluding redesign and re-engineering costs and excluding the costs of procuring, installing and removing the undersized part) shall be a Reimbursable Cost. A cost incurred to avoid an unforeseen obstruction, such as subsurface granite, shall be a Reimbursable Cost. Examples of these and other costs that qualify as Reimbursable Costs are set forth in Schedule 16.2.4  
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attached hereto and made a part hereof. Such examples shall be utilized in the interpretation and application of the principles set forth in this Section  
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16.2.4.  
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16.2.4.2 NON-QUALIFYING COSTS. Items that otherwise would qualify as  
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Reimbursable Costs shall be excluded from Reimbursable Costs if such costs duplicate previous work or were incurred to correct errors or omissions. Injuries to persons at the Site do not qualify as Reimbursable Costs. Examples of these and other costs excluded from Reimbursable Costs are set forth in

Schedule 16.2.4. Such examples shall be utilized in the interpretation and  
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application of the principles set forth in this Section 16.2.4.  
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16.2.4.3 SPECIFIED COSTS. Costs which are specifically identified in  
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other provisions of the Contract as being the responsibility of either COMPANY or CONTRACTOR shall be paid by the responsible party.



16.2.4.4 CHANGES IN PROJECT BUDGET. Additional Reimbursable Costs

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incurred as a result of a change in the scope of the work approved by Change Order shall be added to the Budgeted Cost of the Work. Additional Reimbursable Costs incurred as a result of an unforeseen event or condition (excluding price or cost increases) or force majeure shall be paid by COMPANY and will result in an adjustment of the Budgeted Cost of the Work.

16.3 CONTRACTOR'S FEE. COMPANY shall pay CONTRACTOR a fee (the "FEE")

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which shall consist of the Budgeted Fee set forth in Section 16.3.1 and as

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increased by incentives, if any, earned by CONTRACTOR'S cost savings or as decreased by overruns, if any, caused by CONTRACTOR'S overruns pursuant to Section 16.3.2, and adjusted by adjustments in the Fee pursuant to

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Section 16.10.  
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16.3.1 THE FEE. The Budgeted Fee (the "BUDGETED FEE") shall be

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DEM8,120,000, adjusted as set forth in Section 16.10 (which does not include

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value added taxes associated with such Fee). At the time that the Project Budget is finalized prior to commencement of the Construction Work, the total budgeted Cost of the Work will be determined. That total budgeted Cost of the Work shall be referred to herein as the "BUDGETED COST OF THE WORK". If the parties revise the Project Budget due to changes, additions or omissions pursuant to Section 10.3 or Section 14.3.1 or due to COMPANY'S delay pursuant to

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Section 14.4, the Budgeted Cost of the Work shall also be revised

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accordingly, but the Budgeted Fee shall only be adjusted in accordance with Section 16.10. As of the date of this Agreement, the Budgeted Cost of the Work

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is DEM460,544,936 (which does not include value added taxes associated with such Fee).

16.3.2 CALCULATE INCENTIVE CHANGES IN FEE. If, upon completion of

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the Project, the actual Cost of the Work equals the Budgeted Cost of the Work, the Fee shall be the original Budgeted Fee. If, upon completion of the Project, the actual Cost of the Work is less than the Budgeted Cost of the Work, the Fee shall be increased by twenty percent (20%) of the amount of savings up to, but not exceeding a maximum total Fee (i.e., Budgeted Fee plus cost savings) of

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DEM16,675,000 (which does not include value added taxes associated with such Fee). For purposes of calculating the foregoing increase in the Fee, if CONTRACTOR performs directly (i.e., without any subcontractor) the Construction

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Work for the Clean Room, that portion of the total Budgeted Cost of the Work attributable to the Construction Work performed directly by CONTRACTOR for the Clean Room shall be subtracted from the total Budgeted Cost of the Work, and that portion of the actual Cost of the Work attributable the Construction Work performed directly by CONTRACTOR for the Clean Room shall be subtracted from the actual Cost of the Work, so that any savings attributable to the Construction Work performed directly by CONTRACTOR for the Clean Room shall be excluded in determining the amount of the savings upon which increases in the Fee are to be calculated. If, upon completion of the

43

Project, the actual Cost of the Work exceeds the Budgeted Cost of the Work, the Fee shall be reduced by twenty percent (20%) of the amount that exceeds the Budgeted Cost of the Work, until the amount of the reduction equals fifty percent (50%) of the Budgeted Fee. From that point further, there shall be no more reductions in the Fee.

16.3.3 FEE FOR SERVICES. The parties intend that all costs and

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expenses incurred by CONTRACTOR in connection with the Project not specifically provided to be reimbursed to CONTRACTOR in Section 16.2 including, but not by

way of limitation, CONTRACTOR'S profit and the cost of performing CONTRACTOR'S guarantees and warranties, shall be covered by the Budgeted Fee.

16.4 TOTAL CONTRACT AMOUNT. Except for such payments as may become due

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CONTRACTOR under other provisions of this Contract, the summation of the Reimbursable Costs enumerated in Section 16.2 above and the Fee set forth in

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Section 16.3 above shall constitute the total Contract Amount which COMPANY

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shall pay to CONTRACTOR for the true and faithful performance of all of CONTRACTOR'S obligations under the Contract.

16.5 COSTS OF ALTERATIONS. CONTRACTOR'S charges under Section 16.2 above

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shall not include charges of the kinds covered therein incurred by CONTRACTOR for making the alterations, adjustments, repairs, replacements and other corrections described in Article 19 hereof. Moreover, in the event the costs of

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such work are compensated to CONTRACTOR by insurance carried hereunder, there shall be no adjustment made in CONTRACTOR'S Fee as a consequence of any insurance proceeds paid to CONTRACTOR. All alterations, adjustments, repairs, replacements and other corrections which CONTRACTOR may be required to make on the Facility in fulfilling the guarantees set forth in Article 18 hereof after

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COMPANY takes over the Facility for operation or use shall be borne by CONTRACTOR without reimbursement from COMPANY. Furthermore, in cases where COMPANY makes any alterations, adjustments, repairs, replacements or other corrections of the kind herein above considered in this Section 16.5 with its

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own forces as provided for in Section 19.4 hereof, CONTRACTOR shall reimburse

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COMPANY for the actual costs to COMPANY of all materials and labor used therefor and all other expenses such as overhead, taxes, insurance, freight, equipment rental and the like applicable thereto.

16.6 RECORDS OF REIMBURSABLE COSTS. Following each month's work hereunder,

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CONTRACTOR shall prepare a summary of the total hours expended by job or worker classification of all employees who have performed work hereunder during the preceding month whose time is chargeable to COMPANY under the provisions of Section 16.2 above. (CONTRACTOR shall maintain individual time cards and rate

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sheets for all of its personnel who have performed work hereunder showing the time actually spent by each individual as part of CONTRACTOR'S records of Reimbursable Costs.) CONTRACTOR shall transmit copies of this summary as soon as possible thereafter to COMPANY'S Project Manager. All fringe benefits included in labor charges shall be accounted for as a separate line item. In addition, CONTRACTOR shall keep accurate and detailed accounts of all other Reimbursable Costs chargeable to COMPANY under Section 16.2 above. All material

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costs shall be verified by the actual payment vouchers. In case any subcontract is let, or purchase is made, on a "cost-plus" basis pursuant to Section 9.5

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hereof, CONTRACTOR shall, if COMPANY so requests, make an audit of all expenditures made thereunder prior to final settlement with such subcontractor or vendor. Furthermore, CONTRACTOR shall provide COMPANY'S Inspector and other Representatives continuous access to the Site and other locations where work on this Contract is being performed and shall give COMPANY'S Inspector and other Representatives and auditors access to CONTRACTOR'S books and other records at any and all reasonable times to the extent necessary to determine the accuracy of all of CONTRACTOR'S charges entered into the accounts referred to above and the number of hours entered in

44

the summaries referred to in the first sentence of this Section 16.6. CONTRACTOR

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shall furnish COMPANY with such statements, invoices, receipts, vouchers, and other information as may be required to enable COMPANY to audit CONTRACTOR'S books and other records. All time cards for time chargeable to COMPANY in the summaries referred to in the first sentence of this Section 16.6 must bear the

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signature of the person's department head or division head. Also, any "cost-

plus" subcontract or purchase order which CONTRACTOR may (with COMPANY'S prior written consent) enter into in connection with its Construction Work hereunder shall contain provisions (i) requiring that accurate and detailed accounts be kept of the Reimbursable Costs thereunder, (ii) permitting the Representatives and auditors of CONTRACTOR and COMPANY to have access for audit purposes at any and all reasonable times to the subcontractor's or vendor's books and other records pertaining to costs thereunder, and (iii) requiring that each such subcontractor or vendor furnish CONTRACTOR and COMPANY (if requested) with such statements, invoices, receipts, vouchers, and other information as may be needed to enable CONTRACTOR and COMPANY to audit the books and records pertaining to said costs.

16.7 DISCOUNTS AND REFUNDS. CONTRACTOR shall promptly apply for and obtain

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all discounts (including discounts due to payment of bills on a "cash" basis), refunds, deductions (including tax collection allowances) and the like to which CONTRACTOR may be entitled with respect to the items charged to COMPANY under this Article 16. COMPANY shall be entitled to a credit in the amount of each

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such discount, refund, deduction and the like and CONTRACTOR shall make reasonable and timely efforts to see that they are secured.

16.8 SURPLUS. COMPANY shall be entitled to all surplus materials, surplus

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construction supplies, and surplus items for which it shall have reimbursed CONTRACTOR at actual cost. Upon completion of its Construction Work hereunder, CONTRACTOR shall remove all of said materials, supplies, and items to places of storage or disposal to be designated by COMPANY; however, if requested by COMPANY, CONTRACTOR shall make a reasonable effort to arrange with vendors to take back (or otherwise dispose of) such left over items and if successful, shall credit COMPANY with the amounts refunded or credited by vendors. The amounts of such refunds or credits obtained from vendors for returning such left over items shall in each instance be subject to COMPANY'S approval. As to those surplus materials and supplies that are not taken back by the vendors, CONTRACTOR shall, to the extent requested by COMPANY, endeavor to sell the same to third parties subject to COMPANY'S prior approval as to the amounts to be received therefor. CONTRACTOR shall use its best efforts, consistent with meeting its obligations under the Contract, to keep surplus materials to a minimum. In those instances where because of delivery instructions, CONTRACTOR finds it necessary to order materials on an estimated basis prior to completing the engineering design, CONTRACTOR shall review such orders promptly after the design is completed and adjust the quantities involved to conform to actual material take-off. After its field operations begin, CONTRACTOR shall make a periodic review of materials on hand and on order for the purpose of identifying any surplus materials that are beyond its needs. CONTRACTOR shall furnish COMPANY reports listing any such surplus materials thus disclosed and showing its recommendations as to whether the surplus should be returned to vendors for credit or made available for sale to other parties. COMPANY shall promptly review such reports and advise CONTRACTOR as to the actions to be taken with respect to disposal of surplus materials.

16.9 LUMP SUM SUBCONTRACT. It is agreed that in those instances where

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COMPANY feels that it would be in its best interests to have CONTRACTOR subcontract any of the field work hereunder on a lump-sum price basis instead of having such work performed by CONTRACTOR'S forces on the basis herein provided for, COMPANY shall have the right to require CONTRACTOR to do so.

45

Costs of the kinds covered in Section 16.2.1 above that are incurred by

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CONTRACTOR in connection with field work performed under lump sum subcontracts referred to in this Section 16.9 shall merge with or be reflected by the

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charges under said lump sum subcontracts. Provided, however, that the amount

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of any lump sum subcontract shall exclude applicable value added taxes (including the Import Turnover Tax) and other applicable taxes and all value added taxes and other applicable taxes shall be calculated and identified separately on all invoices from a subcontractor under a lump sum contract and on CONTRACTOR'S Application for Payment.

16.10 ADJUSTMENT IN FEE. The Fee is firm and shall not be subject to

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adjustment except (i) in cases where it is mutually agreed that CONTRACTOR'S services and general overhead costs are significantly increased as a result of an act or omission of COMPANY not authorized by the Contract or if the Facility is destroyed or suffers major damage and CONTRACTOR is required to rebuild or repair same pursuant to Article 22 hereof, or (ii) if major changes, additions

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or omissions are made in the scope of the work pursuant to Section 10.2 and

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approved by Change Order or (iii) if it is determined that restructuring of the Fee would be in the best interest of COMPANY and CONTRACTOR agrees to such restructuring. A major change, addition or omission in the scope of the work shall not be construed to have occurred unless it involves a change in the scope of the work that increases or decreases the Budgeted Cost of the Work by more than twenty percent (20%). In the event of a major change, addition or omission in the scope of the work as described in Clause (ii) of this Section, the Budgeted Fee shall be adjusted according to the following formula: (a) the original Budgeted Fee shall be divided by the original Budgeted Cost of the Work, and the quotient of such division is herein referred to as the "ORIGINAL MULTIPLIER"; (b) the Original Multiplier shall be multiplied by 0.75, and the product of such multiplication is herein referred to as the "ADJUSTED MULTIPLIER"; (c) that portion of the increase or decrease in the Budgeted Cost of the Work that exceeds 20% of the then current Budgeted Cost of the Work shall be determined: (d) that portion of the increase or decrease in the Budgeted Cost of the Work that exceeds 20% of the then current Budgeted Cost of the Work shall be multiplied by the Adjusted Multiplier; and (e) the product of the multiplication in Clause (d) shall be added to or subtracted from the Budgeted Fee. For example, as an illustration only, if the original Budgeted Cost of the Work is \$1,000,000, the original Budgeted Fee is \$10,000 and the scope of the work is increased so that the Budgeted Cost of the Work is now \$1,300,000, the Budgeted Fee would be adjusted as follows:

- (A)  $10,000/1,000,000 = 0.01$ ;
  - (B)  $0.01 \times 0.75 = 0.0075$ ;
  - (C)  $\$1,000,000 \times 0.20 = \$200,000$ ;  
 $\$1,300,000 - \$1,200,000 = \$100,000$ ;
  - (D)  $\$100,000 \times 0.0075 = \$750$ ;
  - (E)  $\$10,000 + \$750 = \$10,750$ .
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Upon the occurrence of an event described in Clause (i) or Clause (iii) of this  
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Section, any increase or decrease in the Fee shall be mutually agreed to by the parties, and such agreement shall be evidenced in writing. If there is any increase or decrease in the Fee, the Budgeted Fee shall be adjusted accordingly.

ARTICLE 17  
TERMS OF PAYMENT

17.1 PAYMENT OF CONTRACT AMOUNT. Based upon Applications for Payment  
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46

submitted to COMPANY by CONTRACTOR, COMPANY shall make progress payments on account of the Contract Amount to CONTRACTOR pursuant to this Article 17. The  
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period covered by each Application for Payment shall be one calendar month ending on the last day of the month. In all instances, the period covered by the Application for Payment must coincide with the corresponding period set forth in the Project Schedule. Near the end of each calendar month, CONTRACTOR shall prepare a fully itemized Application for Payment showing in detail and as completely as possible (i) invoices actually received from subcontractors, vendors and other third parties and expenses and charges actually paid for Reimbursable Costs chargeable to COMPANY under the provisions of Section 16.2  
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hereof (less sums for which CONTRACTOR has previously received reimbursement); and (ii) the portion of CONTRACTOR'S Budgeted Fee that is then payable to CONTRACTOR, as stated in Section 17.2 below. The Application for Payment shall

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show the actual mathematical calculations by which such portion of the Budgeted Fee was determined. The Application for Payment shall be broken down by Reimbursable Costs and Budgeted Fee attributable to each Construction Phase. Each Application for Payment will show the total hours worked by employees in each classification set forth in Schedule 16.2.1.1 multiplied by the corresponding hourly rate in Schedule 16.2.1.1. As soon as each such Application for Payment shall have been prepared, CONTRACTOR shall submit it to COMPANY along with all substantiating invoices, payrolls, petty cash accounts, freight bills, etc., not previously submitted and, at the same time, shall also send COMPANY an invoice for the amount by which the summation of the amounts entered in the aforesaid Application for Payment exceeds the aggregate of all payments previously made by COMPANY under the provisions of this Section 17.1

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and Section 17.2. Each Application for Payment shall show (1) Reimbursable

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Costs for the Project and for each Construction Phase and (2) the percentage completion of the Construction Work for the Project and for each Construction Phase as of the end of the period covered by the Application for Payment. CONTRACTOR shall certify to COMPANY the aforesaid percentages of completion, and COMPANY and COMPANY'S Inspector shall have the right to verify such percentages. Each Application for Payment and the progress payment made by COMPANY to CONTRACTOR shall exclude all amounts that CONTRACTOR retains from its subcontractors (such amount retained being hereinafter referred to as the "SUBCONTRACT RETAINAGE"). Applications for Payment shall show the portion of Reimbursable Costs properly allocable to materials delivered and suitably stored at the Site for subsequent incorporation in the Facility ("STORED MATERIALS") and shall show that the requirements of Section 17.7 have been satisfied as a

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condition precedent to payments for Stored Materials. In taking action on CONTRACTOR'S Applications for Payment, COMPANY shall be entitled to rely on the accuracy and completeness of the information furnished by CONTRACTOR and shall not be deemed to represent that COMPANY has made a detailed examination, audit or arithmetic verification of the documentation submitted or other supporting data. In no event shall any Application for Payment seek reimbursement of Reimbursable Costs previously reimbursed to CONTRACTOR or payment of any part of the Budgeted Fee previously paid to CONTRACTOR. Subject to the provisions of Article 31 hereof, if COMPANY finds the Application for Payment and invoices to

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be proper and in accord with the provisions hereof and if no Default or Event of Default then exists hereunder, COMPANY shall pay CONTRACTOR the entire amount of said Application for Payment within thirty (30) calendar days after receiving the Application for Payment, the invoices and other matters hereinabove specified to be submitted therewith. Any errors or discrepancies discovered in the Application for Payment shall not be cause for COMPANY to withhold payment of the balance of the Application for Payment as to which there is no error or discrepancy. If any part of the Project (including any Construction Work) covered by any monthly Application for Payment has been rejected by COMPANY or COMPANY'S Inspector or Representative (including any Person acting on behalf of any lender of COMPANY) or is being repaired or replaced by CONTRACTOR, the portion of Reimbursable Costs for which CONTRACTOR seeks reimbursement and the portion of the Budgeted Fee attributable to such part of the Project shall be withheld

47

until all necessary repair or replacement has been completed and approved by COMPANY. COMPANY shall not be obligated to make payment for any Construction Work that is not covered by an invoice or that has been rejected by COMPANY or COMPANY'S Inspector or Representative or that exceeds the maximum amount budgeted for the affected Construction Phase. If payment is sought for Stored Materials, CONTRACTOR shall satisfy the conditions to payment for Stored Materials set forth in Section 17.7 below. In no event shall any payment exceed

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the difference between (y) the cost of Construction Work in place, payments for Stored Materials, if any, the portion of the Budgeted Fee payable to date, and any other costs, expenses and fees actually paid by CONTRACTOR for Project costs as of the date of the Application for Payment, and (z) any required Retainage (defined in Section 17.2 below) and the sum of all prior payments. Each advance

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for CONTRACTOR'S Budgeted Fee shall be subject to the Retainage.

17.2 PAYMENT OF INCREASES IN FEE; RETAINAGE. No portion of the Fee above

the Budgeted Fee shall become due and payable until the Project has been finally completed and Final Acceptance of the Facility has occurred. Progress payments shall be made only on the Budgeted Fee. Each Application for Payment shall show the percentage of the Project that has been completed to COMPANY'S satisfaction, and CONTRACTOR shall be paid (subject to Retainage) the same percentage of the Budgeted Fee. Out of each payment of the Budgeted Fee, COMPANY shall retain fifteen percent (15%) of the portion of the Budgeted Fee then due under the Contract. The amount retained by COMPANY is referred to as the "RETAINAGE". The Application for Payment shall show the portion of the Budgeted Fee that is then due and payable, including the method used to calculate such portion, under clause (ii) in Section 17.1, above, and shall show the eighty-five percent (85%)

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portion payable to CONTRACTOR, the fifteen percent (15%) portion to be retained by COMPANY and the cumulative amount retained by COMPANY. In no event shall COMPANY be obligated to pay to CONTRACTOR on account of CONTRACTOR'S Budgeted Fee an amount greater than the amount that bears the same ratio to the entire Budgeted Fee as the then percentage of completion of the Facility bears to one hundred percent (100%) completion of the Facility.

17.3 PARTIAL RELEASE OF RETAINAGE. It is agreed that COMPANY will release

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one-half of the Retainage for payment to CONTRACTOR if the Facility is finally completed prior to or on the date for Final Completion set forth in Section

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14.2. CONTRACTOR shall submit a separate invoice to COMPANY covering such payment at the time the Facility is taken over for operation and maintenance as aforesaid, and COMPANY shall pay CONTRACTOR the amount of said invoice within thirty (30) calendar days after COMPANY'S receipt thereof.

17.4 PAYMENT NOT A WAIVER BY COMPANY. No payments made by COMPANY pursuant

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to a monthly Application for Payment as hereinabove provided shall be deemed to signify or imply acceptance of the materials or workmanship covered by such Application for Payment; and none of them shall operate as an admission on the part of COMPANY as to the propriety or accuracy of any of the amounts entered in the aforesaid Application for Payment, or as a waiver of COMPANY'S right to audit provided for herein. Furthermore, when computing subsequent payments, COMPANY shall not be bound by any entries in previous Applications for Payment and shall be permitted to make corrections for errors therein. COMPANY'S final payment for the Facility shall in no way relieve CONTRACTOR of any obligations or responsibilities under the Contract which extend beyond the date of such final payment.

17.5 PAYMENT OF BALANCE OF RETAINAGE. Within thirty (30) calendar days

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after COMPANY has given CONTRACTOR its Final Acceptance of the Facility as provided for in Article 15 hereof and received a proper Application for Payment

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and supporting invoices from CONTRACTOR covering the payment hereinafter specified in this Section 17.5 and has received from CONTRACTOR

48

all other documents and other items required from CONTRACTOR hereunder (including without limitation documents required by Section 4.11 and Section

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27.1 and Articles 28 and 29), COMPANY shall pay CONTRACTOR the balance of the

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Contract Amount due on the cost of the Facility as of the date of Final Acceptance (as verified by COMPANY'S Representatives and accountants) less the summation of all credits and refunds then due COMPANY under the provisions of the Contract; provided, however, that in case the aforesaid summation of credits and refunds due COMPANY shall be found to exceed the aforesaid unpaid balance of the Contract Amount, CONTRACTOR shall remit the difference between said summation and said unpaid balance to COMPANY within thirty (30) calendar days after the amount of such difference is determined. Such determination shall be made with reasonable dispatch. Except as provided in Section 17.6 next below,

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the payment hereinabove specified shall be the final payment due CONTRACTOR under the Contract; and before said final payment is made, CONTRACTOR shall submit evidence satisfactory to COMPANY that all payrolls, bills, and other indebtedness theretofore incurred in connection with the Contract have been paid, and all subcontractors and vendors have been paid in full and all

governmental inspections and approvals required to permanently occupy and operate the Facility have been completed and issued and the Contract has otherwise been fully performed by CONTRACTOR.

17.6 INSURANCE ADJUSTMENTS. The hourly rates in Schedule 16.2.1.1 shall

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not be adjusted in the event of any insurance premium adjustments resulting from audits by Contractor's insurers or for any other reason.

17.7 STORED MATERIALS. As a condition precedent to payment for Stored

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Materials (i) the Stored Materials shall be included in the coverage of the insurance policies required under this Agreement; (ii) CONTRACTOR shall deliver a certification that no subcontractor, vendor, or other person has retained title, or has liens on or security interests in, the Stored Materials and shall deliver paid invoices or other documentation evidencing title to the Stored Materials vested in CONTRACTOR; (iii) CONTRACTOR shall have delivered such documentation as shall be effective to transfer, upon payment, ownership of the Stored Materials to COMPANY; and (iv) the Stored Materials are satisfactorily stored at the Site to protect against theft or damage. Except with COMPANY'S prior written approval, CONTRACTOR shall not make advance payments to vendors for materials which have not been delivered and stored at the Site.

ARTICLE 18  
WARRANTIES AND GUARANTEES

18.1 CONTRACTOR'S WARRANTY AND GUARANTEE. CONTRACTOR warrants and

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guarantees (i) that all of CONTRACTOR'S, its subcontractors' and vendors' design and engineering work for the Facility, as well as the selection of materials for the Facility, will be properly performed; (ii) that the Facility and all workmanship and materials therein will be (and perform) as specified and described in the Contract Documents and in applicable plans, specifications, drawings, data sheets and other Contract Documents approved by COMPANY; (iii) that all said workmanship and materials will be of the best quality for the grades specified, free from objectionable defects, and suitable for the respective uses intended; (iv) that CONTRACTOR'S work and design possesses at the time of Final Acceptance the characteristics assured in the Contract; (v) that the work and design conform with the recognized rules of sound engineering practice and are free from defects which would nullify or diminish the value or usefulness of the Facility for normal purposes or for the purpose intended in the Contract; and (vi) that the work and design shall satisfy COMPANY requirements for clean room air quality, process equipment, vibration, particulate, air, water and other quality requirements of COMPANY. The foregoing warranties and guarantees exclude the Wafer Process Equipment and materials purchased directly by COMPANY. If any failures of the Facility or any Construction Phase or any system within the

49

Facility to conform to the foregoing warranties and guarantees (excepting, however, any such failures resulting from ordinary wear and tear, ordinary corrosion, or improper operation after COMPANY takes over the Facility for operation if such improper operation is not attributable to some act or omission of CONTRACTOR, its subcontractors or vendors) are found by COMPANY within the applicable period of time specified hereinafter in this Section, beginning on the Warranty Commencement Date (defined in this Section) applicable to the Facility or to the Construction Phase or to such system, COMPANY shall promptly notify CONTRACTOR thereof in writing; and, in accordance with the provisions of Article 19 hereof, CONTRACTOR shall thereupon make all alterations,

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adjustments, repairs, replacements and other corrections and do all things needful to make the Facility or such Construction Phase or such system and all workmanship and materials therein conform to the warranties and guarantees herein specified in every particular. The warranty and guarantee periods for the Facility or any Construction Phase or system are as follows:

Electrical [Electrical generating or transmitting equipment such as trans- formers, switchgear, generators, etc.]	1 year
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Rotating Parts	1 year
Piping And Static Mechanical Systems	5 years
Any Other Portion Of The Facility	5 years

Furthermore, it is agreed that all alterations, adjustments, repairs, replacements and other corrections that CONTRACTOR is required to make within the guarantee period specified above in this Section 18.1 shall, in each case,

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 be warranted and guaranteed by CONTRACTOR for an additional period of time equal to the applicable period of time specified above in this Section, dating from the date that the alteration, adjustment, repair, replacement and other corrections have been completed. CONTRACTOR'S warranties and guarantees shall exclude liability for ordinary wear and tear, ordinary corrosion or improper operation after Company takes over the Facility for operation if such improper operation is not attributable to some act or omission of CONTRACTOR, its subcontractors or vendors. The "WARRANTY COMMENCEMENT DATE" shall be (i) in the case of a system, the date upon which such system has been completed in its entirety and all Punch List items that could lead to a malfunction of the system or could limit any of such system's functions or could affect COMPANY'S continuous use of such system have been corrected and the system satisfies the specifications for the operation of such system and such system has satisfied the System Performance Test and COMPANY has given CONTRACTOR notice of satisfactory completion of the System Performance Test pursuant to Section 25.2;

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 and (ii) in the case of any other part of the Facility, upon Final Completion of the Facility.

18.2 COMPANY'S RIGHT TO REPAIR. If CONTRACTOR fails or refuses to comply

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 with a demand to repair defects within a reasonable time set by COMPANY or unreasonably postpones such repair, then COMPANY shall be entitled to have the defects repaired at the expense of CONTRACTOR by COMPANY'S own forces as provided in Section 19.3. Furthermore, in that case COMPANY shall be entitled

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 to claim from CONTRACTOR an anticipated payment on the estimated expense to repair the defects. In such event, COMPANY shall use reasonable efforts to avoid unnecessary expenditures and shall maintain reasonably detailed records of the costs COMPANY incurs.

18.3 LIABILITY FOR DAMAGES. If a defect is attributable to a fault of

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 CONTRACTOR or its agents, subcontractors or vendors, CONTRACTOR shall also be obliged to compensate COMPANY for all liability, loss, damage, cost and expense arising therefrom.

18.4 CAPACITIES AT OPERATING CONDITIONS. It is expressly understood that

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 compliance with the aforesaid warranties and guarantees will require, but not by way of limitation, that all materials will have capacities (in terms of heat capacities, duty cycles, rates of flow, volumes, and the like) at operating conditions as set forth in the plans, specifications, drawings, data sheets and other Construction Documents approved by COMPANY, under which said items of material are furnished, not less than the respective capacities set forth in said plans, specifications, drawings, data sheets and other Construction Documents and, further, that said items will operate satisfactorily (that is, will be free from defects in design and will operate particulate free and without excessive noise, vibration, strain, and deterioration) at all capacities set forth in said plans, specifications, drawings, data sheets and other Construction Documents. Furthermore, CONTRACTOR warrants and guarantees that the Facility shall meet the conditions of temperature, pressure, cleanliness, vibration and other operating conditions specified in COMPANY'S process design requirements.

18.5 Coordination Of Functions. CONTRACTOR further warrants and guarantees

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 that the Facility and all portions thereof will be suitably coordinated as to functions and interrelations, properly responsive to controls and sufficiently stable in operation to avoid objectionable fluctuations in operating



temperatures, pressures, cleanliness, vibration and other operating conditions and the like during all stages of operation; and will operate satisfactorily without depending upon the routine use of spare equipment or upon the added capacity of any spare equipment and with no more attention than is consistent with good facility operating practice.

18.6 RETAINING IMPERFECT MATERIALS. In the event that any workmanship or -----  
materials are found to be not as above warranted or guaranteed and the parties hereto mutually agree to permit same to remain in the Facility, the retention of such workmanship or materials shall not operate as a waiver of CONTRACTOR'S responsibility therefor and, in the absence of a written agreement to the contrary, CONTRACTOR'S responsibility for the safety and serviceability of such workmanship and materials shall be the same as though such imperfections had not been discovered. However, the parties shall not allow a known unsafe condition to continue to exist.

18.7 NO RELEASE OF OTHER CLAIMS. This Article 18 shall not constitute, or -----  
be interpreted to constitute, a release or discharge by COMPANY of any right, claim or remedy COMPANY may have against CONTRACTOR or any subcontractor or vendor under the Contract or under applicable law in respect of the matters encompassed by this Article 18 or in respect of any defects or failure to meet -----  
specifications or failure of capacities at operating conditions or improper, inferior, defective, unsuitable or damaged workmanship or materials or Defaults or Events of Default or other disputed claim or cause of action whatsoever.

ARTICLE 19  
CORRECTION OF DEFECTIVE CONSTRUCTION WORK

19.1 CORRECTION OF WORK FOR WHICH CONTRACTOR IS RESPONSIBLE. Subject to -----  
the conditions hereinafter set forth in this Article 19 and in Article 22 -----  
hereof, CONTRACTOR at no charge to COMPANY shall make or cause to be made all alterations, adjustments, repairs, replacements and other corrections to the Construction Work that shall be, or become, necessary (i) by reason of the rejection of improper, inferior, defective, unsuitable or damaged workmanship

or materials, or any combination thereof, before COMPANY takes over the Facility for operation; (ii) by reason of any loss or damage that may be suffered by the Facility for which CONTRACTOR assumes responsibility under other provisions of the Contract; (iii) to make the Facility and all workmanship and materials therein conform to CONTRACTOR'S warranties and guarantees; or (iv) to the extent that any such defects are the result of CONTRACTOR'S negligence or willfulness or disregard of specifications or drawings. Any defect in materials due to the fault or default of any subcontractor or vendor shall be imputed to CONTRACTOR, and CONTRACTOR shall be liable to COMPANY for such defect. CONTRACTOR shall require that each subcontractor and vendor incorporate into their respective sub-subcontracts and purchase orders with their respective sub-subcontractors and vendors the same liability to CONTRACTOR that CONTRACTOR has to COMPANY under this Section. If any materials furnished by COMPANY hereunder are found to be improper, inferior, defective, unsuitable or damaged, COMPANY shall bear the expenses for all necessary alterations, adjustments, repairs, or replacements to said materials that are needed because of such deficiencies. All alterations, adjustments, repairs, and replacements made under the provisions of the Contract shall include the removal (if removal be necessary) of the improper, inferior, defective, unsuitable, or damaged materials and the handling and installation of the altered, repaired, or new materials; and any such work which is done after the Facility has been put into operation shall be performed with as little interruption of the operation of the Facility as feasible.

19.2 USING NEW MATERIALS FOR REPAIRS. Materials which are found to be -----  
improper, inferior, defective, unsuitable, or damaged, or otherwise not in conformance with the Contract shall not be altered or repaired, but shall be replaced with new materials, unless (i) CONTRACTOR gives COMPANY a written statement to the effect that the proposed alteration or repair is practicable and will entirely correct the unsatisfactory features of the materials under consideration, and COMPANY agrees in writing to said alteration or repair; or (ii) specifications issued or approved by COMPANY for the materials in question

permit alterations or repairs of the nature contemplated.

19.3 REPAIR BY COMPANY. In the event that any alteration, adjustment,  
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repair, replacement or other correction becomes necessary as provided in this  
Article 19 after the Facility has been put into operation and if it is mutually  
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agreed that said alteration, adjustment, repair, replacement or other correction  
can be made more rapidly and with less delay in the operation of the Facility by  
COMPANY'S forces than by CONTRACTOR'S, or if CONTRACTOR fails or refuses to make  
or unreasonably postpones said alteration, adjustment, repair, replacement or  
other correction, COMPANY shall have the right to make said alteration,  
adjustment, repair, replacement or other correction with its own forces at  
CONTRACTOR'S expense. In such event, COMPANY shall use reasonable efforts to  
avoid unnecessary expenditures and shall maintain reasonably detailed records of  
the costs COMPANY incurs.

Article 20  
Indemnity

20.1 CONTRACTOR'S INDEMNITY. CONTRACTOR shall defend, indemnify, and hold  
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harmless COMPANY, COMPANY'S consultants and any lender for the Project and their  
officers, agents and employees from and against all claims, demands, damages,  
liabilities, losses, suits, actions, costs and expenses, including court costs  
and attorneys' fees, arising out of, or resulting from any defective design or  
defective materials or from the performance of defective or negligent (simple or  
gross) acts, errors or omissions during Construction Work or of any work  
pursuant to CONTRACTOR'S guarantee and warranty (including without limitation  
any work pursuant to guarantees and warranties provided by subcontractors and  
vendors), CONTRACTOR'S or its subcontractors', vendors' or agents' activities on  
the Site, or CONTRACTOR'S breach of this Agreement.

52

Additionally, CONTRACTOR agrees to defend, indemnify and hold COMPANY, COMPANY'S  
other consultants and any lender for the Project and their officers, agents and  
employees harmless from and against any and all claims, demands, damages,  
liabilities, losses, suits, actions, costs and expenses (including court  
expenses and attorneys' fees) for (i) injuries to or death of any person or  
persons, including the employees of each party hereto and the employees of their  
subcontractors or vendors or of any lender for the Project, and (ii) loss of or  
damage to real property (including environmental contamination resulting from  
the activities of CONTRACTOR or its subcontractors, vendors or agents), or the  
property of any person or persons (including existing property of COMPANY and  
the Facility) caused by or arising out of any occurrence in any manner connected  
with the defective or negligent (simple or gross) acts, errors or omissions  
during performance of the Contract, regardless of whether or not it is caused in  
part by a party or other person indemnified hereunder, except that CONTRACTOR  
assumes no liability whatsoever for the sole negligent acts of COMPANY or of  
COMPANY'S officers, agents or employees. CONTRACTOR shall be fully responsible  
for any defective or negligent (simple or gross) acts, errors or omissions of  
any of CONTRACTOR'S subcontractors or vendors (including without limitation sub-  
subcontractors, manufacturers, suppliers and other persons hired by any  
subcontractor or vendor in performing its obligations under the Contract).

20.2 INDEMNIFICATION BY SUBCONTRACTORS AND VENDORS. CONTRACTOR shall use  
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its best efforts to require each subcontractor and vendor in each subcontract  
and purchase order to defend, indemnify and hold harmless COMPANY, COMPANY'S  
consultants and any lender for the Project and their officers, agents and  
employees from and against all claims, demands, damages, liabilities, losses,  
suits, actions, costs and expenses, including court costs and attorneys' fees,  
arising out of, or resulting from the performance of the Construction Work by  
such subcontractor or vendor or of any work pursuant to any guarantee and  
warranty given by such subcontractor or vendor, such subcontractor's or vendor's  
activities on the Site, or such subcontractor's or vendor's breach of its  
subcontract or purchase order, and each subcontract and purchase order shall  
require each subcontractor and vendor to defend, indemnify and hold COMPANY,  
COMPANY'S consultants and any lender for the Project and their officers, agents  
and employees harmless from and against any and all claims, demands, damages  
(including consequential damages), liabilities, losses, suits, actions, costs  
and expenses (including court expenses and attorneys' fees) for (i) injuries to  
or death of any person or persons, including the employees of each party hereto

and the employees of their sub-subcontractors or vendors or of any lender for the Project, and (ii) loss of or damage to real property (including environmental contamination resulting from the activities of such subcontractor or vendor), or the property of any person or persons (including existing property of COMPANY and the Facility) caused by or arising out of any occurrence in any manner connected with the performance of such subcontract or purchase order, regardless of whether or not it is caused in part by a party or other person indemnified hereunder, except that no subcontractor or vendor shall have any liability whatsoever for the sole negligent acts of COMPANY or of COMPANY'S officers, agents or employees.

20.3 COMPANY'S INDEMNITY. COMPANY shall defend, indemnify, and hold

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harmless CONTRACTOR and CONTRACTOR'S officers, agents and employees from and against all claims, demands, damages, liabilities, losses, suits, actions, costs and expenses, including court costs and attorneys' fees, arising out of, or resulting from the negligence or willful misconduct of COMPANY or COMPANY'S officers, agents or employees, in the performance of COMPANY'S obligations hereunder. Additionally, COMPANY agrees to defend, indemnify and hold CONTRACTOR and CONTRACTOR'S officers, agents and employees harmless from and against any and all claims, demands, damages, liabilities, losses, suits, actions, costs and expenses (including court expenses and attorneys' fees) for (i) injuries to or death of any person or persons, including the employees of

53

each party hereto and the employees of their subcontractors or vendors proximately and solely caused by the negligence or willful misconduct of COMPANY or COMPANY'S officers, agents or employees, and (ii) loss of or damage to real property (including pre-existing environmental contamination), or the property of any person or persons, proximately and solely caused by the negligence or willful misconduct of COMPANY or COMPANY'S officers, agents or employees.

20.4 CONSEQUENTIAL DAMAGES. Except as provided in this Section 20.4, neither  
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COMPANY nor CONTRACTOR shall be liable for any consequential damages arising from or in connection with this Contract or the Project.

20.4.1. CONTRACTOR shall only be liable to COMPANY for consequential damages to the Facility, its contents and any persons present therein, and which occur during the performance of work under this Contract and during the warranty periods referenced herein. Under no circumstances shall CONTRACTOR be liable to COMPANY for consequential damages in the nature of lost profits, loss of revenue, loss of production or loss of operation.

20.4.2. The amount of consequential damages for which CONTRACTOR shall be liable to COMPANY pursuant to the first sentence of Section 20.4.1 shall be:

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20.4.2.1. to the extent such consequential damages arise from intentional conduct of Contractor, in an unlimited amount;

20.4.2.2. to the extent such consequential damages in the form of property damage or bodily injury arise from the gross negligence of CONTRACTOR, in an amount limited to DM 20,000,000 (DM twenty million) for each individual occurrence and DM 80,000,000 (DM eighty million) annual aggregate;

20.4.2.3. to the extent such consequential damages arise from the negligence of CONTRACTOR, the gross negligence of CONTRACTOR not covered by Section 20.4.2.2, or the negligence, gross negligence or intentional conduct of

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CONTRACTOR'S subcontractors, vendors or agents, in an amount limited to the greater of DM 10,000,000 (DM ten million) for each individual occurrence or the applicable limits of coverage under CONTRACTOR'S and subcontractor's insurance for each individual occurrence; and,

20.4.2.4. in the event that CONTRACTOR is able to recover any sums from one or more subcontractors, vendors or agents (after reasonable attempts in accordance with AMD's reasonable instructions to collect the same), the amount of these additional sums actually collected in order to fully compensate COMPANY for its total consequential damages. CONTRACTOR may keep any amounts collected under this Section 20.4.2.4 which exceed the amount necessary to fully

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compensate COMPANY.

20.4.3. Except for consequential damages referenced in Section 20.4.2.1 and  
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Section 20.4.2.2, the aggregate amount of all out-of-pocket liability (for which  
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there is no recovery from CONTRACTOR'S insurance or from subcontractors, vendors  
or agents or their insurers) incurred by CONTRACTOR for consequential damages,  
including penalties which may be paid pursuant to Section 37.2, in connection  
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with this Contract shall be limited to the sum of DM 35,000,000 (DM thirty-five  
million).

Article 21  
Insurance And Bank Guarantees

21.1 CONTRACTOR TO CARRY INSURANCE. CONTRACTOR shall not commence  
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Construction Work under this Contract until CONTRACTOR has obtained all the  
insurance required hereunder and the insurance certificates and/or certified  
copies of the original policies evidencing the insurance have been reviewed by  
COMPANY. COMPANY has the right to review the certificates or policies

54

evidencing the subcontractor's insurance. Review of the insurance by COMPANY  
shall not relieve or decrease the liability of CONTRACTOR hereunder. In the  
event any Construction Work under the Contract is performed by a subcontractor,  
CONTRACTOR shall be responsible for any liability directly or indirectly arising  
out of the Construction Work performed under the Contract by a subcontractor, to  
the extent not covered by the subcontractor's insurance but limited, however, as  
provided in Section 20.1.  
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21.2 CONTRACTOR'S LIABILITY INSURANCE.  
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21.2.1 LIABILITY COVERAGE. CONTRACTOR shall obtain and maintain  
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insurance coverage for the following claims which may arise out of the  
performance of this Contract, whether resulting from CONTRACTOR'S operations or  
by the operations of any subcontractor, anyone in the employ of any of them, or  
by an individual or entity for whose acts they may be liable:

1. under applicable employer's liability law, bodily injury,  
occupational sickness, disease or death claims of CONTRACTOR'S  
employees;
2. bodily injury, sickness, disease or death claims for damages  
to persons not employed by CONTRACTOR;
3. personal injury liability claims for damages directly or  
indirectly related to the person's employment by CONTRACTOR or  
for damages to any other person;
4. damage to or destruction of tangible property, including  
claims for property other than the Construction Work itself;
5. bodily injury, death or property damage claims resulting from  
motor vehicle liability in the use, maintenance or ownership of  
any motor vehicle;
6. claims for bodily injury (Personenschaden), property damages  
(Sachschaden) and financial losses (Vermögensschaden) arising  
from Contractor's defective design work; and
7. claims for bodily injury and property damage (but not financial  
losses) arising out of tortious conduct.

21.2.2 LIABILITY LIMITS. CONTRACTOR'S Liability Insurance as  
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required by this Section 21.2 shall be written for not less than the following  
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limits of liability:

1. Employer's Liability Insurance. Employer's Liability  
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insurance (Betriebshaftpflichtversicherung) with a coverage of  
not less than DEM1,500,000.
2. Comprehensive General and Automobile Liability Insurance.  
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Contractor  
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DEM7,500,000 each occurrence, combined single limit bodily  
injury and property damage

DEM15,000,000 aggregate combined single limit bodily  
injury and property damage

Subcontractors  
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DEM750,000 each occurrence, combined single limit bodily  
injury and property damage

DEM1,500,000 aggregate combined single limit bodily injury  
and property damage

21.3 INSURANCE CERTIFICATES. CONTRACTOR shall furnish, and shall make best  
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efforts to cause each subcontractor to furnish, COMPANY insurance certificates  
and/or certified copies of the original policies evidencing the insurance  
specified herein. All insurance to be carried by CONTRACTOR shall be issued by  
insurance companies qualified to issue such insurance in Germany that are  
reasonably acceptable to COMPANY and maintained in force by CONTRACTOR so long  
as CONTRACTOR is engaged in any work at the COMPANY'S Facility within the  
purview of the Contract. Certificates should show type of insurance, operations  
covered, effective dates, and dates of expiration and contain the following  
statement:

"Thirty (30) days written notice of cancellation or change, to be  
effective upon receipt thereof, shall be given to COMPANY, by sending notice  
to Advanced Micro Devices, Inc., ATTN: Risk Manager, One AMD Place, Post  
Office Box 3453, M/S 89, Sunnyvale, California 94088-3453, before any  
cancellation or CONTRACTOR initiated change of this policy shall be  
effective."

21.4 COMPANY AS ADDITIONAL INSURED. CONTRACTOR shall, and shall make best  
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efforts to cause each Subcontractor to, name COMPANY, Advanced Micro Devices,  
Inc and their respective officers, agents and employees as additional insureds  
on CONTRACTOR'S and Subcontractors' liability policies for any claims arising  
with respect to the negligence of CONTRACTOR or subcontractors relating to the  
Construction Work performed under the Contract.

21.5 BUILDERS ALL RISK INSURANCE. COMPANY shall purchase and maintain  
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builders risk-type insurance upon the entire Project for the full cost of  
replacement at the time of the loss. This insurance shall include as named  
insureds COMPANY, CONTRACTOR and the subcontractors (generally as a class, but  
not individually) and shall insure against loss from fire and extended coverage  
perils, and shall include "All Risk" insurance for physical loss or damage  
including, without duplication of coverage and to the extent available, at least  
theft, vandalism, malicious mischief, transit, collapse, flood, earthquake,  
testing and damage resulting from defective design, workmanship or material.  
COMPANY will increase limits of coverage, if necessary, to reflect estimated  
replacement cost. COMPANY will be responsible for any co-insurance penalties or  
deductibles unless due to the fault or negligence of CONTRACTOR or any  
subcontractor.

21.6 PERFORMANCE AND WARRANTY BANK GUARANTEES. CONTRACTOR shall provide a  
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performance bank guarantee in the amount of twenty percent (20%) of that portion  
of the Budgeted Cost of the Work performed by CONTRACTOR (excluding design &

construction management services) and shall cause each subcontractor and vendor to provide a performance bank guarantee in an amount equal to twenty percent (20%) of that portion of the Budgeted Cost of the Work performed by each subcontractor and vendor and shall provide a warranty bank guarantee in the amount of five percent (5%) of that part of the actual Cost of the Work performed by CONTRACTOR (excluding design & construction management services) and shall cause each subcontractor or vendor to provide a warranty bank guarantee in an amount equal to (i) in the case of a subcontract or purchase order amount exceeding DEM5,000,000, five percent (5%) of the subcontract or purchase order amount, and (ii) in the case of a subcontract or purchase order amount between DEM500,000 and DEM5,000,000, ten percent (10%) of the subcontract or purchase order amount, but in the case of a subcontract or purchase order amount less than DEM500,000, no warranty bank guarantee shall be required. Each bank guarantee shall satisfy the applicable criteria

56

for bank guarantees set forth in Schedule 21.6 & 21.7 attached hereto and made a

part hereof and shall be reasonably satisfactory to COMPANY and to any lender or lenders providing financing for the Project, issued by a bank reasonably satisfactory to COMPANY and to any lender or lenders providing financing for the Project. Each warranty bank guarantee shall be for a period equal to the lesser of (x) two years, and (y) the period of the guarantee and warranty for the items covered by such guarantee (e.g., the guarantee for rotating parts shall have a term of one year) specified in Section 18.1.

21.7 ADVANCE PAYMENT BANK GUARANTEES. CONTRACTOR shall provide, or shall

cause each subcontractor and vendor to provide, an advance payment bank guarantee in an amount equal to one hundred percent (100%) of each payment made by COMPANY to CONTRACTOR prior to the date on which CONTRACTOR would be entitled to receive such payment under the terms of this Agreement. Each advance payment bank guarantee shall be procured by CONTRACTOR or any subcontractor or vendor and delivered to COMPANY concurrently with the making of such advance payment. Each advance payment bank guarantee shall satisfy each of the criteria for bank guarantees set forth in schedule 21.6 & 21.7 and shall be satisfactory to COMPANY and to any lender or lenders providing financing for the Project and shall be issued by a surety reasonably satisfactory to COMPANY and to any lender or lenders providing financing for the Project.

21.8 Assignment Of Subcontractors' Warranties And Bank Guarantees.

CONTRACTOR hereby irrevocably assigns without restriction to COMPANY all of CONTRACTOR'S right, title and interest in and to any and all warranty bank guarantees and advance payment bank guarantees that CONTRACTOR holds for the benefit of COMPANY and those provided by any subcontractor or vendor, and any and all warranty claims and claims for performance CONTRACTOR may have against its subcontractors, vendors, architects, building engineers, project planners and any other building tradesmen and persons involved in the Project who have a contractual relationship with CONTRACTOR. CONTRACTOR shall be obligated to provide to COMPANY immediately after receipt all original performance guarantees or warranty guarantees which CONTRACTOR receives from its subcontractors and vendors. COMPANY grants to CONTRACTOR an entitlement, subject to revocation by COMPANY, pursuant to which CONTRACTOR shall be entitled and obligated to assert against all subcontractors and vendors the performance claims and warranty claims under the subcontracts and purchase orders in its own name and at its own cost. COMPANY may revoke this entitlement and obligation upon the occurrence of (i) the filing of a petition for bankruptcy of CONTRACTOR, or (ii) termination of the Contract, and may then itself assert the claims assigned to it against the aforesaid subcontractors, vendors, architects, building engineers, project planners, and other persons involved in the Project. This Section shall not be deemed a waiver in any form whatsoever of any claims against CONTRACTOR under this Agreement, provided any sums collected by COMPANY under this Section 21.8

shall be set off against COMPANY'S claims against CONTRACTOR. CONTRACTOR shall recognize, and hereby consents to, any assignment by COMPANY of its right, title and interest in such guarantees to any lender or lenders providing financing for the Project. CONTRACTOR shall direct the issuer of any bank guarantee to make all payments directly to COMPANY. In the event of revocation of the entitlement, CONTRACTOR shall hold any such proceeds received by CONTRACTOR in trust for COMPANY and shall promptly pay to COMPANY any such proceeds received by CONTRACTOR.

ARTICLE 22  
CASUALTY CAUSING DAMAGE TO THE FACILITY

22.1 DAMAGE BEFORE SUBSTANTIAL COMPLETION OF FACILITY. In case the

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Facility or any portion thereof or any materials or equipment therefor should be damaged, lost, or destroyed by reason of accidental deterioration or accidental loss (such as, but not limited to, fire, flood, gusts of wind, earthquake, theft or vandalism) before substantial completion of the Facility (as described in Section 15.1), COMPANY shall have the right to require CONTRACTOR to forthwith

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reconstruct, repair, or replace the work or materials so damaged, lost, or destroyed. The cost thereof shall be a part of the Budgeted Cost of the Work, the Project Budget shall be correspondingly increased by a Change Order, and the Fee shall be adjusted in accordance with Section 16.10.  
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22.2 DAMAGE AFTER SUBSTANTIAL COMPLETION OF FACILITY. If damage, loss, or

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destruction occurs by reason of accidental deterioration or accidental loss after substantial completion of the Facility as provided in Section 15.1 hereof,

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COMPANY shall be responsible. The provisions of this Article 22 shall not

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affect CONTRACTOR'S obligations under Article 18 and Article 19 hereof.  
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ARTICLE 23  
PROTECTION OF PROPERTY

23.1 CONTRACTOR'S PROTECTION OF FACILITY. Until COMPANY has taken over the

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Facility for operation or use, CONTRACTOR shall take all reasonable precautions, including those related to security and to sanitation and health for the safety of CONTRACTOR'S personnel and the personnel of others, to protect all work done and all materials furnished under the Contract (including those furnished by COMPANY for installation by CONTRACTOR, and regardless of whether the materials have been erected or not) from loss or damage by the processes of construction, by the action of the elements or by any other cause or causes; and after COMPANY has taken over the Facility for operation or use, CONTRACTOR shall take all reasonable precautions to protect the health and safety of CONTRACTOR'S personnel and the personnel of others and the Facility and all portions thereof from any and all loss or damage which CONTRACTOR or its subcontractors might cause while making alterations, adjustments, repairs, or replacements or while performing any other work at the job site. To the extent caused by CONTRACTOR, its subcontractors or vendors, or their respective officers, agents or employees, all loss or damage arising out of the processes of construction done under the Contract, or from any defect in the Construction Work, or from the action of the elements against which reasonable precautions were not taken, shall be the responsibility of CONTRACTOR. CONTRACTOR shall also protect COMPANY'S property which is not a part of the Facility from loss or damage which might result either directly or indirectly, from CONTRACTOR'S and its subcontractor's activities on COMPANY'S premises; and, if COMPANY should at any time believe that the means provided by CONTRACTOR for protecting COMPANY'S property are unsafe or inadequate, COMPANY shall have the right to require CONTRACTOR to make them safe and adequate, and CONTRACTOR shall comply with such requirement. However, neither the failure of COMPANY to make such demands nor CONTRACTOR'S compliance with such demands, if made, shall in anyway relieve CONTRACTOR from its liability for loss, damage, or injury resulting from the operations of it or its subcontractors.

ARTICLE 24  
PREPARATION OF THE FACILITY FOR OCCUPANCY AND TESTING

24.1 CONTRACTOR'S PREPARATION OF FACILITY. At such time as COMPANY may

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occupy or utilize the Facility for the installation of the Wafer Process Equipment or in preparation for the conduct of any System Performance Test,

CONTRACTOR shall flush equipment as required (using suitable precautions to prevent damage from freezing); check to see that all mechanical equipment and electrical equipment relating to the Wafer Process Equipment or the system to be tested in the Facility is in good working order and properly connected; make preliminary run-ins of the various pumps and compressors relating to the Wafer Process Equipment or the system to be tested in the Facility; purge equipment as required, and perform all other tasks that shall be needed for preparing and conditioning the Facility for installation of the Wafer Process Equipment or for conduct of any System Performance Test using in such work all reasonable precautions that may be necessary to prevent damage of any kind, from any cause or causes, to the Facility or any part thereof or to any chemicals intended for use therein. COMPANY shall furnish, at no cost to CONTRACTOR, all operating personnel (other than vendors' or subcontractors' service engineers) needed to operate equipment in the Facility which must be operated during the period that the Facility is being prepared and conditioned for occupancy and testing as aforesaid. Such personnel will perform their duties under CONTRACTOR'S direction and COMPANY'S supervision, and CONTRACTOR will have a skilled operator or operators present at the Site to furnish such direction and representation as needed during said period on each shift when such work is being performed.

24.2 CALIBRATION OF INSTRUMENTATION. As a part of CONTRACTOR'S work in  
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preparing the Facility for installation of the Wafer Process Equipment and for testing, CONTRACTOR shall calibrate all affected instruments and controls in the Facility, through the full range, and make all other necessary adjustments thereon using such skilled employees as shall be needed for this work, to insure that each instrument and control is properly performing its required function or functions. COMPANY may, if it so desires, place its own instrument employees on the Facility to check and test instruments and controls to the extent COMPANY considers desirable, and it is understood that said instrument employees shall limit their work to the checking and performance testing of instruments and controls. COMPANY'S employees shall report to CONTRACTOR'S chief instrument supervisor all faulty equipment or installation errors found, and CONTRACTOR shall make all necessary corrections and repairs. It is understood that neither the presence of COMPANY'S instrument employees on the Facility nor their acts in checking and performance testing of instruments and controls shall in any way relieve CONTRACTOR of its complete responsibility for the operation of said instruments and controls or of any other of its responsibilities under the provisions of the Contract.

24.3 TAKE OVER FOR INSTALLATION OR TESTING. When the preparation of the  
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Facility for installation of the Wafer Process Equipment or for system testing has been completed, CONTRACTOR shall so notify COMPANY and COMPANY shall then, if it agrees that the preparation for installation of the Wafer Process Equipment or for testing has in fact been completed and that all affected mechanical and electrical equipment in the Facility is in good working order, take over the Facility for installing the Wafer Process Equipment or take over the system in question for conducting a System Performance Test and give CONTRACTOR a written notice to this effect. However, neither this notice nor the act of COMPANY in taking over the Facility or such system for conducting a System Performance Test shall in any way relieve CONTRACTOR from its obligations to finally complete the Facility; or from CONTRACTOR'S responsibility to alter, adjust, repair, replace and otherwise correct workmanship or materials as necessary to enable the Facility and each system within the Facility to satisfactorily complete a System Performance Test and to meet and fulfill the warranties and guarantees under the Contract, or from any other obligations or responsibilities which extend beyond the preparation of the Facility for installation of the Wafer Process Equipment or for testing or pertain to matters arising after the issuance of said notice.

ARTICLE 25  
SYSTEM PERFORMANCE TESTS

25.1 CONDUCT OF SYSTEM PERFORMANCE TESTS; REPAIRS. As soon as practicable  
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after each system within the Facility shall have been properly prepared and conditioned for operation, COMPANY shall bring such system on stream and shall then make a system performance test (the "SYSTEM PERFORMANCE TEST") on such system by operating it under approximately normal conditions of temperature,



pressure, capacity, vibration, cleanliness and all other appropriate operating conditions prescribed by COMPANY for a period of seventy-two (72) consecutive hours to demonstrate that all materials, equipment and machinery are in proper working order and free from defects and that such system is operable under said conditions of temperature, pressure, capacity, vibration, cleanliness and the Facility Performance Criteria set forth in Exhibit A, and other appropriate

operating conditions and that the clean room and clean areas satisfy the cleanliness requirements. In the event of failure to demonstrate this on the first or any subsequent attempt, CONTRACTOR shall make, at CONTRACTOR'S cost, all alterations, adjustments, repairs, replacements or other corrections that may be needed and, if it becomes necessary to shut down the Facility or any portion thereof for the purpose of making alterations, adjustments, repairs, replacements or other corrections or for any other reason before any System Performance Test is satisfactorily completed, COMPANY at CONTRACTOR'S cost shall service the Facility (or such portions thereof as are involved in or affected by the shutdown) for resuming testing after said shutdown. Then, when the Facility is again ready for testing, COMPANY shall bring the system on stream and shall start a new System Performance Test. The foregoing procedure shall be repeated as often as necessary until such system shall have operated continuously, and in conformity with the Facility Performance Criteria and the Fab 30 Preliminary Design and final design, for a period of the duration specified in the first sentence of this Section 25.1 under normal conditions of temperature, pressure,

capacity, vibration, cleanliness and the Facility Performance Criteria and the Fab 30 Preliminary Design and final design; and the System Performance Test shall thereby have been satisfactorily completed. It is understood that CONTRACTOR shall be permitted to furnish, at its own expense, an observer to witness any System Performance Test.

25.2 NOTICE OF SATISFACTORY COMPLETION. When any System Performance Test on a system within the Facility has been satisfactorily completed as specified in Section 25.1 above, COMPANY shall notify CONTRACTOR to this effect in writing.

25.3 COORDINATION OF SYSTEMS. The parties acknowledge that CONTRACTOR will complete, and COMPANY will test and accept, certain systems in the Facility before other systems have been completed, tested and accepted. If one system, that has already been completed, tested and accepted, operates in conjunction with a second system, and if the balancing and coordination of the two systems and the testing of the second system reveals defects in the first system, then the first system shall be retested pursuant to Section 25.1 as if it had never been tested, and COMPANY'S previous acceptance of such defective system and COMPANY'S previous notice of completion of the System Performance Test pursuant to Section 25.2 shall be null and void and of no force or effect.

25.4 STANDARDS OF OPERATION. At no time (whether during any System Performance Test or any other period) shall CONTRACTOR operate the Facility or any part thereof in a manner which subjects any equipment to conditions of temperature, pressure, excess particulates, vibrations or stress that are more severe, in COMPANY'S opinion, than the maximum allowable operating conditions for which the equipment was designed; nor shall any alterations, adjustments, repairs, replacements or other corrections be made while the Facility or any

60

part thereof is in operation if, in COMPANY'S opinion, the safety of individuals or equipment would be jeopardized by so doing; nor shall any part of the Facility be continued in operation when, in COMPANY'S opinion, further operation thereof would be hazardous to the safety of individuals or equipment.

25.5 SHUT DOWN PROCEDURE. The procedure for shutting down the Facility shall be in accordance with a standard mutually agreed upon by and between CONTRACTOR and COMPANY.

26.1 USE OF COMPLETED CONSTRUCTION PHASES. COMPANY reserves the right to

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occupy and use Construction Phases or systems within the Facility as they are completed, including those Construction Phases or systems completed in advance of other portions of the Facility, and such Construction Phases or systems may be occupied or used pending completion of said other portions, provided that

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such occupancy or use by COMPANY would not unduly interfere with CONTRACTOR'S subsequent work on the Facility. CONTRACTOR shall complete the milestones in the order of precedence designated by Section 14.1 above, prepare the

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Construction Phases for occupancy and testing, and turn same over to COMPANY for operation or use in the aforesaid order of precedence. In such case COMPANY shall give CONTRACTOR a separate notice on each occasion when it takes over any such portion of the Facility for occupancy and testing. If any system in the Facility has been substantially completed and all Punch List items affecting such system, other than minor cosmetic matters (as described in Section 15.2.1),

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have been completed, then the provisions of Section 18.1 regarding warranties

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and guarantees shall apply. It shall be understood, however, that neither COMPANY'S taking over, or occupancy or use of, any portion or system of the Facility, nor any notice given by COMPANY in connection therewith shall in any way be construed to commit COMPANY to the acceptance of any Construction Work not completed or furnished in accordance with the Design Documents pertaining thereto, nor to constitute a Final Acceptance thereof nor to relieve CONTRACTOR from its obligation to complete the Facility (if it is then not already completed) or from any other unfulfilled obligations or responsibilities under the Contract.

ARTICLE 27  
CLOSING REPORT ON COST OF THE FACILITY

27.1 CLOSING REPORT. As soon as possible after substantial completion of

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the Facility but, in any event, before COMPANY'S Final Acceptance thereof, CONTRACTOR shall furnish COMPANY a detailed closing report showing the apportionment of the costs for the Facility among the Construction Phases in accordance with the closing report outline to be prescribed by COMPANY. In the event that agreement between the parties cannot be reached on any matter that is not covered by the above-mentioned outline concerning the detail or form of the closing report, it shall be understood that applicable requirements for apportionment of costs among the Construction Phases shall be defined in the Project Procedures Manual.

ARTICLE 28  
RECORD DOCUMENTS

28.1 DESCRIPTION OF RECORD DOCUMENTS. The record document is the written,

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printed, and drawn (including in electronic form) presentation of factual information on the completed Project, defining what, how, and where Construction Work was installed, together with any other relevant information, including without limitation two sets of electronic media of all drawings and specifications developed by CONTRACTOR or any subcontractor or vendor. The purpose of record documents is to provide factual information which will

61

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facilitate COMPANY'S future use, service, modification, and/or replacement of completed Construction Work, and which complements information furnished under Operation and Maintenance Data (defined in Section 29.1). CONTRACTOR must

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submit record documents to COMPANY for review and approval prior to the covering of any Construction Work. Such approval by COMPANY will constitute acceptance of the record documents with respect to such covered Construction Work.

28.2 INFORMATION ON RECORD DOCUMENTS. Record drawings shall specifically

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show all items of Construction Work, regardless of specialty, included under this Contract, location and runs of all mechanical systems, electrical and drainage whether above or below ground, equipment locations and connections, all structural elements, floor levels, yard paving and grade elevations, etc. CONTRACTOR shall keep on Site two complete sets of prints of the record drawings

for the sole purpose of recording all changes in work and all subcontractors. It shall be the responsibility of CONTRACTOR to enter appropriate information on the master set as soon as the affected Construction Work is accomplished and to determine that the subcontractor's set is also kept current. CONTRACTOR shall make record drawing sets available at all times to COMPANY. Information entered on record drawings shall be neat, legible and done in a draftsman-like manner in English.

28.3 RECORDING DATA. CONTRACTOR shall record information concurrently with  
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construction progress and date all entries. CONTRACTOR shall make drawing entries within two (2) working days after occurrence of any change or installation requiring recording. Any concealed Construction Work covered before recording data shall be uncovered as directed or as necessary to obtain data. Accuracy of records shall be such that future reference will disclose reliable information. CONTRACTOR shall make due care and all means necessary (including appropriate measuring devices) to determine and record the required information.

28.4 CONDUITS, PIPES, ETC.. In many cases on the Design Documents, the  
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arrangement of conduits, pipes, ducts, and similar items is shown schematically rather than as a precise scaled layout. CONTRACTOR shall identify the actual location of these with field verified horizontal and vertical dimensions from column lines, wall lines, or other permanent reference lines or points. CONTRACTOR shall identify the depth of buried lines or other features by relation to a datum elevation, using invert, centerline, top or bottom elevation, and by slope or rate of fall if any.

28.5 FINALIZATION OF DOCUMENTS OTHER THAN DRAWINGS. If documents have been  
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collected and retained in clear and complete condition and if entries thereon are clear and neat, the collected copies may be accepted as final record documents. Items not in acceptable condition shall be carefully transferred with all notations or information to the new copy.

28.6 FINALIZATION OF DRAWINGS. CONTRACTOR shall obtain COMPANY'S review of  
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the Project record print set on which information has been entered. After COMPANY has approved the notated print set, CONTRACTOR shall carefully transfer all notations, changes, data, and information to be the reproducible set. CONTRACTOR shall emphasize entries or revisions by asterisks, encirclement by a "cloud" around affected area, or other graphic device. When documents are complete and assembled, CONTRACTOR shall obtain COMPANY'S review, participate in review meeting(s) and make all changes in the documents as required or directed. CONTRACTOR shall promptly deliver the approved final record documents to COMPANY.

28.7 REMEDIES REGARDING RECORD DOCUMENTS. COMPANY shall have the right to  
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withhold portions of any progress payments due CONTRACTOR in the event the record documents are not maintained current or are not submitted as specified. The portions of progress payments withheld shall be reasonably related to the

work for which record documents have not been properly maintained or submitted. If CONTRACTOR fails to comply with the foregoing duties within a reasonable time set by the COMPANY, then COMPANY shall be entitled to produce the record documents at the expense of CONTRACTOR.

ARTICLE 29  
OPERATION AND MAINTENANCE DATA

29.1 SUBMITTAL OF OPERATION AND MAINTENANCE DATA. "OPERATION AND  
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MAINTENANCE DATA" is a written, printed, and drawn (including in electronic form) presentation of data describing the operation, maintenance, and repair of products and systems installed in the Project. CONTRACTOR shall, prior to submitting its final payment request, submit to COMPANY ten (10) sets of Operating and Maintenance Data describing all products, units or systems installed in the Project. Approved shop drawings or record documents may serve this purpose, but may require amplification as required by COMPANY.

29.2 CONTENTS OF DATA. Contractor shall provide the following information:  
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29.2.1 Product name and specification section under which it was included.

29.2.2 Manufacturer's trade or brand name, catalog or model number, and serial number (where applicable).

29.2.3 Name, address and telephone number of the installing or applying subcontractor.

29.2.4 Name, address and telephone number of local supplier or manufacturer's representative.

29.3 DATA FOR EQUIPMENT AND SYSTEMS. For equipment and systems, CONTRACTOR shall provide the following information:  
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29.3.1 Manufacturer's parts lists and spare parts recommendations.

29.3.2 Manufacturer's published performance ratings, curves or tables.

29.3.3 Manufacturer's diagrams or drawings of control and power wiring.

29.3.4 Control system diagrams and sequence of operation descriptions, including identification of final field settings of control points.

29.3.5 Testing, balancing, and adjusting tabulations and reports.

29.3.6 Valve identification lists.

29.3.7 Piping systems identification or color coding tabulations.

29.3.8 Manufacturer's printed operation and maintenance instructions, including (1) recommendations for lubrication and intervals at which service should be performed, (2) trouble shooting suggestions, (3) adjusting and repair directions.

29.3.9 CONTRACTOR prepared typewritten instructions, drawings, diagrams or other information as necessary to supplement, clarify, or complete the information supplied by the manufacturer.

63

29.3.10 A copy of each warranty, bond, or service contract which applies to a product and its installation.

ARTICLE 30  
TAXES

30.1 TAXES ASSESSED AGAINST FACILITY. CONTRACTOR shall pay all taxes, -----  
assessments, excises, impositions, royalties, tariffs and licenses levied, assessed, or imposed upon or on account of the execution of the work under the Contract or CONTRACTOR'S receipts therefrom or on the materials furnished by CONTRACTOR therefor or on the manufacture, storage, sale, receipts from sale, use, tariffs, licenses, royalties, value added, transportation, inspection, or delivery of said materials under any German Federal, state, or local law or laws. CONTRACTOR shall be reimbursed by COMPANY for all such taxes and other amounts (excluding interest or penalties, if any, connected therewith, and value added taxes described in Section 16.2.3.10) paid under the Contract that are -----  
adequately documented if such documentation is delivered to COMPANY pursuant to Clause 16.2.2.19.  
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30.2 TAXES AFFECTING EMPLOYEES. CONTRACTOR hereby accepts exclusive -----  
liability for the payment to the respective State of Saxony and German Federal Governments of all taxes, contributions, interest, and penalties provided in any

laws or in any applicable collective bargaining agreements with respect to the wages and salaries paid to CONTRACTOR'S employees for services rendered in connection with the Contract; and also agrees to require the subcontractors and vendors to do likewise with respect to the wages and salaries paid to their employees. CONTRACTOR shall be reimbursed by COMPANY for all such taxes and contributions (excluding interest and penalties) that are adequately documented if such documentation is delivered to COMPANY pursuant to Section 30.1.

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30.3 TAXES NOT PART OF BUDGETED COST. Taxes, assessments, excises and

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impositions shall not be a part of the Budgeted Cost of the Work and shall not be utilized in calculating the Fee.

ARTICLE 31  
LIENS [PFANDRECHT]

31.1 LIENS [PFANDRECHT]. CONTRACTOR shall prove with respect to movables

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and rights which are not indivisibly connected with the real property that it owns these movables and rights and that, in particular, there exist no rights of third parties such as liens and the like. It is only after CONTRACTOR will have furnished this proof that it may claim payment of costs of such movables or rights hereunder. If there is, at any time, indication to COMPANY of the existence of a lien as a result of which COMPANY will not be unrestricted owner of the movables or rights, or will be liable because of such lien, or will be subject to other claims of third parties, in particular without limitation, of subcontractors or suppliers, CONTRACTOR shall reimburse the respective costs payable by COMPANY in addition to the costs otherwise owed by COMPANY to CONTRACTOR hereunder. COMPANY shall further be entitled, as long as CONTRACTOR fails to prove that it owns the aforesaid movables or rights, to withhold any such payment, unless mere payment of the Reimbursable Costs hereunder would lead to the extinguishment of the lien on the movable or right by operation of law. The proof to be furnished by CONTRACTOR shall consist of a respective written waiver of respective liens issued by its supplier or subcontractor and of a declaration of CONTRACTOR'S supplier or subcontractor according to which it already transferred to CONTRACTOR full title to the movable or the right. Also proof of full payment of the subcontractor or supplier for the respective movable or right shall be deemed to be such proof, unless the agreement with the third party contains further rights.

64

ARTICLE 32  
PATENTS AND CONFIDENTIALITY

32.1 CONTRACTOR'S RESPONSIBILITY. Subject to the provisions of Section

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32.2, CONTRACTOR shall pay all royalties and license fees, and shall indemnify,

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save harmless and defend COMPANY from and against any action or suit which may be brought against COMPANY at any time for infringement of any patent or patents or for wrongful use of proprietary information of any third party allegedly relating to or arising from the Facility or any element or combination of elements thereof, furnished hereunder by CONTRACTOR, its subcontractors or vendors, or to the use of the Facility or any element or combination of elements thereof, or to the performance of any work hereunder; provided, however, that COMPANY promptly notifies CONTRACTOR in writing of the institution of such action or suit and permits CONTRACTOR to control its defense. CONTRACTOR shall pay all costs and expenses of any such action or suit, including compensation and expenses of experts and counsel of its choice and selection, and CONTRACTOR shall also pay and save COMPANY free and harmless from any damages or other sums awarded or assessed in any such action or suit. COMPANY may be represented by counsel of its own selection at its own expense, and agrees to cooperate fully in the defense of any such action or suit and to furnish all the evidence in its control.

32.2 DESIGN PROCESS. CONTRACTOR does not assume any obligation hereunder with

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respect to infringement of any patent arising solely from CONTRACTOR'S adherence to COMPANY'S written instructions or directions which involve the use of elements or combinations of elements. COMPANY shall indemnify, defend and hold harmless from and against any action or suit which may be brought against CONTRACTOR at any time for infringement of any patent or patents of any third

party allegedly relating to or arising from any element or combination of elements which COMPANY directed CONTRACTOR to use; provided, however, that CONTRACTOR promptly notifies COMPANY in writing of the institution of such action or suit and permits COMPANY to control its defense. COMPANY shall pay all costs and expenses of any such action or suit, including compensation and expenses of experts and counsel of its choice and selection, and COMPANY shall also pay and save CONTRACTOR free and harmless from any damages or other sums awarded or assessed in any such action or suit. CONTRACTOR may be represented by counsel of its own selection at its own expense, and agrees to cooperate fully in the defense of any such action or suit and to furnish all the evidence in its control. COMPANY'S acceptance of CONTRACTOR'S designs shall not be considered COMPANY'S written instructions or directions under this Section.

32.3 REPLACEMENT OF INFRINGING ITEM. With respect to claims within Section  
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32.1, CONTRACTOR shall, at its expense, (i) replace any infringing  
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item with a non-infringing item, (ii) modify such infringing item to make it non-infringing, provided that any such replacement or modification is of equal performance and quality to the original and that it shall not unreasonably interfere with COMPANY'S use of the Facility, or (iii) by license or other release from claim of infringement procure for COMPANY'S benefit the right to use such item.

32.4 CONFIDENTIALITY. In connection with work performed pursuant to this  
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Contract, CONTRACTOR and COMPANY may receive confidential, Proprietary Information (defined in Section 32.4.1 below) used in each other's operations.  
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The parties shall, and shall cause their subcontractors and vendors, and their respective agents, employees, principals, representatives and officers, to (i) not use, directly or indirectly, and maintain in strictest confidence all such information received directly or indirectly from the other party, (ii) not disclose such information to any third party without the disclosing party's prior written consent, and (iii) use such information only for design, material procurement, construction, alteration, maintenance, repair and

65

operation of COMPANY processes or equipment as required under this Contract. Each party shall, and shall cause its subcontractors and vendors to, restrict access to such information to those of their respective employees who have a reasonable need for such information in carrying out their respective duties on behalf of CONTRACTOR pursuant to this Contract and who have agreed to maintain such information in confidence. All persons issued CONTRACTOR badges shall execute confidentiality agreements in form satisfactory to COMPANY.

32.4.1 PROPRIETARY INFORMATION. As used herein "PROPRIETARY  
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INFORMATION" refers to all information relating to processes, operations, plans, products, know-how, equipment or trade secrets or other technical data, policies or agreements, including this Contract, or any other information of a confidential nature and all documents, instruments, data, reports, interpretations, statements, projections, forecasts and other information (including the Fab 30 Preliminary Design and all Contract Documents) concerning COMPANY or any company owning, owned by or under common ownership with COMPANY (an "AFFILIATE"), or concerning CONTRACTOR or any subcontractor or vendor, whether furnished before or after the date hereof, and regardless of whether such information is furnished in writing, electronically, orally or in some other manner, and whether furnished by COMPANY, or its Affiliates or CONTRACTOR or any subcontractor or vendor, or their respective directors, officers, employees, representatives, contractors, subcontractors, vendors, managers, agents, controlling persons, engineers, attorneys, accountants and consultants (such directors, officers, employees, representatives, contractors, subcontractors, vendors, managers, agents, controlling persons, engineers, attorneys, accountants and consultants being referred to herein, collectively, with respect to any person as such person's "ADVISORS") which contain or otherwise reflect such information. Notwithstanding the foregoing, Proprietary Information does not include information which (a) is or becomes generally available to the public other than as the result of disclosure by COMPANY or its Affiliates or CONTRACTOR or any subcontractor or vendor, or their respective Advisors, or (b) was available on a non-conditional basis prior to its disclosure by COMPANY or its Affiliates or CONTRACTOR or any subcontractor or vendor, or their respective Advisors.

32.4.2 HOLD IN CONFIDENCE. Both COMPANY and CONTRACTOR shall, and

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shall cause their Advisors and all subcontractors and vendors and their respective Affiliates and Advisors to, hold and treat all Proprietary Information in confidence and not disclose or reveal to any person (except for those Advisors employed by CONTRACTOR or COMPANY who are actively and directly participating in the Project and have a need to know such Proprietary Information). Each party shall cause such persons to observe the terms of this Agreement, and will take appropriate action to ensure that it and its Advisors will act in accordance herewith and will not use Proprietary Information for any purpose other than for the Project. Each party shall take all steps which may be necessary or appropriate in order that its officers, agents and employees and all subcontractors, vendors and consultants are bound by the provisions of this Article. Appropriate clauses to carry out the purpose and intent hereof shall be included in all subcontracts, purchase orders and consulting agreements entered into by CONTRACTOR pursuant to the performance of this Contract.

32.4.3 ANNOUNCEMENTS. CONTRACTOR shall not make any announcements or

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release any information or photographs concerning this Contract or COMPANY or the Project to any person, including without limitation any member of the public or the press or any official body, without COMPANY'S prior written consent. COMPANY'S Project Manager is designated by COMPANY as responsible for authorizing any such announcement or release of information. COMPANY may withhold its consent in its good faith business judgment.

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ARTICLE 33  
COMPANY'S RIGHT TO TAKE OVER THE WORK

33.1 COMPANY'S OPTION. COMPANY reserves the right at any time prior to

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completion of CONTRACTOR'S work hereunder to take over the balance of the work to be performed hereunder and complete same with COMPANY'S labor forces and some or all of CONTRACTOR'S subcontractors and vendors not then in default, by giving CONTRACTOR at least ten (10) working days prior written notice as to the effective date of such takeover. CONTRACTOR shall turn over to COMPANY the Site, the Construction Work and all Design Documents, and other matter that CONTRACTOR may have prepared for the Facility and all materials and supplies paid for by COMPANY either directly or indirectly, and COMPANY shall have the right to make use of the Design Documents, materials and supplies for such purposes as COMPANY may desire in accordance with Section 4.11. Also, upon such

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termination COMPANY shall either (i) accept CONTRACTOR'S commitments under unfulfilled purchase orders theretofore issued by CONTRACTOR in good faith in connection with the work included under the Contract and uncompleted subcontracts for work included under the Contract which CONTRACTOR may have theretofore entered into with the consent of COMPANY, other than purchase orders and subcontracts in default; and CONTRACTOR shall execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights, as COMPANY may require for the purpose of fully vesting in itself the rights and benefits of CONTRACTOR under such purchase orders and subcontracts; or (ii) reimburse CONTRACTOR for all costs reasonably incurred by CONTRACTOR in respect of subcontracts and purchase orders not in default and not accepted by COMPANY, pursuant to Section 33.2.

33.2 REIMBURSEMENT OF CONTRACTOR. In the event of termination of the

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Contract pursuant to Section 33.1 above, COMPANY shall pay CONTRACTOR in  
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accordance with the terms of Section 35.1 hereof for all work which has been  
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performed, and shall pay CONTRACTOR a pro rata share of CONTRACTOR'S Fee as set forth in Section 35.1, less all damages, losses, claims, cost and expense  
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suffered or incurred by COMPANY in connection with any Default or Event of Default by CONTRACTOR under Section 36.1 below. All Reimbursable Costs  
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reasonably incurred by CONTRACTOR after such termination in respect of work not yet performed shall be reimbursed. Payments which CONTRACTOR is obligated to

make to subcontractors and vendors whose subcontracts and purchase orders are not accepted by COMPANY and to workers exclusively hired for the work on the Facility shall also be reimbursed. CONTRACTOR shall use its best efforts to obtain in every subcontract and purchase order and all exclusive hires a right to terminate such subcontract, purchaser order or exclusive hire in the event COMPANY takes over the work pursuant to Article 33 or Article 36 at no

additional cost. CONTRACTOR shall take all reasonable steps to minimize such costs incurred by reason of COMPANY taking over the work.

33.3 GUARANTEES. CONTRACTOR shall be obligated for all warranties and guarantees under the Contract applying to the portion of the work completed prior to the termination of CONTRACTOR'S work.

ARTICLE 34  
COMPANY'S RIGHT TO SUSPEND WORK

34.1 COMPANY'S RIGHT TO SUSPEND PROJECT. Company shall have the right, at its sole discretion, to suspend the performance of all or any part of the Project at any time and shall give CONTRACTOR prompt written notice thereof. Upon receipt of such notice, CONTRACTOR shall proceed with the orderly cessation of work to accomplish such suspension and take such steps as will protect and preserve the work completed and permit the resumption of the work upon termination of the period of suspension.

34.2 SUSPENSION UPON COMPANY'S NOTICE. CONTRACTOR shall, upon written

67

notice from Company, suspend performance of all or any portion of the work on the Project for such time or times and in such manner as Company may specify in such notice. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

34.2.1 As soon as possible discontinue work to the extent specified in the notice.

34.2.2 Continue to preserve and maintain at the Site any materials and supplies furnished or used in the performance of the Construction Work, to the extent specified in such notice.

34.2.3 Continue to prosecute and perform any work that is not suspended.

34.2.4 Take all necessary measures to mitigate and minimize the effect of the suspension on any costs incurred or to be incurred by Contractor or Company.

34.3 COMPENSATION FOR SUSPENSION. As full compensation for such suspension, Contractor shall be reimbursed for all costs reasonably incurred as a result of the suspension, including but not limited to:

34.3.1 The reasonable costs, incurred by virtue of the suspension, for the storage and maintenance of Contractor's personnel and materials at the Site on a standby status. Compensation for equipment on standby shall be determined in accordance with Section 8.5.

34.3.2 The reasonable costs of mobilizing and demobilizing any equipment and work forces.

34.3.3 An equitable adjustment for any increase in the cost to Contractor of subsequently performing any suspended work.

34.4 RESUMPTION OF WORK. Upon receipt of written notice to resume suspended work, Contractor shall as soon as possible resume performance of the suspended work to the extent required in the written notice. In the event of the resumption of work, Contractor shall be entitled to reimbursement of extra costs incurred through the delay resulting from the suspension. The Budgeted



Costs shall be increased by the costs of suspension and the extra costs incurred after resumption of the work. Any claim on the part of CONTRACTOR for compensation shall be made within twenty (20) working days after receipt of notice to resume work. However, no additional compensation or extension of time shall be granted if suspension resulted from CONTRACTOR'S noncompliance with the requirements of this Contract.

34.5 TERMINATION FOLLOWING SUSPENSION. In the event such suspension were

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to continue for more than 183 consecutive calendar days, either party shall have the option of terminating this Contract. In case of such termination, CONTRACTOR shall deliver, and COMPANY and any Affiliate of Company shall have the right to make use for the completion of the work and the other purposes identified in Section 4.11 of all Design Documents, including without limitation

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all plans, specifications, drawings, data sheets, and other matters that CONTRACTOR has prepared for the Facility, as set forth in Section 4.11. To the

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extent subcontractors, vendors or others have an interest in any such Design Documents, CONTRACTOR shall comply with Section 4.11 regarding the assignment

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and conveyance by such subcontractors, vendors and others of the rights of use specified in Section 4.11 to COMPANY or COMPANY'S Affiliate. Upon such termination and payment as herein provided, title to all materials, work in process and other things procured or produced by CONTRACTOR under this Contract (except construction equipment owned by CONTRACTOR) shall vest in COMPANY. Upon such termination, COMPANY shall be

68

responsible for the reasonable cost of settling and paying claims arising under CONTRACTOR'S commitments under all unfulfilled purchase orders theretofore issued by CONTRACTOR in good faith in connection with the work included under the Contract and all uncompleted subcontracts for work included under the Contract which CONTRACTOR may have theretofore entered into with the consent of COMPANY; and if COMPANY requests, CONTRACTOR shall execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights, as COMPANY may require for the purpose of fully vesting in itself the rights and benefits of CONTRACTOR under such purchase orders and subcontracts. In the event of such termination, COMPANY shall reimburse CONTRACTOR pursuant to Section 35.1 as if the termination had occurred

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pursuant to Article 35.

ARTICLE 35  
TERMINATION FOR CONVENIENCE OF COMPANY

35.1 TERMINATION BY COMPANY. COMPANY may, at any time, for any reason

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whatsoever, whether or not CONTRACTOR is in default, and without notice to CONTRACTOR'S sureties, if any, terminate the Contract in whole or in part by giving written notice to CONTRACTOR specifying the part or parts of the work to be terminated and the effective date of the termination. Upon any such termination, CONTRACTOR shall discontinue work as soon as possible and minimize associated costs of termination. Provided such termination is not due to CONTRACTOR'S Default, COMPANY shall reimburse CONTRACTOR for all reasonable costs and expenses incurred by CONTRACTOR by virtue of such termination, including but not limited to:

35.1.1 (i) All amounts due in accordance with Section 16.2 hereof and

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not previously paid to CONTRACTOR for work completed in accordance with this Contract prior to or in connection with such notice, and for work thereafter completed as specified in such notice, plus (ii) a pro rata share of CONTRACTOR'S Fee which shall be the portion of the Budgeted Fee earned to the termination, calculated as follows:

Net COW  
----- X Budgeted Fee = Portion of Budgeted Fee  
Budgeted COW

Where:

Net COW means Actual Cost of the Work incurred through the termination plus any reasonable costs that cannot be avoided by cancellation of contracts and purchase orders;

Budgeted COW means the Budgeted Cost of the Work;

and (iii) if CONTRACTOR is not then in default hereunder, a reasonable sum, under all of the circumstances, reflecting any Project Budget cost savings realized through the date of such termination.

35.1.2 The reasonable cost of settling and paying claims arising out of the termination of work under subcontracts or purchase orders as hereinafter provided. CONTRACTOR shall use its best efforts to obtain in every subcontract and purchase order the right to terminate such subcontracts and purchase orders in the event COMPANY terminates the Contract pursuant to this Article 35 or

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Article 36 at no additional cost.  
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35.1.3 Any other reasonable costs actually incurred by CONTRACTOR incidental to such termination of work.

35.1.4 A deduction or offset for all damages, losses, claims, cost and expense suffered or incurred by COMPANY in connection with any Default or

69

Event of Default by CONTRACTOR under Article 36 below.  
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Except for the foregoing compensation CONTRACTOR waives any claims for damages on account of such termination.

35.2 ACTIONS UPON RECEIPT OF NOTICE. Upon receipt of any such notice of  
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termination, CONTRACTOR shall:

35.2.1 As soon as possible discontinue work on the date and to the extent specified in the notice.

35.2.2 Deliver to COMPANY copies of all Design Documents, including without limitation all plans, specifications, drawings and data sheets and all data, reports, completed work, work in process, and such other information and materials relating to the terminated part of the work as may have been acquired or prepared by CONTRACTOR in connection with this Contract for COMPANY'S or any Affiliate's use in accordance with Section 4.11.  
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35.2.3 Continue to prosecute and perform any unterminated part of the work.

35.2.4 Remove its personnel and subcontractors and construction outfit from the Site as to the terminated part of the Work.

CONTRACTOR shall take all necessary measures to mitigate and minimize the effect of the termination on any costs incurred or to be incurred by CONTRACTOR or COMPANY.

35.3 GUARANTEES FOLLOWING TERMINATION. In the event of termination of the  
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Contract pursuant to Section 35.1 above, CONTRACTOR shall be obligated for all  
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warranties and guarantees under the Contract applying to the portion of the work completed prior to the termination of CONTRACTOR'S work. This section shall also apply in the event of a termination pursuant to Section 34.5.  
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ARTICLE 36  
DEFAULT BY THE CONTRACTOR

36.1 EVENTS OF DEFAULT. If any or all of the work to be performed under  
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this Contract is abandoned by CONTRACTOR; or if the Contract is assigned in violation of the provisions hereof; or if any work is subcontracted by CONTRACTOR without any required approval of COMPANY; or if CONTRACTOR becomes insolvent or unable to meet its payroll or other current obligations, or is adjudicated a bankrupt, or has an involuntary petition in bankruptcy filed against it, or makes an assignment for the benefit of creditors, or files a petition for an arrangement, composition or compromise with its creditors under any applicable laws, or has a receiver, trustee or other officer appointed to take charge of its assets; or if CONTRACTOR persistently disregards applicable laws or ordinances; or if CONTRACTOR fails, except in cases beyond its control, to supply enough properly skilled workers or proper materials or to prosecute the Construction Work with promptness and diligence; or if COMPANY determines that the Project Schedule is not being maintained or that CONTRACTOR is violating any of the conditions or provisions of this Contract; or if CONTRACTOR refuses or fails to perform properly any portion of the work in accordance with the terms of this Contract (any of the foregoing, a "DEFAULT"), and if, within ten (10) working days after receipt of a written notice of default from COMPANY, CONTRACTOR fails to remedy such Default or to provide satisfactory evidence that such Default will be corrected as soon as possible (an "EVENT OF DEFAULT"), COMPANY may take over the work and/or withhold any amounts otherwise due under the Contract and/or terminate by written notice the Contract without thereby releasing CONTRACTOR from any of its obligations or liabilities under the Contract, or affecting the rights conferred on COMPANY by the Contract.

70

36.2 COMPANY'S RIGHT TO TAKE OVER WORK. Upon such Event of Default,  
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Company may take possession of the Site, the Construction Work and of all plans, specifications, drawings, data sheets, materials, supplies, construction equipment and tools, construction outfit, subcontracts, purchase orders, and facilities thereon and use them to finish the work by whatever method COMPANY may deem expedient and dispose of them in partial satisfaction of any obligations due from CONTRACTOR to COMPANY. In such case, COMPANY at its option may accept CONTRACTOR'S commitments under all unfulfilled purchase orders theretofore issued by CONTRACTOR in good faith in connection with the work included under the Contract and all uncompleted subcontracts for work included under the Contract which CONTRACTOR may have theretofore entered into, with the consent of COMPANY; and upon COMPANY'S request, CONTRACTOR shall execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights, as COMPANY may require for the purpose of fully vesting in itself the rights and benefits of CONTRACTOR under such purchase orders and subcontracts. In the event COMPANY demands of CONTRACTOR the assignment of contractual claims against subcontractors or vendors or otherwise against third parties, COMPANY shall in return, be obliged to assume the obligations under such subcontracts or purchase orders that arise after such assignment takes effect.

36.3 COMPANY'S RIGHT TO COMPLETE WORK. Upon such termination or  
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withholding, COMPANY shall have the right to complete any work by whatever method COMPANY may deem expedient, including employing another contractor under such form of contract as COMPANY may deem advisable or having COMPANY provide any labor or materials and perform any part of such work that has been terminated. COMPANY shall not be required to obtain proposals for completing such work, but may make such reasonable expenditures as in COMPANY'S judgment, taking into account the duty to minimize damages, will best accomplish such reasonable completion of the Facility. The expense of completing such work (above the Budgeted Cost of the Work), together with a reasonable charge for administering any contract for such completion, will be charged to CONTRACTOR, and such expense will be deducted by COMPANY from such monies as may be due or may at any time thereafter become due to CONTRACTOR. In case such expense exceeds the sum which would have otherwise been payable under this Contract, CONTRACTOR shall be liable for and shall upon notice from COMPANY promptly pay to COMPANY the amount of such excess. COMPANY shall not be liable for any damages on account of such termination.

36.4 CONTRACTOR'S ACTION UPON RECEIPT OF NOTICE. Upon receipt of any such  
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written notice of termination of right to proceed, CONTRACTOR shall:

36.4.1 DISCONTINUE WORK. As soon as possible discontinue work on the  
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date and to the extent specified in the notice.

36.4.2 DELIVER DESIGN DOCUMENTS, ETC. Deliver to COMPANY, the Site

and any plans, specifications, drawings, data sheets, data, reports, completed work, work in process, and such other information and materials relating to the terminated work as may have been acquired or prepared by CONTRACTOR hereunder. CONTRACTOR shall not have any right to withhold the aforesaid documents.

36.4.3 PERFORM UNTERMINATED WORK. Continue to prosecute and perform

any uninterminated part of the work.

36.4.4 REMOVAL OF OUTFIT. Remove from the Site CONTRACTOR'S and any

subcontractor's or vendor's construction outfit, temporary buildings and materials as set forth in said notice.

36.5 REMEDIES CUMULATIVE. The rights and remedies of COMPANY provided by

this provision of the Contract are in addition to any and all other rights and remedies provided by law or under this Contract, and nothing contained herein shall prejudice the rights of COMPANY to take whatever action it may deem necessary or appropriate to obtain the satisfactory performance of this Contract. This shall not, however, under any circumstances be construed to entitle COMPANY to lost profits.

36.6 Limits On Amount Payable To Contractor. Should COMPANY invoke its

termination rights pursuant to this Article 36, any amount payable to CONTRACTOR shall not cause the Budgeted Cost of the work to be exceeded, nor shall it exceed an amount calculated as follows:

36.6.1 Take the Reimbursable Costs incurred by CONTRACTOR to the date of termination.

36.6.2 Add a portion of the CONTRACTOR'S Budgeted Fee computed upon the percentage of Construction Work completed to the date of termination.

36.6.3 Subtract the aggregate of previous payments made by COMPANY.

36.6.4 Subtract any compensation for losses, damages, liabilities, claims, expenses and other costs suffered or incurred by COMPANY in connection with CONTRACTOR'S default.

COMPANY shall also pay CONTRACTOR fair compensation, either by purchase or rental at the election of COMPANY, for any equipment owned by CONTRACTOR which COMPANY elects to retain and which is not otherwise included in the Cost of the Work under Section 36.5.1.

ARTICLE 37
PENALTY CLAUSE

37.1 DAMAGES FOR DELAY IN SUBSTANTIAL COMPLETION OF FACILITY.

CONTRACTOR shall substantially complete the Facility in a timely manner and not later than the Latest Date For Substantial Completion Of The Facility. For each Delay Week (defined below) or portion thereof by which CONTRACTOR culpably exceeds the Latest Date For Substantial Completion Of The Facility, CONTRACTOR shall pay COMPANY a contract penalty in the amount listed below:

Table with 3 columns: Week Following The Week Ending On The Latest Date For Substantial Completion Of The Facility, Amount of Contract Penalty Payable That Week, Cumulative Contract Penalty. Rows for 1st Week, 2nd Week, 3rd Week, 4th Week.

37.2 PAYMENT OF CONTRACT PENALTY. CONTRACTOR shall pay COMPANY the

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foregoing sums as contract penalty (and COMPANY shall have the right to offset the foregoing sums against any amounts owed by COMPANY to CONTRACTOR) for each week beyond the Latest Date For Substantial Completion Of The Facility that the Facility remains substantially uncompleted. Each week (a "DELAY WEEK") shall commence on the day of the week following the day on which the Latest Date For Substantial Completion Of The Facility occurred, and if

the Facility is substantially completed on a day other than the last day of a Delay Week, the amount of penalties shall be pro-rated on the basis of a 7-day week. Notwithstanding anything to the contrary contained in this Article, in no event shall the amount of contract penalties payable by CONTRACTOR under this Section 37.2 exceed DEM10,000,000, and in no event shall COMPANY be obligated

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to prove the existence or extent of damages as a precondition to receiving payment. COMPANY may claim the foregoing penalties prior to, in connection with or after Final Acceptance of the Facility or final payment of the Contract Amount.

37.3 SUBCONTRACT PENALTY CLAUSES. If and to the extent CONTRACTOR

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has a claim for payment of contract penalties against its subcontractors or vendors because such subcontractors or vendors have exceeded any contractual deadlines under the subcontracts or purchase orders, CONTRACTOR agrees to fully enforce such contract penalties against its subcontractors or vendors at its own cost. CONTRACTOR shall pay to COMPANY 50% of the contract penalties paid by its subcontractors or vendors (for purposes of clarification, the DEM10,000,000 limit in Section 37.2 does not apply to this Section 37.3). Payment of contract

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penalties by any subcontractor or vendor will be deemed to exist also if CONTRACTOR can offset its claim for contract penalties against other claims of such subcontractor or vendor. CONTRACTOR shall, without COMPANY'S request, inform COMPANY at all times of the enforcement of its contract penalties. Further, immediately after acceptance by CONTRACTOR of the work performed by any subcontractor or vendor, however, no later than upon receipt of the subcontractor's or vendor's final invoice, CONTRACTOR shall inform COMPANY in detail whether CONTRACTOR has a claim for contract penalties against the subcontractor or vendor, whether CONTRACTOR will enforce such claim, whether CONTRACTOR has already received payment, whether CONTRACTOR has offset the claim for contract penalties against outstanding claims of the subcontractor or vendor or whether (and if so, why) there exist no claims for contract penalties against the subcontractor or vendor. CONTRACTOR shall include a valid contract penalty clause in each subcontract and purchase order concluded by CONTRACTOR, and CONTRACTOR shall use its best efforts to have the contract penalty clause be equal to ten percent (10%) of the total amount of the subcontract or purchase order. COMPANY shall be entitled to enforce this claim for payment only if the prerequisites as mentioned in Section 37.1 above toward CONTRACTOR exist. If

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CONTRACTOR fails to enforce any such claim, CONTRACTOR shall assign such claim to COMPANY, and COMPANY shall be entitled to enforce such claim.

37.4 SET-OFF OF CONTRACT PENALTIES. Any contract penalty actually paid

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by CONTRACTOR shall be set off against the amount of any damages actually paid to COMPANY by virtue of CONTRACTOR'S failure to execute the design and engineering services or the Construction Work in a timely manner.

ARTICLE 38

COMPLIANCE WITH LAWS, CHOICE OF LAW, CHOICE OF FORUM, CONTRACT LANGUAGE

38.1 COMPLIANCE WITH APPLICABLE LAW. CONTRACTOR shall comply with, and

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shall require that all its subcontractors and vendors comply with, all municipal ordinances, state, and federal laws applicable to the Facility and all applicable orders, regulations, and directives issued thereunder by any authorized government agency, and any amendments thereto, in the performance of the Contract and will furnish or cause to be furnished to COMPANY, such stipulations, statements, or certificates evidencing such compliance therewith

as COMPANY may require for its protection. All materials and workmanship shall comply with all laws, ordinances, codes, orders, regulations, rules, directives and the latest standards applicable thereto.

38.2 INDEMNITY FOR VIOLATION. If, in the execution or performance of this  
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Contract, CONTRACTOR shall have violated any laws, rules, orders, regulations, or ordinances applicable to the work hereunder, then CONTRACTOR

73

shall indemnify and save COMPANY harmless from all damages or penalties paid by COMPANY or imposed upon COMPANY resulting from any such violation committed by CONTRACTOR or its subcontractors, vendors or their respective officers, agents, representatives or employees in such execution or performance of the work hereunder.

38.3 CHOICE OF LAW. This Agreement and the Contract (including without  
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limitation the enforcement of all rights and duties of the parties arising from or relating in any way to the subject matter of the Contract) and the relationship of the parties arising out of the Project and all disputes and claims, whether in contract, tort, or otherwise regarding the Project, shall be governed by, interpreted and construed in accordance with the internal laws of Germany (including the enforcement of all rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement), without regard to conflict of laws principles that would cause the law of another jurisdiction to be applied.

38.4 DISPUTES; ARBITRATION.  
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38.4.1 RESOLUTION OF DISPUTES BY ARBITRATION. All disputes between  
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CONTRACTOR and COMPANY regarding this Agreement or the Contract (including without limitation the enforcement of all rights and duties of the parties arising from or relating in any way to the subject matter of the Contract) or the relationship of the parties arising out of the Project and all disputes and claims, whether in contract, tort, or otherwise regarding the Project, shall be resolved by binding arbitration in accordance with this Section 38.4. Every  
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subcontract and purchase order shall obligate the subcontractor and vendor to consent to their joinder in any such arbitration proceeding between COMPANY and CONTRACTOR and to resolve all disputes of the nature described in this Section, including without limitation disputes involving the subcontract or purchase order, by binding arbitration in accordance with this Section 38.4, and  
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CONTRACTOR and COMPANY may intervene as a matter of right therein. Any such disputes, however, shall not entitle CONTRACTOR to suspend or discontinue work on the Project.

38.4.2 PLACE OF ARBITRATION. Any arbitration shall be conducted in  
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Paris, France. After consultation with the parties, the arbitrators shall select the time, date and place in Paris, France at which each session of the arbitration shall take place. The parties and their counsel shall be notified in writing by the arbitrators of such times, dates and places.

38.4.3 EXCLUSIVE JURISDICTION. The International Chamber of Commerce  
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of Paris, France shall have exclusive jurisdiction over all such disputes. Except as provided herein, the rules and procedures set forth in the International Chamber of Commerce Rules Of Conciliation And Arbitration shall govern all such arbitration proceedings.

38.4.4 SELECTION OF ARBITRATORS. All such disputes shall be heard  
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and decided by a panel of three arbitrators, one arbitrator to be named by the party bringing the action, one arbitrator to be named by the party defending such action and the presiding arbitrator to be named by the two arbitrators appointed. If the two appointed arbitrators cannot select the third arbitrator within forty-five (45) calendar days after the later appointment of the two, the third arbitrator shall be selected by the International Chamber of Commerce in Paris, France. All arbitrators shall be independent of both CONTRACTOR and

COMPANY. The arbitrators selected by CONTRACTOR and COMPANY shall have at least fifteen (15) years experience in the area or areas that are the subject matter of the arbitration. Additionally, the third arbitrator shall have at least fifteen (15) years experience as an attorney practicing German law and shall have experience in the practice of American law at least equivalent to an LL.M. degree. If an arbitrator is unable to perform his task due to death, resignation or any other reason which renders participation in the proceedings impossible, he shall be replaced by an arbitrator to be

74

appointed according to the foregoing provisions.

38.4.5 LANGUAGE OF PROCEEDINGS. The exclusive language of all  
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arbitration proceedings shall be English.

38.4.6 APPLICABLE LAW. All decisions shall be based upon the  
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internal law of Germany and the German Code of Civil Procedure (excluding Private International Law Rules), without regard to conflict of laws principles, and the arbitrators shall be bound to apply such law.

38.4.7 ARBITRATION AWARD. The arbitration award shall be in English,  
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shall state the arbitrators' reasons for their decision and shall award to the prevailing party reasonable costs and expenses, including reasonable travel costs, administrative expenses, costs of appeal (to be determined following the conclusion of any appeal), expert witness fees, reasonable fees of the arbitrator, and reasonable attorneys' fees incurred by virtue of the arbitration proceedings. Any resulting award shall be final and rendered in such form that judgment may be entered thereon in any court of competent jurisdiction. The arbitrators shall prepare findings of fact and conclusions of law, applying the internal laws of Germany. With the exception of requesting judicial review of the award for errors of law, the award is not subject to judicial review. However, the prevailing party may petition a court to award costs of enforcing the arbitration award to the prevailing party. Under no circumstances shall arbitrators modify or deviate from the provisions of the Contract.

38.4.8 PROVISIONAL REMEDIES. Nothing in this section shall be  
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construed to preclude either party from seeking provisional remedies, including but not limited to, temporary restraining orders and preliminary injunctions, from any court of competent jurisdiction, to protect its rights pending arbitration but such preliminary relief shall not be sought as a means of avoiding arbitration.

38.5 CONTRACT MADE IN ENGLISH. This Contract has been made and executed in  
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the English language and in a German translation. In case of dispute between the parties with respect to this Contract or the Contract Documents, the English version shall always prevail.

#### ARTICLE 39 FINANCING OF PROJECT

39.1 TAKE OVER BY PROJECT LENDER. COMPANY shall have the right to assign  
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the Contract, or any of COMPANY'S rights and obligations thereunder, in whole or in part, to the lender or lenders providing part or all of the financing for the Facility, and CONTRACTOR presently consents to any assumption of the Contract by any such lender or lenders. CONTRACTOR agrees to perform its obligations under the Contract, and to cause all of its subcontractors and vendors to perform their obligations under all subcontractors and purchase orders, on behalf of such lender or lenders, provided that such lender or lenders comply with  
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COMPANY'S assigned obligations arising subsequent to such lender or lenders taking over the Project.

39.2 APPROVALS BY PROJECT LENDER. The lender or lenders providing part or  
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all of the financing for the Facility may participate in the approval of Design Documents, the Project Budget, the Project Schedule and changes, additions and omissions.

39.3 AUDIT BY PROJECT LENDER. The lender or lenders providing part or all  
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of the financing for the Facility and their agents and representatives shall  
have the same rights to inspect the Construction Work and to review and

75

audit the books and activities of CONTRACTOR and any subcontractor or vendor in  
connection with the Project that COMPANY has under the Contract.

39.4 AMENDMENT OF AGREEMENT. CONTRACTOR agrees to amend this Agreement to  
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satisfy the requirements of any lender or lenders providing financing for the  
Project, provided such amendment does not materially increase the obligations or  
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reduce or restrict the rights of CONTRACTOR hereunder or change the amount of  
compensation that CONTRACTOR is entitled to receive hereunder or modify the  
means of calculating such compensation.

ARTICLE 40  
FORCE MAJEURE

40.1 EVENTS OF FORCE MAJEURE. Occurrences beyond the control of the party  
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affected that cause delays in or failure of performance of such affected party  
under the Contract (excluding performance of a provision requiring the payment  
or expenditure of money) shall constitute force majeure, including, but not  
limited to, acts of governmental authority (excluding delays or failures of  
performance attributable to the affected party's delay or other fault and  
excluding proper exercise of the police power in response to an improper act or  
omission of the affected party), unusually severe weather conditions (as defined  
in this Section), strikes or other concerted acts of workmen (except to the  
extent caused by the affected party or its agents, officers, representatives,  
subcontractors or vendors and except to the extent that a strike had been  
announced in advance and provision could have been made to alleviate such  
strike's effects), fires, floods, explosions, riots, sabotage shipwrecks (except  
to the extent such fires, floods, explosions, riots, sabotage or shipwrecks were  
caused by the affected party or its agents, officers, representatives,  
subcontractors or vendors), war and rebellion. As used in this Section, the  
term "unusually severe weather conditions" shall mean weather conditions that  
(i) CONTRACTOR establishes to COMPANY'S reasonable satisfaction were not  
reasonably foreseeable and (ii) were sufficiently severe that thirty percent  
(30%) of the work force employed on the Project were unable to work, and (iii)  
resulted in delay that affected the critical path set forth in the Project  
Schedule. Notwithstanding anything herein to the contrary, events of "force  
majeure" shall not include the following: (I) delays or failures of performance  
caused by general economic conditions or (II) delays or failures of performance  
caused by open market conditions, such as inability to procure labor or  
materials in the open market. Insufficiencies in the design of the Facility,  
rejection by COMPANY pursuant to this Agreement of any proposed subcontractor or  
vendor or absence of CONTRACTOR'S Representatives or other personnel shall also  
not be considered as a just cause of delay. CONTRACTOR shall be fully  
responsible for the timely ordering, scheduling, expediting, delivery, and  
installation of all equipment and materials. Therefore, delays by vendors in  
manufacture or delivery of materials, which delays are not caused by force  
majeure, or shortages of labor or materials resulting from general market  
conditions shall not be considered as a just cause for delay.

40.2 EFFECT ON TIME FOR PERFORMING OBLIGATION. Either party's inability to  
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perform a non-monetary obligation under the Contract on time and as required by  
reason of the occurrence of force majeure, shall cause such obligation to be  
suspended, but only until the cessation of such occurrence, so far as the  
affected party's ability to perform is affected by that force majeure  
occurrence. In the event that such force majeure obstructs performance of the  
Contract for more than six (6) months, the parties hereto shall consult with  
each other to determine whether the Contract should be modified. COMPANY and  
CONTRACTOR will not unreasonably withhold their respective consents to a request  
by the other party to extend the Project Schedule or increase the Budgeted Cost  
of the Work if force majeure has obstructed performance of the Contract.

76



40.3 EFFECT ON COMPENSATION. Notwithstanding anything to the contrary in

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Section 14.1 above, the Fee shall not be increased if, following a force majeure event, CONTRACTOR is not required as a result thereof to perform a materially greater amount of work (e.g., if a fire destroys a shipment of doors and the  
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only additional effort required from CONTRACTOR is to re-order the doors).

40.4 OBLIGATION TO MITIGATE. If force majeure occurs, the affected party

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shall, as soon as practicable after the occurrence of that force majeure, use its best efforts (including incurring any reasonable expenditure of funds and rescheduling manpower and resources) to mitigate and minimize any resulting delay in the performance of the suspended obligation.

40.5 NOTIFICATION. The affected party shall within 72 hours notify the

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other party in accordance with the provisions of Section 14.3 and keep the other  
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party informed at reasonable intervals. Upon request by the other party, as soon as practicable following that request, the affected party shall provide notice concerning the likely duration of the force majeure, the action taken and the action proposed to be taken by the affected party, the cessation of force majeure or the successful mitigation of the force majeure, and any other matter which the other party may reasonably request.

40.6 FAILURE TO NOTIFY. If the affected party fails to give notices as

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prescribed in Sections 14.3 and 40.5, the lack of such notices shall be  
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sufficient ground for denial of an extension of time on account of the force majeure, and the affected party shall not be excused from any delay resulting from the occurrence of such force majeure.

ARTICLE 41  
WAIVER, SEVERABILITY AND REMEDIES

41.1 COMPANY'S RIGHTS NOT AFFECTED. COMPANY'S rights under the Contract

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shall not be affected in any way whatsoever by any inspection by COMPANY or by COMPANY'S Inspector or Representative, nor any payment by COMPANY, nor any payment for, or acceptance of, the whole or any part of the Construction Work by COMPANY, nor any extension of time, nor any possession taken by COMPANY.

41.2 CONTRACTOR'S WAIVER. CONTRACTOR hereby waives its claims on the basis

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of Section 648 German Civil Code (Bauhandwerkersicherungshypothek).

41.3 NO WAIVER OF BREACH. No waiver by either party of any term, covenant

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or condition of the Contract nor any waiver of or assent, express or implied, by either party to any breach of or default in any term, covenant or condition in the Contract on the part of the other to be performed or observed shall constitute a waiver of any other term, covenant or condition of the Contract, nor a waiver of or assent to any succeeding breach of or default in the same or any other term, covenant or condition of the Contract. No failure to exercise and no delay in exercising any right, power or privilege by any party under the Contract shall operate as a waiver of such right, power or privilege, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

41.4 WRITTEN CHANGES. The Contract may be changed only by a writing

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executed by COMPANY'S Representatives and CONTRACTOR'S Representatives, and no oral statement, act or omission by COMPANY or CONTRACTOR shall constitute a change in the Contract or a waiver of the requirements of this Section.

41.5 SEVERABILITY. If any provision of the Contract is declared invalid by

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any court or other tribunal of competent jurisdiction, the remaining provisions of the Contract shall remain in full force and effect.

The parties shall endeavor in good faith to negotiate a provision to replace the invalid provision which replacement provision shall achieve the same purpose and intent as the invalid provision.

41.6 Cumulative Remedies. No remedy contained in the Contract is intended

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to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given under the Contract or now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by either of the parties shall not constitute a waiver by such party of the right to pursue any other available remedies.

41.7 CAPTIONS. The headings of articles, sections and clauses hereof are

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for convenience only and are not a part of this Agreement.

ARTICLE 42  
NOTICES AND ADDRESSES

42.1 NOTICES. All notices and instructions given by either party under the

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Contract to the other shall be in writing, in English, and any such notice or instruction shall be deemed to have been properly served if delivered in person to the office of the Representative authorized and designated in writing to act on the specific matter to which the notice or instruction applies, or if sent by facsimile transmission or deposited in the German Mail properly stamped with the required postage and addressed to the office of such Representative. If no Representative shall have been appointed to act on the matter to which a notice or instruction applies, such notice or instruction shall be deemed to have been properly served if deposited in the German Mail properly stamped with the required postage and addressed to:

AMD Saxony Manufacturing GmbH  
At the Site  
Attn: Jack Saltich, General Manager

With copies to:

AMD Saxony Manufacturing GmbH  
c/o Advanced Micro Devices, Inc.  
5204 East Ben White Boulevard  
Austin, Texas 78741  
Attn: John Gieske (M/S 588)  
Fax No.: 512/602-5299

A copy of any notice of default by COMPANY hereunder shall be sent to:

Advanced Micro Devices, Inc.  
Legal Department  
One AMD Place M/S 68  
P.O. Box 3453  
Sunnyvale, California U.S.A. 94088-3453  
Attn: General Counsel  
Fax No.: 408/774-7002

if the notice or instruction is to COMPANY, or to:

Meissner + Wurst GmbH + Co.  
Rossbachstrasse 38  
Germany  
Attn: Martin Beigl and Frank Hahn  
Fax No.: 0711-8804-212

if the notice or instruction is to CONTRACTOR.

The date of service of a notice or instruction sent by mail shall be the five (5) regular business days following the date on which such notice or instruction is deposited in the German Mail or the U.S. mail as aforesaid. Service of a notice or instruction by facsimile transmission shall be complete at the time of

transmission, and the copy of the notice or instruction so served shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted.

42.2 CHANGE OF ADDRESS. Either party hereto shall have the right to change

any Representative or address it may have given the other party by giving such other party due notice in writing of such change.

ARTICLE 43  
ENTIRE AGREEMENT; SUCCESSORS

43.1 ENTIRE AGREEMENT. This Contract supersedes all previous agreements

between CONTRACTOR and COMPANY relating to the subject matter hereof, except confidentiality and similar agreements.

43.2 SUCCESSORS AND ASSIGNS. This Contract shall be binding upon and shall

inure to the benefit of the legal successors of the parties hereto, and, except as otherwise provided herein, shall not be assigned by either party without the prior written consent of the other.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed on their behalf, effective as of the day and year first above written.

COMPANY

AMD SAXONY MANUFACTURING GmbH

By: /s/ Jack Saltich

Name: Jack Saltich

Title: Vice President and General Manager Fab 30

Date: November 15, 1996

CONTRACTOR

MEISSNER + WURST GmbH + CO.

By: /s/ Helmut Laub

Name: Helmut Laub

Title: Managing Director

Date: November 15, 1996

79

SCHEDULE 16.2.4

SCHEDULE 16.2.4

EXAMPLES OF QUALIFYING AND NON-QUALIFYING  
ADDITIONAL REIMBURSABLE COSTS

As a general rule, COMPANY shall pay for the design, labor and materials involved in designing, purchasing and installing each element of the Project once. If CONTRACTOR forgets to design in a part that the Facility requires, then COMPANY will pay for the added design and construction cost (but not the added redesign costs), even if CONTRACTOR was negligent in leaving it out of the original design. If CONTRACTOR designed in the wrong part and that part is installed and now needs to be removed, COMPANY shall not pay the redesign costs and CONTRACTOR will be fully responsible for the cost associated with installing and removing the wrong part (including the cost of the wrong part if it cannot be returned to the vendor or used elsewhere in the Project),

and COMPANY shall pay only the material and construction costs for the correct part (and there will not be an adjustment in the Project Schedule). If subcontractors make mistakes, CONTRACTOR will be responsible for associated costs (and the Project Schedule will not change to account for the mistakes). Also, if market conditions change the price of materials, COMPANY shall pay the cost change, but the Budgeted Cost of the Work will not be adjusted.

SCENARIO: The Design Documents prepared by CONTRACTOR and approved by COMPANY

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show a 2 inch pipe. A 2 inch pipe is installed. However, the Facility requires a 4 inch pipe. The 2 inch pipe is torn out and replaced by a 4 inch pipe.

RESULT: COMPANY originally paid the cost of designing the pipe and of the  
-----  
2 inch pipe's procurement and installation. COMPANY now pays the cost of the 4 inch pipe's procurement and installation but receives a credit equal to the amount originally paid to procure and install the 2 inch pipe. The amount of the credit and the cost of any redesign work are borne by CONTRACTOR. The Budgeted Cost of the Work is not adjusted.

SCENARIO: The Design Documents show a tank in one location and a pipe running

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past the tank. A subcontractor negligently installs the tank in the space in which the pipe is to run.

RESULT: COMPANY originally paid for the design of the tank and pipe and  
-----  
for the cost of procuring and installing the tank and pipe. CONTRACTOR will pay the additional cost of either removing and relocating the tank or relocating the pipe. The Budgeted Cost of the Work is not adjusted.

SCENARIO: Soil studies obtained by COMPANY show a subsurface area clear of

-----  
obstructions. The Design Documents prepared by CONTRACTOR and approved by COMPANY show a pipe running through the unobstructed area. When the area is excavated, granite is found.

RESULT: Because the presence of the granite was not foreseen, COMPANY  
-----  
shall pay the additional cost of reconfiguring or relocating the pipe or of removing the granite. The Budgeted Cost of the Work is adjusted. However, if CONTRACTOR had reason to know, or should have known, of the presence of the granite, then CONTRACTOR would pay the additional cost of reconfiguring or relocating the pipe or of removing the granite. The Budgeted Cost of the Work would not be adjusted.

#### SCHEDULE 21.6 & 21.7

#### SCHEDULE 21.6 & 21.7

#### ----- CRITERIA FOR BANK GUARANTEES -----

The minimum requirements for the performance bond and the warranty and advance payment guarantees (in addition to those already set out in Section 21.6 and 21.7) are as follows:

1) For guarantees furnished by CONTRACTOR, as well as guarantees furnished by  
-----  
subcontractors or vendors that enter into individual contracts to which the AGBG  
-----  
does not apply:  
-----

- a) the bonds and guarantees qualify as a "Garantie" under German law;
- b) the bonds and guarantess be payable on first demand;
- c) payment by the guarantor be made free of any restriction or condition, whether by way of set-off (Aufrechnung), counter-claim (Widerklage), defense of voidability (Einrede der Anfechtbarkeit) or

rights of retention (Zuruckbehaltungsrechte) or otherwise, and

- d) the guarantor waives his right to deposit (Hinterlegung) the amount claimed.

2) For guarantees furnished by subcontractors or vendors that do not enter into individual contracts (e.g. the AGBG does apply):

- a) the bonds and guarantees qualify as a "Burgschaft" under German law;
- b) payment by the guarantor be made free of any restriction or condition, whether by way of set-off (Aufrechnung), counter-claim (Widerklage), defense of voidability (Einrede der Anfechtbarkeit) or rights of retention (Zuruckbehaltungsrechte) or otherwise, and
- c) the guarantor waives his right to deposit (Hinterlegung) the amount claimed.

Exhibit A

Fab 30 Facility Performance Criteria

ALL CONFIDENTIAL INFORMATION OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION

Schedule 7.1

AMD Fab 30 Dresden

SCHEDULE 7.1  
Site Studies furnished by company to contractor

SUBJECT	AUTHOR	DATE	REMARKS
Georadar Report Project No. M - 012/96	Analy Tech Ingenieurgesellschaft fur Baumgrunduntersuchun gen, Umwelttechnologie und Saniertung mbH; Mittlebach	03/21/96	15 pages 7 appendices
Geotechnical Reports Report No. 56 962	BAUGEO Ingenieurbuero fur Baugrund und Geotechnik GmbH; Leipzig	04/19/96	65 pages 19 appendices
Appendices:			
1	general plan		
2	map of the area with planned development		
3	Investigation plan		
4	map of the area inclusive of geodesic measurement points		
5	exploration profiles		
6	contour index		
7	results of heavy pile sounding		
8	geological section drawing		
9	protocols of the short pumping test		
10	photographic documentation of the drill core samplings		
11	results of the soil-mechanical tests		
12	results of the chemical analysis		
13	results of the mechanical analysis of rock		
14	topographical map		
15	Isolinear map of the top edge of bedrock decomposition		

16 Isolinear map of the top edge of the bedrock  
 17 groundwater isohypsen  
 18 report of radon measurement  
 19 report of ground radar measurement from  
 selected geological sections

-----  
 Geotechnical Reports BAUGEO 05/09/96 6 pages  
 Report No. 56 962 Ingenieurbuero fur 7 appendices  
 - -1/st/ completion - Baugrund und  
 Geotechnik GmbH;  
 Leipzig  
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 Stand October 15, 1996

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 page 1 of 3

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 AMD Fab 30 Dresden  
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SUBJECT	AUTHOR	DATE	REMARKS
Groundwater Report (chemical analysis)	ICA Institut fur Chemische Analytik GmbH, Leipzig		Appendices 17.1 and 17.2
Report No. 3131/Water		03/27/96	
Report No. 3142/Water		03/21/96	
Report No. 3143/Water		03/21/96	
Report No. 3144/Water		03/21/96	
Report No. 3145/Water		03/21/96	
(Drinking water and process water supply)	Wasserverband Brochwitz	11/14/95	
Topsoil Report Report No. 3131/soil	ICA Institut fur Chemische Analytik GmbH, Leipzig	03/27/96	
Air Quality Report	TUV Sachsen GmbH, Dresden	05/10/96	
Air Report - emission prognoses and streaming models	TUV Umwelttechnik, Dresden	04/17/96	10 pages 12 appendices
Report on the noise level measurements in Wilschdorf mesurement report 96 140/01	CDF Schallschutz Consulting Dr. Furst, Dresden	06/18/96	
Environmental impact prediction - Development map, Traffic noise State Highway 81 Noise Prediction - Report No. 96 135/03	CDF Schallschutz Consulting Dr. Furst, Dresden	04/18/96	
Vibration Report No. 1888 Vibration measurements from 04/21/96 to 04/23/96 in Dresden-Wilschdorf	Brussau Bauphysik GmbH Acoustics-Dynamics- Structural Physics, Fellbach/Stuttgart	05/23/96	21 diagrams 111 measured reports
Vibration Report (Preliminary report of the vibration test)	Brussau Bauphysik GmbH Acoustics-Dynamics- Structural Physics, Fellbach/Stuttgart	05/09/96	9 appendices

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AMD Fab 30 Dresden

SUBJECT	AUTHOR	DATE	REMARKS
Military-historical study about the situation of Wilschdorf during the Second World War and investigation of bombs or ammunition	Rohl Umweltentsorgung und Munitionsbergung in Sachsen und Thuringen GmbH	05/02/96	
preliminary measurement of structural dynamics and dynamic vibrations calculation of the clean room ceiling construction		09/25/96	

Schedule 16.2.1.1

HOURLY RATES OF CONTRACTOR'S EMPLOYEES  
AND  
CONTRACTOR'S ESTABLISHED TRAVEL AND LIVING EXPENSES  
REIMBURSEMENT POLICIES  
SCHEDULE 16.2.1.1

Classification	Hourly Rate - DEM
Project Director	166,00
Project Manager	162,00
Senior Systems Engineer	121,00
Process Engineer	110,00
Software Engineer	108,00
Systems Engineer	111,00
CAD Operator	86,00
Project Commercial Manager	109,00
Accounting Administration	71,00
Secretary	77,00

Travel

See attached Contractor's "Travel Expenses - Guideline Headquarter Policy".

Notes

Rates apply from 01/01/1996 on and are subject to revision from time to time. All rate increases to be approved by AMD.

Formula for the Calculation of Hourly Rates

1. Salary Rates

1.1 Employees with a single contract (not related to trade union agreements/40 hours per week).

Current Actual Annual Salary for each employee scheduled to work on the project is divided by 1792 hours to obtain the effective hourly salary rate. Total hours for the year - 2080 is reduced by 30 days vacation times 8 hours (240) and 6 days sick time (average for M+W) times 8 hours (48).

1.2 Employees with a contract related to trade union agreement/38 hours a week/7.6 hours a day.

Current Actual Annual salary for each employee scheduled to work on the project is divided by 1706 hours to obtain the effective hourly salary rate. Total hours for the year - 1980 is reduced by 30 days vacation times 7.6 hours (228) and 6 days sick time (average for M+W) times 7.6 hours (45.6).

2. The total annual Social Benefits cost is calculated for each employee scheduled to work on the project based on their total annual salary as follows:

Health Insurance	6.7% on salary up to DEM 72,000
Unemployment Insurance	3.25% on salary up to DEM 96,000
Pension	9.6% on salary up to DEM 96,000
Health for Elderly	0.85% on salary up to DEM 72,000

The total annual social benefits costs for each employee is divided by 1792 hours (employees working 40 hours per week) or 1706 hours (employees with a contract related to trade agreement working 38 hours per week) to determine the hourly rate amount.

- 3. The actual hourly salary rate and the actual hourly social benefits cost for each employee scheduled to work on the project are added together to obtain a combined actual hourly salary and social benefit rate.
- 4. The combined actual salary and social benefits cost rate for each employee included in a classification set forth on schedule 16.2.1.1 are added together and divided by the number of employees included in the classification. The result is a weighted average actual hourly and social benefits cost rate for that classification.
- 5. An overhead rate of 75% is applied to the weighted average actual hourly and social benefits cost rate for each classification to calculate the total hourly rate for that classification.

ADDENDUM TO SCHEDULE 16.2.1.1

-----  
CALCULATION OF OVERHEAD RATE  
-----



		-----
Total M + W Personnel Costs		DM 75,578,520
DEDUCT:		
Accruals for Wages and Salaries		3,250,855
		-----
		72,327,665
DEDUCT:		
Business Field Products CC 6010		10,617,990
General & Administrative:		
CC 5434	305,945	
CC 6400	5,823,045	
CC 6420	1,767,223	
		-----
		7,896,213
Selling Expense - Domestic 70% (Est)	4,617,662	
Selling Expense - Foreign	1,741,594	
		-----
		6,359,256
		-----
(A) Net M + W PERSONNEL COSTS		DM 47,454,206
		=====
Total M + W Overhead Costs		28,785,181
DEDUCT:		
Business Field Products CC 6010	5,106,388	
Foreign Branch Office Selling Expense		
(DM 2,487,992 x 30%)	746,398	
		-----
		5,852,786
		-----
ADD:		22,932,395
General & Administrative Personnel Costs:		
CC 5434	305,945	
CC 6400	5,823,045	
CC 6020	1,767,223	
		-----
		7,896,213
Selling Expense Personnel Costs		4,617,662
		-----
(B) Net M + W OVERHEAD COSTS		DM 35,446,270
		=====
Overhead Rate B / A =		74.7%
	USE:	75%

CCT  
Project: AMD FAB 30  
K 121 060  
10/22/96  
Page: 1 of 6

TRAVEL EXPENSES - GUIDELINE HEADQUARTER POLICY  
MEISSNER+WURST GMBH+Co.  
ROSSBACHSTRABE 38  
70499 STUTTGART

1. APPLICABILITY  
- - - - -

This Travel Expenses Guideline does justice to the tax laws and rules of the Federal Republic of Germany, and is binding for all MEISSNER+WURST Stuttgart CCT profit center employees. MEISSNER+WURST reserves the right to modify the regulations contained herein from time to time. Unless otherwise noted, this guideline applies to all MEISSNER+WURST project locations.

2. DEFINITION OF TRAVEL EXPENSES

2.1 Travel expenses are defined as additional expenses due to business trips, including but not limited to:

- accomodations
- air travel
- airport taxes/fees
- train travel
- communication costs (telephone/fax)
- taxi fare
- costs, related to use of private cars
- car rental
- parking
- storage of baggage

2.2 All such expenses have to be proved with original receipts. In the case that an original receipt got lost or the employee cannot prove the expenses with an original receipt for any other reason, he has to issue a receipt and sign this one. Such "document" has to be approved by the responsible manager (e.g. dept. manager/project manager).

2.3 VAT on all invoices shall be indicated separately.

CCT

Project: AMD FAB 30

K 121 060

10/22/96

Page: 2 of 6

TRAVEL EXPENSES - GUIDELINE HEADQUARTER POLICY  
MEISSNER+WURST GMBH+Co.  
ROSSBACHSTRABE 38  
70499 STUTTGART

2.4 All business trips shall be limited to the shortest possible distance and time spent for the trip. All such trips shall be made considering the most economical way to reach the destination. The same principle applies for trips back to the headquarter office.

3. DEFINITION OF BUSINESS TRIP

3.1 The fact of working as an employee temporarily outside the own permanent office is defined as business trip.

3.2 In case a business trip exceeds the time period of six (6) months, the responsible management may decide to require a project specific employment contract (ENTSENDUNGSVERTRAG) at the staff department. Such employment contract shall follow all relevant regulations of this guideline, however, it is advisable especially for all employees sent to foreign countries in order to follow the applied tax laws of these countries.

4. DEFINITION OF PERMANENT OFFICE

The permanent office is defined as the place where the employee is normally spending most of his working hours and/or where he is reporting to.

5. DAILY ALLOWANCE

5.1 Business trips in Germany.

In case of business trips in Germany the employee is entitled to receive a daily allowance for each calendar day as follows:

absence from permanent office 10 to 14 hours	DEM 10.00
absence from permanent office 14 to 24 hours	DEM 20.00

CCT  
Project: AMD FAB 30  
K 121 060  
10/22/96  
Page: 3 of 6

TRAVEL EXPENSES - GUIDELINE HEADQUARTER POLICY  
MEISSNER+WURST GMBH+Co.  
ROSSBACHSTRABE 38  
70499 STUTTGART

5.2 Business trips outside Germany  
-----

In case of business trips outside Germany the employee is entitled to receive a daily allowance each calendar day in accordance with EXHIBIT A (6 pages) of this guideline.

6. AIR TRAVEL  
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6.1 Air travel in Germany  
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In case of air travel in Germany the company will book and directly pay an ECONOMY CLASS ticket.

6.2 Air travel outside Germany  
-----

In case of air travel outside Germany and exceeding a flight time of 1.5 hours, the company will book and directly pay a BUSINESS CLASS ticket.

6.3 Senior Management, Department Management is entitled to BUSINESS CLASS tickets generally.

6.4 If an employee had to pay a ticket by himself, the amount will be reimbursed due to the ticket and boarding card attached to the expense report.

6.5 Any unused ticket has to be returned to the company immediately.

6.6 Air travel has to be co-ordinated with and approved by management (e. g. dept. manager, project manager).

6.7 Use of personal aircrafts is strictly prohibited for company business trips.

6.8 Free tickets offered by airlines based on the amount of miles accumulated, remain the property of the employee.

CCT  
Project:AMD FAB 30  
K 121 060  
10/22/96  
Page: 4 of 6

TRAVEL EXPENSES - GUIDELINE HEADQUARTER POLICY  
MEISSNER+WURST GMBH+CO.  
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7. ACCOMMODATION  
-----

7.1 In general the company will book and directly pay for accommodation such as hotel rooms, apartments, etc.

- 7.2 Hotel accommodation shall be limited to middle class hotels with DEM 180,-- per day/night.
- 7.3 Apartments shall be available for employees with families and those being permanent project team members. The expenses shall be limited to DEM 3.200,-- per month.
- 7.4 In the case the employee had to pay for accommodation by himself, the amount will be reimbursed due to the bill attached to the expense report.
- 7.5 Accommodation has to be co-ordinated and approved by management (e.g. dept. manager, project manager).

#### 8. USE OF PRIVATE CARS

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- 8.1 The use of private cars for business trips is limited to short distance trips with 100km single journey.
- 8.2 The use of private cars will be reimbursed with DEM 0,52 per km.
- 8.3 The belonging amounts of km has to be stated on the expense report and his accuracy will be checked from time to time.
- 8.4 In case the stated amount of km is found incorrect, the shortest possible connection + 10% will be determined in order to reimburse such trip.
- 8.5 Exception may be made in regard of said limitation, if approved by management.

CCT  
Project: AMD FAB 30  
K 121 060  
10/22/96  
Page: 5 of 6

TRAVEL EXPENSES - GUIDELINE HEADQUARTER POLICY  
MEISSNER+WURST GMBH+Co.  
ROSSBACHSTRASSE 38  
70499 STUTTGART

#### 9. CAR RENTAL

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- 9.1 In case of car rental the company SIXT BUDGET is the preferred partner to rent cars at.
- 9.2 For employees travelling alone compact car class is required, such as:
- VW Golf  
Ford Fiesta  
Opel Astra
- 9.3 An exception may be made due to baggage or equipment to be transported, or in case of transportation to other people. In such case the employee will be provided with such a car (see 11.4).
- 9.4 For employees travelling in groups up to three (3) persons, middle class cars, four doors is required, such as:
- Opel Vectra  
Ford Scorpio  
VW Passat
- 9.5 Management is entitled to rent upper middle class cars, such as:
- BMW 5er  
Audi A6
- 9.6 Full insurance coverage for cars, drivers and third parties is required.

#### 10. TRAIN TRAVEL

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10.1 As an alternative to air or car travel in Germany, it is advised to check on train travel possibilities.

10.2 Within a distance of 300 km second class tickets are required.

CCT

Project: AMD FAB 30

K 121 060

10/22/96

Page: 6 of 6

TRAVEL EXPENSES - GUIDELINE HEADQUARTER POLICY  
MEISSNER+WURST GMBH+Co.  
ROSSBACHSTRASSE 38  
70499 STUTTGART

10.3 In general the company will book and directly pay train travel tickets.

10.4 In the event an employee had to pay the ticket by himself, such amount will be reimbursed due to the ticket attached to the expense report.

11. EXPENSE REPORTS

- - - - -

11.1 All business trips have to be billed latest at the end of the following month.

11.2 For business trips in and outside Germany the form "INLANDSREISEKOSTEN-ABRECHNUNG" has to be filled in (see EXHIBIT B (2 pages) of this guideline).

11.3 All original receipts have to be attached in chronological order to the corresponding form.

11.4 For receipts issued in foreign currency the corresponding exchange-rate has to be stated on the receipt. On the expense report the amount is to be shown in DEM.

11.5 All expense reports are to be checked and approved by the responsible manager (e. g. dept. manager, project manager).

11.6 The mathematical and tax related check of the expense report is done by the staff department (Mrs. Reyher, tel. -546). Possible deductions or eventual corrections will be shown on the copy that is returned to the employee.

11.7 The belonging amounts due to the checked and eventually corrected expense reports will be paid to the employee together with the salary of the following month.

11.8 Payments of amounts due to expense reports are proceeded by account dept. (Mrs. Philipp, tel. -486).

CCT

Project: AMD FAB 30

K 121 060

10/22/96

Page:7 of 6

TRAVEL EXPENSES - GUIDELINE HEADQUARTER POLICY  
MEISSNER+WURST GMBH+Co.  
ROSSBACHSTRASSE 38  
70499 STUTTGART

11.9 Within reasonable amounts down payments due to expected travel expenses may be provided by the account dept. A belonging receipt has to be issued and signed by the employee. Such down payment will be deducted from the expense reports amount which has to be paid to the employee.

Signed and authorized  
M. Beigl Project manager

Signed and authorized  
F. Hahn Authorized manager

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Schedule 16.2.1.1

(Exhibit A)

EXHIBIT A  
SCHEDULE 16.2.1.1

Anlage zur Reisekostenordnung:

Pauschbeträge für Verpflegungsmehraufwendungen bei  
Auslandsdienstreisen

LAND	PAUSCHBETRAG BEI ABWESENHEITSDAUER JE KALENDERTAG VON		
	MINDESTENS 24 STD.	WENIGER ALS 24 STD. ABER MINDESTENS 14 STD.	WENIGER ALS 14 STD. ABER MINDESTENS 10 STD.
Agypten	48 DM	32 DM	16 DM
Kairo	48 DM	32 DM	16 DM
Aquatorialguinea	74 DM	50 DM	25 DM
Athiopien	54 DM	36 DM	18 DM
Afghanistan	74 DM	50 DM	25 DM
Albanien	54 DM	36 DM	18 DM
Algerien	72 DM	48 DM	24 DM
Andorra	66 DM	44 DM	22 DM
Angola	90 DM	60 DM	30 DM
Argentinien	96 DM	64 DM	32 DM
Armenien	60 DM	40 DM	20 DM
Aserbaidshan	48 DM	32 DM	16 DM
Australien	66 DM	44 DM	22 DM
Bahamas	74 DM	50 DM	25 DM
Bahrain	78 DM	52 DM	26 DM
Bangladesch	60 DM	40 DM	20 DM
Barbados	74 DM	50 DM	25 DM
Belgien	74 DM	50 DM	25 DM
Benin	54 DM	36 DM	18 DM

Bolivien	42 DM	28 DM	14 DM
Bosnien-Herzegovina	72 DM	48 DM	24 DM
Botsuana	60 DM	40 DM	20 DM
Brasilien	66 DM	44 DM	22 DM
Brunet (Darussalam)	96 DM	64 DM	32 DM
Bulgarien	42 DM	28 DM	14 DM
Burkina Faso	54 DM	36 DM	18 DM
Burundi	72 DM	48 DM	24 DM
Chile	60 DM	40 DM	20 DM
China	78 DM	52 DM	26 DM
Shanghai	78 DM	52 DM	26 DM
(China) Taiwan	84 DM	56 DM	28 DM

LAND	PAUSCHBETRAG BEI ABWESENHEITSDAUER JE KALENDERTAG VON		
	MINDESTENS 24 STD.	WENIGER ALS 24 STD. ABER MINDESTENS 14 STD.	WENIGER ALS 14 STD. ABER MINDESTENS 10 STD.
Costa Rica	54 DM	36 DM	18 DM
Cote d' Ivoire	60 DM	40 DM	20 DM
Danemark	96 DM	64 DM	32 DM
- - Kopenhagen	96 DM	64 DM	32 DM
Dominikanische Republik	72 DM	48 DM	24 DM
Dschjbuti	74 DM	50 DM	25 DM
Ecuador	54 DM	36 DM	18 DM
El Salvador	48 DM	32 DM	16 DM
Eritrea	54 DM	36 DM	18 DM
Estland	42 DM	28 DM	14 DM
Fidschi	60 DM	40 DM	20 DM
Finnland	72 DM	48 DM	24 DM
Frankreich	78 DM	52 DM	26 DM
- - Paris	96 DM	64 DM	32 DM
Gabun	72 DM	48 DM	24 DM
Gambia	74 DM	50 DM	25 DM
Georgien	84 DM	56 DM	28 DM
Ghana	60 DM	40 DM	20 DM
Griechenland	60 DM	40 DM	20 DM
Guatemala	72 DM	48 DM	24 DM

Guinea	66 DM	44 DM	22 DM
Guinea-Bissau	54 DM	36 DM	18 DM
Guyana	74 DM	50 DM	25 DM
Haiti	74 DM	50 DM	25 DM
Honduras	42 DM	28 DM	14 DM
Hongkong	78 DM	52 DM	26 DM
Indien	48 DM	32 DM	16 DM
- - New Delhi	48 DM	32 DM	16 DM
- - Bombay	48 DM	32 DM	16 DM
Indonesien	84 DM	56 DM	28 DM
Irak	74 DM	50 DM	25 DM
Iran	42 DM	28 DM	14 DM
Irland	90 DM	60 DM	30 DM
Island	96 DM	64 DM	32 DM
Israel	72 DM	48 DM	24 DM

LAND	PAUSCHBETRAG BEI ABWESENHEITSDAUER JE KALENDERTAG VON		
	MINDESTENS 24 STD.	WENIGER ALS 24 STD. ABER MINDESTENS 14 STD.	WENIGER ALS 14 STD. ABER MINDESTENS 10 STD.
Italien	78 DM	52 DM	26 DM
Jamaica	66 DM	44 DM	22 DM
Japan	132 DM	88 DM	44 DM
Jemen	96 DM	64 DM	32 DM
Jordanien	60 DM	40 DM	20 DM
Jugoslawien	72 DM	48 DM	24 DM
Kambodscha	72 DM	48 DM	24 DM
Kameron	60 DM	40 DM	20 DM
Kanada	66 DM	44 DM	22 DM
Kap Verde	74 DM	60 DM	25 DM
Kasachstan	48 DM	32 DM	16 DM
Katar	60 DM	40 DM	20 DM
Kenia	60 DM	40 DM	20 DM
Kargisistan	36 DM	24 DM	12 DM
Kolumbien	60 DM	40 DM	20 DM
Komoren	74 DM	50 DM	25 DM
Kongo	66 DM	44 DM	22 DM



Korea Demokrat Republik	96 DM	64 DM	32 DM
Korea, Republik	108 DM	72 DM	36 DM
Kroatien	78 DM	52 DM	26 DM
Kuba	54 DM	36 DM	18 DM
Kuwait	78 DM	52 DM	26 DM
Laotische Demokr, Volksrep.	54 DM	36 DM	18 DM
Lesotho	48 DM	32 DM	16 DM
Lettland	54 DM	36 DM	18 DM
Lebanon	72 DM	48 DM	24 DM
Liberia	74 DM	50 DM	25 DM
Libysch-Arab Dschamahinja	120 DM	80 DM	40 DM
Litauen	36 DM	24 DM	12 DM
Luxemburg	74 DM	50 DM	25 DM
Madagaskar	42 DM	28 DM	14 DM
Malaw	48 DM	32 DM	16 DM
Malaysia	60 DM	40 DM	20 DM
Maledven	60 DM	40 DM	20 DM
Mali	60 DM	40 DM	20 DM

LAND	PAUSCHBETRAG BEI ABWESENHEITSDAUER JE KALENDERTAG VON		
	MINDESTENS 24 STD.	WENIGER ALS 24 STD. ABER MINDESTENS 14 STD.	WENIGER ALS 14 STD. ABER MINDESTENS 10 STD.
Malta	54 DM	36 DM	18 DM
Marokko	72 DM	48 DM	24 DM
Mauretanien	72 DM	48 DM	24 DM
Mauritius	74 DM	50 DM	25 DM
Mazedonien	42 DM	28 DM	14 DM
Mexiko	48 DM	32 DM	16 DM
Moldau, Republik	36 DM	24 DM	12 DM
Monaco	78 DM	52 DM	26 DM
Mongolei	48 DM	32 DM	16 DM
Mosambik	66 DM	44 DM	22 DM
Myanmar (fruher Burma)	48 DM	32 DM	16 DM
Namibia	48 DM	432DM	16 DM
Nepal	48 DM	32 DM	16 DM
Neuseeland	72 DM	48 DM	24 DM

Nicaragua	60 DM	40 DM	20 DM
Niederlande	84 DM	56 DM	28 DM
Niger	42 DM	28 DM	14 DM
Nigeria	84 DM	56 DM	28 DM
Norwegen	84 DM	56 DM	28 DM
Osterreich	72 DM	48 DM	24 DM
- - Wien	72 DM	48 DM	24 DM
Oman	84 DM	56 DM	28 DM
Pakistan	48 DM	32 DM	16 DM
Panama	60 DM	40 DM	20 DM
Papua-Neuguinea	72 DM	48 DM	24 DM
Paraguay	48 DM	32 DM	16 DM
Peru	72 DM	48 DM	24 DM
Philippinen	72 DM	48 DM	24 DM
Polen	48 DM	32 DM	16 DM
- - Warschau	60 DM	40 DM	20 DM
Portugal	60 DM	40 DM	20 DM
Ruanda	74 DM	50 DM	26 DM
Rumanien	48 DM	32 DM	16 DM
Russische Foderation	108 DM	72 DM	36 DM
- - Moskau	108 DM	72 DM	36 DM

LAND	PAUSCHBETRAG BEI ABWESENHEITSDAUER JE KALENDERTAG VON		
	MINDESTENS 24 STD.	WENIGER ALS 24 STD. ABER MINDESTENS 14 STD.	WENIGER ALS 14 STD. ABER MINDESTENS 10 STD.
Sambia	42 DM	28 DM	14 DM
Samoa	54 DM	36 DM	18 DM
San Marino	78 DM	52 DM	26 DM
Sao Tome and Principe	74 DM	50 DM	25 DM
Saudi-Arabien	78 DM	52 DM	26 DM
Schweden	84 DM	56 DM	28 DM
Schweiz	84 DM	56 DM	28 DM
Senegal	54 DM	36 DM	18 DM
Sierra Leone	66 DM	44 DM	22 DM
Simbabwe	36 DM	24 DM	12 DM

Singapur	84 DM	56 DM	28 DM
Slowaken	42 DM	28 DM	14 DM
Slowenien	60 DM	40 DM	20 DM
Somalia	74 DM	50 DM	25 DM
Spanien	66 DM	44 DM	22 DM
Sri Lanka	42 DM	28 DM	14 DM
Sudan	84 DM	56 DM	28 DM
Swasiland	74 DM	50 DM	25 DM
Syrien, Arabische Republik	60 DM	40 DM	20 DM
Tadschikistan	42 DM	28 DM	14 DM
Tansania, Vereinigte Republik	66 DM	44 DM	22 DM
Thailand	48 DM	32 DM	16 DM
Togo	60 DM	40 DM	20 DM
Tonga	72 DM	48 DM	24 DM
Trinidad und Tobago	72 DM	48 DM	24 DM
Tschad	66 DM	44 DM	22 DM
Tschechische Republik	42 DM	28 DM	14 DM
Turken	48 DM	32 DM	16 DM
- - asiatischer Teil	48 DM	32 DM	16 DM
Tunesien	54 DM	36 DM	18 DM
Turkmenistan	60 DM	40 DM	20 DM
Uganda	60 DM	40 DM	20 DM
Ukraine	42 DM	28 DM	14 DM
Ungarn	48 DM	32 DM	16 DM
Uruguay	66 DM	44 DM	22 DM

LAND	PAUSCHBETRAG BEI ABWESENHEITSDAUER JE KALENDERTAG VON		
	MINDESTENS 24 STD.	WENIGER ALS 24 STD. ABER MINDESTENS 14 STD.	WENIGER ALS 14 STD. ABER MINDESTENS 10 STD.
Usbekistan	60 DM	40 DM	20 DM
Vatikanstadt	78 DM	52 DM	26 DM
Venezuela	48 DM	32 DM	16 DM
Vereinigte Arabische Emirate	84 DM	56 DM	28 DM
Vereinigte Staaten	78 DM	52 DM	26 DM
New York	102 DM	68 DM	34 DM
- - Washington/2) /	96 DM	64 DM	32 DM



It umseitiger/beigefugter  
Rechnung

\_\_\_\_\_ DM

\_\_\_\_\_ DM

-----  
Ort Datum Unterschrift

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\*Zutreffendes bitte ankreuzen

Reisekostenabrechnung

MEISSNER+WURST

Name		Abteilung		Personal-Nr.	Kostenstelle		vorn		
Reisetag	Reisedauer		Reiseort/Reisezweck	Leitziffer Komm.-Nr.	Anzahl km	km- Geld	Bahn Taxi Parken	Benzin	Flug
	von	bis							
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									

Summen

Sätze Inland	Ableitungsleiter	Personalabteilung	ausgezahlt am	Unterschrift MA
ab 10 Std. = 10,-DM				
ab 14 Std. = 20,-DM				
ab 24 Std. = 46,-DM			ausgezahlt an	

bis		Belegnummer AF				
Auslösung	Übernachungskosten	Kundenbewirtung	Kundengeschenke	Telefon, Porto	Material, Sonstiges	Wechsel kurs
1						
2						
3						
4						

5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
Summen			
	gesamle Reisekosten		DM
	abz. erh. Vorschub		DM
	auszuzahlen/zuruckzuzahlen		DM
			Reisekosten 1/96

Schedule 16.2.2.3

Rental Rates

EQUIPMENT RENTAL RATES Schedule 16.2.2.3.

Equipment	Model or Capacity	Daily	Weekly	Monthly	New Purchase Price
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					

Notes:

- a. Rates apply only to construction equipment with values in excess of 800 DM.
- b. Rates include normal maintenance cost and lubrication.
- c. Rates do not include fuel.
- d. Rates include all normal operating accessories, weld cable, air hoses, hoisting cable, etc.
- e. Rates are based of normal work week. Overtime usage adjustments apply to rotating equipment only.
- f. All equipment furnished under these rates must be in first-class condition.
- g. Rates for any equipment not defined herein must have AMD's prior written approval.
- h. All rates listed are firm through the duration of the work of this project.
- i. Contractor may submit its own rental equipment list providing the conditions set forth herein are met.
- j. Include separate sheets if necessary.

We do not foresee to own any of these Construction Equipments and Tools!

[LETTERHEAD/LOGO OF AMD APPEARS HERE]

January 16, 1997

Helmut Laub  
Meissner + Wurst  
GmbH+Co.  
Rossbachstrasse 38  
D-70499 Stuttgart, Germany

Subj.: Replacement Pages to Design/Build Agreement Dated November 15, 1996

Dear Mr. Laub,

There were some minor clerical errors contained in the above referenced Agreement. Attached are 5 replacement pages (pages 5, 7, 10, 33 and 56). These pages hereby substitute and replace the corresponding pages currently in the executed Agreement.

Please acknowledge your acceptance of this action by signing below.

Signature /s/ JACK SALTICH for AMD Saxony Manufacturing, GmbH

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Jack Saltich  
Vice President and General Manager Fab 30

ACKNOWLEDGED & AGREED:

Signature /s/ FRANK HAHN for Meissner & Wurst.

-----

Printed Name FRANK HAHN

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Title Vice President dept Commercial Date 07.02.97

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Wafer Process Equipment, the procurement and installation of which shall be determined by COMPANY.

1.4 CONSTRUCTION AND CONSTRUCTION ADMINISTRATION AND SUPERVISION SERVICES.

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1.4.1 CONSTRUCTION AND CONSTRUCTION MANAGEMENT SERVICES BY

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CONTRACTOR. The acquisition and installation of the Wafer Process Equipment is

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COMPANY'S responsibility. Except for the Wafer Process Equipment and other things that the provisions of the Contract expressly require or provide for COMPANY to furnish for the Facility, CONTRACTOR shall furnish and provide all construction management services and all construction for the entire Facility, including without limitation all materials to be incorporated into the buildings, structures and other improvements and all labor, fuel, transportation, construction equipment, tools, utilities, water, wastewater disposal, sewage disposal, supplies, outfit, and appurtenances of every sort which may be necessary for or in connection with the scheduling, delivery, handling, construction, erection, installation, performance, calibration, adjustment and turnover of the Facility, and for the start up and performance testing of the Facility and for the execution of all other construction work included as a part of the Project. All such construction management services and all construction work are collectively referred to as the "CONSTRUCTION WORK". CONTRACTOR shall be responsible for all Construction Work, including without limitation the following:

1.4.1.1 UPDATING BUDGET AND SCHEDULE. During construction,



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revising and updating continuously, and reporting to COMPANY on a  
monthly basis, the Project Budget and the Project Schedule, as described  
in Section 1.3.2.4 and Article 12, subject to COMPANY'S approval and  
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effected by issuance of a Change Order; submitting CONTRACTOR'S monthly  
Application for Payment (described in Section 17.1 below) and invoices  
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and other supporting documentation, as required herein at least monthly;  
and providing COMPANY with a summary of the status of the Project and a  
report on the percentage of completion of the Project (both in such form  
and containing such information, including then current aerial  
photographs, as COMPANY may reasonably require at least monthly,  
providing such updated reports, invoices and documents on a timely basis  
shall be a condition precedent to payment of CONTRACTOR'S Budgeted Fee.  
Should the Project fall behind schedule or be projected to fall behind  
schedule, CONTRACTOR shall prepare and submit for COMPANY'S approval, a  
plan or plans for recovering the lost time showing such actions as may  
be required to restore the Project Schedule to the complete satisfaction  
of COMPANY and showing the costs associated with such actions (a  
"SCHEDULE RECOVERY PLAN"). A Schedule Recovery Plan may include, without  
limitation, one or more of the following courses of action:

- Increase the size of the work force; or
- Place activities on shift work; or
- Provide and utilize additional equipment; or
- Place activities on overtime for a specified period of time but  
only if approved by COMPANY.

The party who shall bear any additional costs to the Project occurring as a  
result of such delay(s) or the effort(s) necessary to recover therefrom shall be  
determined in accordance with Sections 10.3, 14.4 and 16.2.4. The

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Budgeted Cost of the Work shall be increased only by means of Change Order  
approved by COMPANY in writing pursuant to Article 10 or Article 14.  
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castings, structural steel, steel plate, exchangers, condensers, coolers,  
insulation, paint, welding rod, instruments, instrument charts, pumps, motors,  
compressors, generators, furnaces, air conditioning, ventilating, fans,  
transformers, conduit, wiring, switch gear, panel boards, hoists, tube cleaners,  
wrenches, fire extinguisher, and the like.

1.6.3 The term "PERSON" where used herein shall mean an individual,  
corporation, association, partnership, joint venture, limited liability company,  
trust or other business entity or government or governmental agency, court,  
department or officer.

1.6.4 The term "REASONABLE PERIOD OF TIME" when used herein in  
connection with any testing by, or any consent or approval of COMPANY shall mean  
a period of time equal to ten (10) working days or, if the circumstances then  
prevailing require a longer period of time, COMPANY will justify to CONTRACTOR  
such longer period of time in which COMPANY may commence its testing or grant or  
deny its consent or approval.

1.6.5 The term "REPRESENTATIVE" when used herein shall mean a person  
designated by one of the parties hereto as its representative and authorized to  
represent or act on behalf of, and to make decisions that are binding on, the  
party such person is representing for the purposes for which such person has  
been appointed and when used herein as applying to COMPANY, for purposes of  
inspection and approval of Construction Work, shall include any person  
representing or acting on behalf of any lender to COMPANY. A person designated  
as a representative for a limited purpose, e.g., to conduct audits, shall not be

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a representative for any other purpose. COMPANY'S Representatives shall include  
any independent Person retained by COMPANY to implement financial and cost  
controls or to examine and advise COMPANY regarding financial or cost matters.

1.6.6 Expressions such as "SERVICE THE FACILITY" and "SERVICING THE

FACILITY" where used herein shall be understood as requiring or referring to the performance of such work as is normally needed to recondition the equipment for resuming operation after a shutdown thereof as, for example, routine purging, unplugging, cleaning or plating up of equipment; installing fresh operating supplies; making such routine pressure tests as are needed before resuming operation; and the like.

1.6.7 The term "SITE BOUNDARY LINES" where used herein shall be understood to refer to the boundaries of the Site designated as such in the Contract Documents.

1.6.8 The term "SUBCONTRACTOR" where used herein shall mean a corporation, association, partnership, joint venture, limited liability company, trust or other business entity or individual (other than an employee) who contracts with CONTRACTOR (or with any subcontractor) to (i) perform part of CONTRACTOR'S work, whether at the Site or elsewhere, or (ii) furnish materials for the Facility and also erect or install same at the Site.

1.6.9 The term "SUPPLIES" where used herein shall mean those goods or commodities which enter into the construction of the temporary structures or temporary lines that are needed at the Site in connection with work on the Facility, and goods or commodities of a rapidly consumable nature that are used by the mechanical or building trades at the Site for work on the Facility.

1.6.10 The term "SYSTEM" where used herein shall include, without limitation (i) a functionally related group of elements, such as a group of interacting mechanical or electrical components such as the ultra pure water system or the HVAC system for the Fab and Clean Room, or (ii) a structurally related group of elements, such as a building.

7

Representative, then Contractor's Representative shall delegate to the senior Project construction superintendent the authority specified in Section 2.2.1.

It is understood that only one Representative of COMPANY shall have authority to approve increases or decreases in the Budgeted Cost of the Work.

2.6 PERSONNEL PROFICIENCY IN ENGLISH. The senior Project construction superintendent, the superintendent [Bauleiter], the technical superintendent [Fachbauleiter] and all other senior construction personnel shall be able to speak and write English with a reasonable degree of fluency considering the nature and requirements of the Project.

2.7 EMPLOYMENT OF LEGAL WORKERS. CONTRACTOR shall be responsible for ensuring that all of CONTRACTOR'S and its subcontractors' and vendors' employees have necessary visas and have the legal right to be present at the Site or anywhere else where the work is being performed and to be employed in the work and that none of such employees are illegal immigrants.

2.8 COMPLIANCE WITH LAW AND PROMPTITUDE IN HIRING AND REPLACING PERSONNEL. The removal, replacement and hiring of personnel by CONTRACTOR shall be done in accordance with the laws of the State of Saxony or other applicable law. Replacements for removed personnel shall be hired for the Project within a period of time that does not affect the Cost of the Work or the Project Schedule.

### ARTICLE 3 CONTRACT DOCUMENTS

3.1 CONTRACT DOCUMENTS. The "CONTRACT DOCUMENTS" consist of this Agreement (including the Exhibit and Schedules attached hereto and the documents incorporated herein by reference), the Project Schedule, the Project Budget, each Estimate of Project Cost, the Project Safety Manual and the Project Procedures Manual which are currently being prepared, the Design Documents to be prepared by CONTRACTOR and approved by COMPANY pursuant to Article 4 hereof, any Addenda to this Agreement entered into between COMPANY and CONTRACTOR and any Change Orders pursuant to Article 10 hereof. This Agreement and the other

Contract Documents shall constitute the Contract between the parties. The Project Safety Manual and the Project Procedures Manual and the Estimate of Project Cost and the Design Documents to be prepared by CONTRACTOR and approved by COMPANY pursuant to Article 4 hereof and any Change Orders pursuant to

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Article 10 hereof, are hereby made a part hereof as effectively as if actually  
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set forth herein in full. It is understood and agreed that whenever the term "CONTRACT DOCUMENTS" is used in this Agreement, it shall mean the Contract Documents as approved by COMPANY except that, in the event the parties hereto mutually agree to any modifications of the Contract Documents, it shall mean the Contract Documents as so modified.

3.2 RESOLUTION OF CONFLICTS. If any of the other Contract Documents

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(other than any Addenda to this Agreement) are found to conflict with this Agreement, then this Agreement shall control. Furthermore, should there be a conflict between any of the other Contract Documents (other than any Addenda to this Agreement), the Contract Document bearing the later date shall control. Notwithstanding the foregoing, if a document with a later date adversely affects another portion of the Facility covered by a document with an earlier date, the parties shall cooperate to remove the adverse effect. In cases where a conflict exists between any parts of the Contract Documents after application of the foregoing provisions, and adoption of one of the conflicting alternatives would jeopardize CONTRACTOR'S warranties and guarantees hereunder while adoption of the other would not, the alternative which would not jeopardize CONTRACTOR'S warranties and guarantees shall control unless the construction involved therein would be unsafe in which case the parties hereto shall cooperate in revising one of the aforesaid alternatives to remove the objections of jeopardy to warranties and guarantees

10

COMPANY'S inspection of the Punch List items, it is found that CONTRACTOR has not completed all of the items listed, or other Construction Work not listed is found to be deficient, COMPANY shall prepare a further Punch List and submit to CONTRACTOR. This list may not be exhaustive and the failure to include an item on it does not relieve CONTRACTOR of the responsibility to complete all of the Construction Work in accordance with the Contract. If, after inspection of the further Punch List items, it is found that CONTRACTOR has not completed all of the items listed, or other Construction Work not listed is found to be deficient, the cost of all further inspections required by COMPANY to determine if the Construction Work has been completed in accordance with the Design Documents and authorized Change Orders will be charged to CONTRACTOR. Punch List items that could not lead to malfunction of a system or could not limit any of such system's functions or could not affect COMPANY'S continuous use of such system shall not delay COMPANY'S acceptance of such system. COMPANY may have the beneficial or partial use of a system prior to substantial completion and acceptance of such system due to Punch List items that affect the system's functions or the system's ability to meet specifications or Facility criteria, but such beneficial or partial use shall not relieve CONTRACTOR of its obligation to correct or complete such Punch List items, shall not trigger the Warranty Commencement Date (defined in Section 18.1) applicable to such system  
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and shall not constitute acceptance of such system.

15.2.2 CONTRACTOR'S CERTIFICATION OF COMPLETION OF CONSTRUCTION

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WORK. When CONTRACTOR has completed all of the Construction Work, including the  
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items of the Punch List(s), on each system or on the Facility, CONTRACTOR shall certify to COMPANY (i) that such Construction Work has been completed in accordance with the approved Design Documents and (ii) that all materials and workmanship are in accordance with the Design Documents. If COMPANY'S Representative or Inspector agrees with CONTRACTOR'S certification, then such Construction Work shall be deemed to have been completed. If COMPANY'S Representative or Inspector disagrees, COMPANY'S Representative or Inspector shall identify the matters that have not yet been completed, and CONTRACTOR shall complete such matters. When CONTRACTOR has completed such Construction Work to COMPANY'S satisfaction, then such Construction Work shall be deemed to have been completed.

15.2.3 CONDITIONS CONSTITUTING FINAL COMPLETION. The Facility

shall be finally complete when (i) CONTRACTOR shall have completed the Construction Work as described in Section 15.2.1 above, (ii) CONTRACTOR shall  
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have certified such completion as described in Section 15.2.2 above and  
-----  
COMPANY'S Inspector shall have determined in accordance with Section 15.2.2 that  
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all of the Construction Work (including Punch List items) to be performed in connection with the Facility has been performed to the satisfaction of COMPANY'S Inspector, (iii) the construction of the Facility shall have been completed free of liens and free of retention of title to any materials, and (iv) the Facility is undamaged and has been available for regular use and occupancy. The date upon which such matters have been completed to COMPANY'S satisfaction shall be the "FINAL COMPLETION DATE". The parties shall enter into a written memorandum memorializing the Final Completion Date. It is understood that COMPANY'S Final Acceptance of the Facility pursuant to Section 15.3 hereof shall occur after the  
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Final Completion Date.

### 15.3 FINAL ACCEPTANCE AND FINAL PAYMENT. -----

15.3.1 FINAL ACCEPTANCE BY COMPANY. When all of the conditions  
-----  
hereinafter set forth in this Section 15.3.1 shall have been fulfilled, COMPANY  
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shall give CONTRACTOR its final acceptance of the Facility (the "FINAL ACCEPTANCE") in writing. The aforesaid Final Acceptance shall be contingent upon the following conditions: (i) the Final Completion Date shall have

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DEM750,000 each occurrence, combined single limit bodily injury and property damage

DEM1,500,000 aggregate combined single limit bodily injury and property damage

21.3 INSURANCE CERTIFICATES. CONTRACTOR shall furnish, and shall make  
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best efforts to cause each subcontractor to furnish, COMPANY insurance certificates and/or certified copies of the original policies evidencing the insurance specified herein. All insurance to be carried by CONTRACTOR shall be issued by insurance companies qualified to issue such insurance in Germany that are reasonably acceptable to COMPANY and maintained in force by CONTRACTOR so long as CONTRACTOR is engaged in any work at the COMPANY'S Facility within the purview of the Contract. Certificates should show type of insurance, operations covered, effective dates, and dates of expiration and contain the following statement:

"Thirty (30) days written notice of cancellation or change, to be effective upon receipt thereof, shall be given to COMPANY, by sending notice to Advanced Micro Devices, Inc., ATTN: Risk Manager, One AMD Place, Post Office Box 3453, M/S 89, Sunnyvale, California 94088-3453, before any cancellation or CONTRACTOR initiated change of this policy shall be effective."

21.4 COMPANY AS ADDITIONAL INSURED. CONTRACTOR shall, and shall make  
-----  
best efforts to cause each subcontractor to, name COMPANY, Advanced Micro Devices, Inc. and their respective officers, agents and employees as additional insureds on CONTRACTOR'S and Subcontractor's liability policies for any claims arising with respect to the negligence of CONTRACTOR or subcontractors relating to the Construction Work performed under the Contract.

21.5 BUILDERS ALL RISK INSURANCE. COMPANY shall purchase and maintain  
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builders risk-type insurance upon the entire Project for the full cost of replacement at the time of the loss. This insurance shall include as named insureds COMPANY, CONTRACTOR and the subcontractors (generally as a class, but not individually) and shall insure against loss from fire and extended coverage perils, and shall include "All Risk" insurance for physical loss or damage including, without duplication of coverage and to the extent available, at least theft, vandalism, malicious mischief, transit, collapse, flood, earthquake,

testing and damage resulting from defective design, workmanship or material. COMPANY will increase limits of coverage, if necessary, to reflect estimated replacement cost. COMPANY will be responsible for any co-insurance penalties or deductibles unless due to the fault or negligence of CONTRACTOR or any subcontractor.

21.6 PERFORMANCE AND WARRANTY BANK GUARANTEES. CONTRACTOR shall provide

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a performance bank guarantee in the amount of twenty percent (20%) of that portion of the Budgeted Cost of the Work performed by CONTRACTOR (excluding design & construction management services) and shall cause each subcontractor and vendor to provide a performance bank guarantee in an amount equal to twenty percent (20%) of that portion of the Budgeted Cost of the Work performed by each subcontractor and vendor and shall provide a warranty bank guarantee in the amount of five percent (5%) of that part of the actual Cost of the Work performed by CONTRACTOR (excluding design & construction management services) and shall cause each subcontractor or vendor to provide a warranty bank guarantee in an amount equal to (i) in the case of a subcontract or purchase order amount exceeding DEM5,000,000, five percent (5%) of the subcontract or purchase order amount, and (ii) in the case of a subcontract or purchase order amount between DEM500,000 and DEM5,000,000, ten percent (10%) of the subcontract or purchase order amount, but in the case of a subcontract or purchase order amount less than DEM500,000, no warranty bank guarantee shall be required. Each bank guarantee shall satisfy the applicable criteria

Exhibit 11  
ADVANCED MICRO DEVICES, INC.

STATEMENT RE: COMPUTATION OF PER SHARE EARNINGS

Three Years Ended December 29, 1996  
(Thousands except per share)

PRIMARY	1994	1995	1996
	-----	-----	-----
Weighted average number of common shares outstanding during the year.....	117,597	127,680	135,447
Incremental common shares attributable to shares issuable under employee stock plans (assuming proceeds would be used to purchase treasury stock).....	6,965	6,295	240
Warrants	2,112	2,233	-
Total shares.....	----- 126,674	----- 136,208	----- 135,687
Net income:			
Amount applicable to common shares.....	\$260,592	\$216,316	\$(68,950)
Per share.....	\$ 2.06	\$ 1.59	\$ (0.51)
 FULLY DILUTED			
Weighted average number of common shares outstanding during the year.....	117,597	127,680	135,447
Incremental common shares attributable to shares issuable under employee stock plans (assuming proceeds would be used to purchase treasury stock).....	7,188	6,414	240
Dilutive convertible securities .....	145	145	-
Preferred stock.....	6,854	1,343	-
Warrants.....	2,358	2,233	-
Total shares.....	----- 134,142	----- 137,815	----- 135,687
Net income:			
Amount applicable to common shares.....	\$260,592	\$216,316	\$(68,950)
Preferred stock dividends.....	10,350	10	-
Convertible notes interest.....	280	109	-
Net adjusted income.....	----- \$271,222	----- \$216,435	----- \$(68,950)
Per share.....	\$ 2.02	\$ 1.57	\$ (0.51)

MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF  
 -----  
 OPERATIONS AND FINANCIAL CONDITION  
 -----

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS  
 -----

The statements in this Management's Discussion and Analysis of Results of Operations and Financial Condition that are forward-looking are based on current expectations and beliefs and involve numerous risks and uncertainties that could cause actual results to differ materially. The forward-looking statements relate to operating results, cash flows, realization of net deferred tax assets, capital expenditures and adequacy of resources to fund operations and capital investments; future business prospects for microprocessors, Flash memory device products and other product lines; the effect of foreign exchange contracts and interest rate swaps; the development, validation, certification, introduction, market acceptance and pricing of the K86/(TM)/ products; the Company's commitment to research and development; the effective utilization of Fab 25 (as defined below); the proposed Dresden and FASL manufacturing facilities (which are defined below); and the assembly and test facility to be constructed in Suzhou, China. See Financial Condition and Risk Factors below, as well as such other risks and uncertainties as are detailed in the Company's Securities and Exchange Commission reports and filings for a discussion of the factors that could cause the actual results to differ materially from the forward-looking statements.

The following discussion should be read in conjunction with the Consolidated Financial Statements and Notes thereto at December 29, 1996 and December 31, 1995, and for each of the three years in the period ended December 29, 1996. On January 17, 1996, the Company acquired NexGen, Inc. (NexGen) in a transaction accounted for as a pooling-of-interests. All financial data and footnote information of the Company, including the Company's previously issued financial statements for the periods discussed herein, have been restated to give retroactive effect to the merger with NexGen.

RESULTS OF OPERATIONS  
 -----

AMD participates in the digital integrated circuit (IC) market - memory circuits, microprocessors and logic circuits - through, collectively, its Communications and Components Group (CCG), its Computation Products Group (CPG) and its Programmable Logic Division (Vantis). CCG products include Flash memory devices, Erasable Programmable Read-Only Memory (EPROM) devices, voice and data communications products, embedded processors, input/output (I/O) devices and network products. CPG products include microprocessors. Vantis products are high-speed programmable logic devices. The Company's operations relating to I/O devices and network products are currently included in the operations of CCG. The Company previously reported such results as part of CPG. All results for CCG and CPG for prior periods have been revised to conform to the new classification.

The following is a summary of the net sales of CCG, CPG and Vantis in 1996, 1995 and 1994:

(Millions)	1996	1995	1994
	-----	-----	-----
CCG	\$ 1,364	\$ 1,434	\$ 1,147
CPG	341	778	821
Vantis	248	256	187
	-----	-----	-----
Total	\$ 1,953	\$ 2,468	\$ 2,155
	=====	=====	=====

1996 net sales of \$2.0 billion declined approximately 21 percent from 1995. This decrease was primarily due to a decline in Am486/(R)/ microprocessor sales, as both unit volume and average selling prices decreased significantly. These decreases were partially offset by sales of AMD-K5/(TM)/ microprocessors which were introduced in 1996. Net sales of \$2.5 billion in 1995 increased approximately 15 percent from 1994 primarily due to substantial growth in Flash memory sales and secondarily due to an increase in sales of communications

products, the combination of which more than offset a decline in microprocessor sales.

CCG net sales decreased from 1995 to 1996, as net sales of Flash memory devices were flat and unit shipments of other CCG products declined. Flash memory devices contributed a significant portion of the Company's revenues in 1996 and 1995. In 1996, the market for the Company's Flash memory devices saw increasing competition and falling prices. The increase in CCG net sales in 1995 was due to increased sales of Flash memory devices, primarily due to growth in unit shipments and secondarily due to a change in product mix resulting in higher average selling prices.

8

CPG net sales decreased from 1995 to 1996 as well as from 1994 to 1995. The decline in CPG net sales was in each case due to increased market acceptance of higher performance fifth-generation microprocessors from Intel Corporation (Intel), coupled with the Company's delay in introducing competitive fifth-generation microprocessors. The Company's fifth-generation microprocessor, the AMD-K5 microprocessor, was introduced relatively late in the life cycle of fifth-generation products. As such, the Company believes the AMD-K5 microprocessor will be a transitional product and will not generate levels of sales achieved by the Am486 microprocessor over its product life. The Company intends to begin volume shipments of the AMD-K6(TM)/ products in the second quarter of 1997, although no assurance can be made that such shipments will occur.

Vantis net sales decreased in 1996 due to lower unit shipments. The Company believes this decrease was caused by decreased market demand in the simple programmable logic market. The increase from 1994 to 1995 was primarily due to higher unit shipments. The Company is in the process of transferring its programmable logic device operations to a wholly owned subsidiary, Vantis Corporation. Vantis Corporation will rely upon the Company for manufacturing services. A dedicated programmable logic device sales force was formed and began operating as a separate unit in the second half of 1996.

All of the Company's products are in markets characterized by rapid technological change and significant competition. As such, there can be no assurance that trends, including falling prices for Flash memory devices, reduced microprocessor sales and decreased unit shipments of programmable logic devices, will not continue. See Risk Factors below.

Gross margin was 26 percent, 43 percent and 53 percent in 1996, 1995 and 1994, respectively. The decline in gross margin in 1996 was primarily due to lower sales, the underutilization of certain production facilities, and increased purchases by the Company of Flash memory devices from its manufacturing joint venture with Fujitsu Limited, Fujitsu AMD Semiconductor Limited (FASL), at prices higher than the costs of similar products manufactured internally. The decline in gross margin in 1995 was due to Am486 processor price declines; increased purchases from FASL at prices higher than the costs of similar products manufactured internally; negative gross margin, inventory and manufacturing loss accruals associated with significantly reduced demand for NexGen products; and the transition of Fab 25 costs from research and development to cost of sales when production commenced in September 1995. The impact of gross margin declines caused by purchases of FASL products during 1996 and 1995 was mostly offset by the Company's share of FASL income.

Research and development expenses were \$401 million, \$417 million and \$295 million in 1996, 1995 and 1994, respectively. The decrease from 1995 to 1996 was due to the commencement of production at Fab 25 in the third quarter of 1995, when Fab 25 costs transitioned from research and development to cost of sales. The increase from 1994 to 1995 was primarily due to higher Fab 25 research and development expenses and secondarily due to increased microprocessor development costs.

Marketing, general and administrative expenses were \$365 million, \$413 million and \$378 million in 1996, 1995 and 1994, respectively. The decrease from 1995 to 1996 was primarily due to the cessation of expenses associated with products from NexGen, which the Company no longer offers, coupled with effective expense controls. The increase from 1994 to 1995 was primarily attributable to expenses for the sale of Nx586(R)/and other related products from NexGen, and secondarily to higher advertising expenses.

Interest income and other, net was \$59 million, \$32 million and \$17 million in



1996, 1995 and 1994, respectively. The increase from 1995 to 1996 was due to realized gains of approximately \$41 million from equity securities sold in 1996, which were partially offset by lower interest income as a result of lower cash balances and lower interest rates during 1996. The increase from 1994 to 1995 was due to higher interest rates and a realized gain of approximately \$3 million from equity securities. Interest expense was \$15 million, \$3 million and \$4 million in 1996, 1995 and 1994, respectively. The increase from 1995 to 1996 was primarily due to interest expense incurred on the Company's Senior Secured Notes sold in August, 1996. Gross interest expense increased in 1996 and is expected to increase in the future, primarily due to interest expense incurred on the Company's Senior Secured Notes and a four-year secured term loan, as discussed below. Interest expense in 1995 decreased from 1994 due to higher capitalized interest mainly related to the construction of Fab 25.

9

MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS  
OF OPERATIONS AND FINANCIAL CONDITIONS

The Company recorded a tax credit of \$85 million in 1996, resulting in an effective tax rate (benefit) of approximately 41 percent. The income tax rate was approximately 28 percent for 1995 and 34 percent for 1994. The lower tax rate in 1995 resulted from lower state taxes and increased benefits from foreign income taxed at a lower rate. Realization of the Company's net deferred tax assets (\$46 million at December 29, 1996) is dependent on future taxable income. While the Company believes that it is more likely than not that such assets will be realized, other factors, including those mentioned in the discussion of Risk Factors, may impact the ultimate realization of such assets.

International sales were 53, 56 and 55 percent of total sales in 1996, 1995 and 1994, respectively. During 1996, approximately 16 percent of the Company's net sales were denominated in foreign currencies. The Company does not have sales denominated in local currencies in those countries which have highly inflationary economies. (A highly inflationary economy is defined in accordance with the Statement of Financial Accounting Standards No. 52 as one in which the cumulative inflation over a three-year consecutive period approximates 100 percent or more.) The impact on the Company's operating results from changes in foreign currency rates individually and in the aggregate has not been material.

The Company enters into foreign exchange forward contracts to buy and sell currencies as economic hedges of the Company's foreign net monetary asset position including the Company's liabilities for products purchased from FASL. In 1996 and 1995, these hedging transactions were denominated in lira, yen, French franc, deutsche mark (DM) and pound sterling. The maturities of these contracts are generally short-term in nature. The Company believes its foreign exchange contracts do not subject the Company to material risk from exchange rate movements because gains and losses on these contracts are designed to offset losses and gains on the net monetary asset position being hedged. Net foreign currency gains and losses have not been material. As of December 29, 1996, the Company had approximately \$25 million (notional amount) of foreign exchange forward contracts (see Notes 3, 4 and 5 to the Consolidated Financial Statements).

The Company has engaged in interest rate swaps primarily to reduce its interest rate exposure by changing a portion of the Company's interest rate obligation from a floating rate to a fixed rate basis. At the end of 1996, the net outstanding notional amount of interest rate swaps was \$40 million, which will mature in 1997. Gains and losses related to these interest rate swaps have not been material (see Notes 3, 4 and 5 to the Consolidated Financial Statements).

The Company participates as an end user in various derivative markets to manage its exposure to interest and foreign currency exchange rate fluctuations. The counterparties to the Company's foreign exchange forward contracts and interest rate swaps consist of a number of major, high credit quality, international financial institutions. The Company does not believe that there is significant risk of nonperformance by these counterparties because the Company monitors their credit ratings, and reduces the financial exposure by limiting the notional amount of agreements entered into with any one financial institution.

FINANCIAL CONDITION  
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The Company's working capital balance decreased to \$446 million at December 29,

1996 from \$462 million at December 31, 1995 primarily due to continued capital spending, particularly on Fab 25, repayment of the Company's \$150 million four-year term bank loan, and the net loss in 1996, which were offset by the net proceeds from the sale of \$400 million of the Company's Senior Secured Notes in the third quarter of 1996. The Company's cash, cash equivalents and short-term investments balance was approximately \$386 million at December 29, 1996 compared to \$510 million at December 31, 1995.

Excluding the cash received from the sale of the Senior Secured Notes, the Company's capital investments and its recent operating performance have resulted in significant negative cash flow. In 1996 the Company made substantial capital investments in its process technology and manufacturing capacity based, in part, upon Company and industry projections regarding future growth in the market for ICs. The Company plans to make capital investments of approximately \$500 million in 1997, excluding those relating to the Dresden Facility (as defined below) and FASL. The Company's current capital plan and requirements are based on the availability of financial resources and various product-mix, selling-price, and unit-demand assumptions and are, therefore, subject to revision.

10

AMD Saxony Manufacturing GmbH (AMD Saxony), a German subsidiary wholly owned by the Company through a German holding company, is building a 900,000 square foot submicron integrated circuit manufacturing and design facility in Dresden, in the State of Saxony, Germany (the Dresden Facility) over the next five years at a presently estimated cost of approximately \$1.5 billion. The Dresden Facility is being designed for the production of microprocessors and other advanced logic products. The Federal Republic of Germany and the State of Saxony have agreed to support the project in the form of (i) a guarantee of 65% of the bank debt to be incurred by AMD Saxony up to a maximum of DM1.65 billion, (ii) investment grants and subsidies totaling DM500.5 million, and (iii) interest subsidies from the State of Saxony totaling DM300 million. In March, 1997 AMD Saxony will be entering into a loan agreement with a consortium of banks led by Dresdner Bank AG under which facilities totaling DM1.65 billion will be made available. In connection with the financing, the Company has agreed to invest in AMD Saxony over the next three years equity and subordinated loans in an amount totaling approximately DM507.5 million. Until the Dresden Facility has been completed, AMD has also agreed to guarantee AMD Saxony's obligations under the loan agreement up to a maximum of DM217.5 million. After completion of the Dresden Facility, AMD has agreed to make available to AMD Saxony up to DM145 million if the subsidiary does not meet its fixed charge coverage ratio covenant. Finally, AMD has agreed to undertake certain contingent obligations, including various obligations to fund project cost overruns. The Company began site preparation of the Dresden Facility in the fourth quarter of 1996, and plans to commence construction during the second quarter of 1997. The planned Dresden Facility costs are denominated in deutsche marks and, therefore, are subject to change due to foreign exchange rate fluctuations. The Company plans to hedge future foreign exchange exposure for the Dresden Facility.

The Company's total cash investment in FASL was \$160 million at the end of 1996 and at the end of 1995. No additional cash investment is currently planned for 1997. In March of 1996, FASL began construction of a second Flash memory device wafer fabrication facility (FASL II) at a site contiguous to the existing FASL facility in Aizu-Wakamatsu, Japan. The facility is expected to cost approximately \$1.1 billion when fully equipped. Capital expenditures for FASL II construction are expected to be funded by cash generated from FASL operations and, if necessary, borrowings by FASL. To the extent that FASL is unable to secure the necessary funds for FASL II, AMD may be required to contribute cash or guarantee third-party loans in proportion to its percentage interest in FASL. At December 29, 1996, AMD had loan guarantees of \$39 million outstanding with respect to such loans. The planned FASL II costs are denominated in yen and, therefore, are subject to change due to foreign exchange rate fluctuations.

In August, 1996, the Company sold \$400 million of Senior Secured Notes due August 1, 2003 under its shelf registration declared effective by the Securities and Exchange Commission on May 17, 1994. Due to the sale of the Senior Secured Notes, the Company fully utilized this shelf registration. Interest on the Senior Secured Notes accrues at the rate of 11 percent per annum and is payable semiannually in arrears on February 1 and August 1 of each year, commencing February 1, 1997. The Senior Secured Notes are secured by substantially all of the assets of Fab 25 and its ancillary facilities, and are redeemable at the Company's option after August 1, 2001.

The net proceeds to the Company from the sale of Senior Secured Notes, after

deducting underwriting discounts and commissions and estimated expenses of the sale of Senior Secured Notes, were approximately \$389 million. The Company used \$150 million of the net proceeds to repay its existing four-year term bank loan which was to mature on January 5, 1999. The Company expects to use the balance of the net proceeds of approximately \$239 million for general corporate purposes.

On July 19, 1996, the Company entered into a syndicated bank loan agreement (the Credit Agreement) which provides for a new \$400 million term loan and revolving credit facility which became available concurrently with the sale of the Senior Secured Notes. The Credit Agreement replaced the Company's unsecured and unused \$250 million line of credit and its unsecured \$150 million four-year term loan. The Credit Agreement provides for a \$150 million three-year secured revolving line of credit (which can be extended for one additional year, subject to approval of the lending banks) and a \$250 million four-year secured term loan which the Company fully utilized in January, 1997. Additionally, as of December 29, 1996, the Company has available unsecured uncommitted bank lines of credit in the amount of \$85 million, of which \$15 million was utilized.

The Company believes that current cash balances, together with cash flows, will be sufficient to fund operations and capital investments currently planned through 1997.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF  
OPERATIONS AND FINANCIAL CONDITION

RISK FACTORS  
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The Company's business, results of operations and financial condition are subject to the following risk factors:

MICROPROCESSOR PRODUCTS

Intel Dominance. Intel has long held a dominant position in the market for  
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microprocessors used in personal computers (PCs). Intel Corporation's dominant market position has to date allowed it to set and control x86 microprocessor standards and thus dictate the type of product the market requires of Intel Corporation's competitors. In addition, Intel Corporation's financial strength has enabled it to reduce prices on its microprocessor products within a short period of time following their introduction, which reduces the margins and profitability of its competitors, and to exert substantial influence and control over PC manufacturers through the Intel Inside advertising rebate program. The Company expects Intel to continue to invest heavily in research and development and new manufacturing facilities and to maintain its dominant position through advertising campaigns designed to engender brand loyalty to Intel among PC purchasers. As an extension of its dominant microprocessor market share, Intel also increasingly dominates the PC platform. The Company does not have the financial resources to compete with Intel on such a large scale. As long as Intel remains in this dominant position, its product introduction schedule, product pricing strategy and customer brand loyalty may continue to have a material adverse effect on the Company.

As Intel has expanded its dominance in designing and setting standards for PC systems, many PC original equipment manufacturers (OEMs) have reduced their system development expenditures and have begun to purchase microprocessors in conjunction with chip sets or in assembled motherboards. In marketing its microprocessors to these OEMs and dealers, AMD is dependent upon companies other than Intel for the design and manufacture of core-logic chip sets, motherboards, basic input/output system (BIOS) software and other components. In recent years, these third-party designers and manufacturers have lost significant market share to Intel. In addition, these companies are able to produce chip sets, motherboards, BIOS software and other components to support each new generation of Intel Corporation's microprocessors only to the extent that Intel makes its related proprietary technology available. Any delay in the availability of such technologies would make it increasingly difficult for them to retain or regain market share. To compete with Intel in this market in the future, the Company intends to continue to form closer relationships with third-party designers and manufacturers of core-logic chip sets, motherboards, BIOS software and other components. The Company similarly intends to expand its chip set and system design capabilities, and offer to OEMs a portion of the Company's processors

together with chip sets and licensed system designs incorporating the Company's processors and companion products. There can be no assurance, however, that such efforts by the Company will be successful. The Company expects that as Intel introduces future generations of microprocessors, chip sets and motherboards, the design of chip sets and higher level board products which support Intel microprocessors will become increasingly dependent on the Intel microprocessor design and may become incompatible with non-Intel processor-based PC systems. If the infrastructure of third-party designers and manufacturers which supports non-Intel PC platforms were to fail to continue to support the Company's products or to offer products competitive with Intel Corporation's, the Company could experience difficulties marketing its microprocessors, which could have a material adverse effect on the Company.

Dependence on New AMD Microprocessor Products. Am486 microprocessor products

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contributed a significant portion of the Company's revenues, profits and margins in 1994 and 1995. Am486 microprocessor revenues in 1996 were significantly below those of 1995. As the product life cycle of fourth-generation x86 products has declined, the Company's ability to maintain or expand its current levels of revenues from microprocessor products, and its ability to benefit fully from the substantial financial commitments it has made to process technologies and integrated circuit manufacturing facilities dedicated to the production of microprocessors, has depended upon its success in developing and marketing in a timely manner its future generations of microprocessor products, the K86 RISC SUPERSCALAR/(TM)/products. The Company is currently shipping its fifth-generation K86 products including the PR 133/1/, PR 150 and PR 166 AMD-K5 processors which are designed to be competitive with the Pentium, Intel Corporation's fifth-generation microprocessor. The Company anticipates that the AMD-K5 microprocessor, which was introduced relatively late in the life cycle of fifth-generation microprocessor products, will be a

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/1/ "PR" refers to the performance rating assigned to the microprocessors by AMD based upon tests conducted employing the Ziff-Davis Winstone 96 benchmark, which compares the systems performance provided by a microprocessor to the systems performance provided by Pentium processors of various clock speeds. A performance rating of 166, for example, indicates that the microprocessor has been determined to deliver systems performance equal to or greater than that provided by a 166 Megahertz Pentium.

transitional product, and will not result in the levels of revenue that the Company realized from the Am486 microprocessor. The Company's AMD-K5 products have not, to date, achieved substantial market acceptance, which has had and continues to have a material adverse effect on the Company. The Company intends to begin volume shipments of its sixth-generation microprocessor, the AMD-K6 processor, in the second quarter of 1997, although no assurance can be made that such shipments will occur. The Company's production and sales plans for K86 microprocessors are subject to numerous risks and uncertainties, including the introduction and volume production of higher performance AMD-K5 products and of AMD-K6 products, the possibility that volume shipments of the AMD-K6 may be delayed due to the time required to verify operating systems and application software compatibility, the development of market acceptance for the AMD-K5 and the AMD-K6 products particularly with leading PC OEMs, the effects of marketing and pricing strategies adopted by Intel, the possible adverse effects of existing and future customer inventory levels, the pace at which the Company is able to ramp production of fifth- and sixth-generation microprocessors in Feb 25, the possibility that products newly introduced by the Company may be found to be defective, possible adverse conditions in the personal computer market and unexpected interruptions in the Company's manufacturing operations. A failure of the Company's K86 products, particularly the AMD-K6 processor, to be timely introduced or to achieve market acceptance, would have a material adverse effect on the Company. AMD is also devoting substantial resources to the development of its seventh-generation Microsoft(R) Windows(R) compatible microprocessor, the AMD-K7 processor.

Dependence on Market Acceptance of x86 Standard and Dominance of Windows.

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Customer acceptance of the Company's K86 products will depend upon the continued demand for x86-based personal computers, including the continued development of application software programs for such computers. There can be no assurance of the continued acceptance of the x86 standard or that software developers will continue to develop software compatible with this standard. The Company's K86

products will face competition not only from x86 products manufactured by Intel and others but also from products based upon an increasing number of different architectures which have been developed or are under development by IBM, Motorola, Silicon Graphics, Sun Microsystems, Digital Equipment Corporation and other manufacturers of integrated circuits. Several of these manufacturers, such as Motorola, Digital Equipment Corporation, Silicon Graphics and Sun Microsystems, produce microprocessors which are designed to be compatible with such operating systems as Windows NT(R) and UNIX but not with Windows or Windows 95. Currently, as a result of the dominance of the Windows operating system, which operates with x86-based PCs, AMD is able to market its microprocessors without significant competition from these manufacturers. AMD would lose much of this advantage if the Microsoft Windows operating system should be displaced as the dominant operating system software by one or more other systems, such as Windows NT or UNIX. A reduction in the market acceptance of either the x86 standard or the Windows operating system could have a material adverse effect on the Company.

Compatibility Certifications. For its future generations of K86 microprocessors,

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AMD intends to obtain Windows, Windows 95 and Windows NT certifications from Microsoft and other appropriate certifications from recognized testing organizations. A failure to obtain certifications from Microsoft would prevent the Company from describing and labeling its K86 microprocessors as Microsoft Windows compatible. This could substantially impair the Company's ability to market the products and could have a material adverse effect on the Company.

Fluctuation in PC Market. Since most of the Company's microprocessor products

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are used in personal computers and related peripherals, the Company's future growth is closely tied to the performance of the PC industry. The Company could be materially and adversely affected by industry-wide fluctuations in the PC marketplace in the future.

Possible Rights of Others. Prior to its acquisition by AMD, NexGen granted

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limited manufacturing rights regarding certain of its current and future microprocessors, including the Nx586 and Nx686(TM), to other companies. The Company does not intend to produce any NexGen products. The Company believes that its forthcoming AMD-K6 processors are AMD products and not NexGen products. There can be no assurance that another company will not seek to establish rights with respect to the processors. If another company were deemed to have rights to produce the Company's AMD-K6 processors for its own use or for sale to third parties, such production could reduce the potential market for microprocessor products produced by AMD, the profit margin achievable with respect to such products, or both.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF  
OPERATIONS AND FINANCIAL CONDITION

FLASH MEMORY PRODUCTS

Importance of Flash Memory Device Business; Increasing Competition. In 1996, the

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market for Flash memory devices experienced rapid growth and increased competition as additional manufacturers introduced competitive products and industry-wide production capacity increased. The Company expects that the marketplace for Flash memory devices will continue to be increasingly competitive. A substantial portion of the Company's revenues are derived from sales of Flash memory devices, and the Company expects that this will continue to be the case for the foreseeable future. During 1996, the Company experienced declines in the selling prices of Flash memory devices. There can be no assurance that the Company will be able to maintain its market share in Flash memory devices or that price declines may not accelerate as the market develops and as new competitors emerge. A decline in the Company's Flash memory device business could have a material adverse effect on the Company.

MANUFACTURING

Capacity. The Company's manufacturing facilities have been underutilized from

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time to time as a result of reduced demand for certain of the Company's

products. The Company's operations related to microprocessors have been particularly affected by this situation. Any future underutilization of the Company's manufacturing facilities could have a material adverse effect on the Company. The Company plans to increase its manufacturing capacity by making significant capital investments in Fab 25 and in Fab 30 in Dresden, Germany. In addition, FASL has begun construction of a second Flash memory device manufacturing facility (FASL II). There can be no assurance that the industry projections for future growth upon which the Company is basing its strategy of increasing its manufacturing capacity will prove to be accurate. If demand for the Company's products does not increase, underutilization of the Company's manufacturing facilities will likely occur and have a material adverse effect on the Company.

There have been situations in the past in which the Company's manufacturing facilities were inadequate to enable the Company to meet demand for certain of its products. In addition to having its own fabrication facilities, AMD has foundry arrangements for the production of its products by third parties. Any inability of AMD to generate sufficient manufacturing capabilities to meet demand, either in its own facilities or through foundry or similar arrangements with others, could have a material adverse effect on the Company.

Process Technology. Manufacturers of integrated circuits are constantly seeking  
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to improve the process technologies used to manufacture their products. In order to remain competitive, the Company must make continuing substantial investments in improving its process technologies. In particular, the Company has made and continues to make significant research and development investments in the technologies and equipment used to fabricate its microprocessor products and its Flash memory devices. Portions of these investments might not be recoverable if the Company's microprocessors fail to gain market acceptance or if the market for its Flash memory products should significantly deteriorate. This could have a material adverse effect on the Company. In addition, any inability of the Company to remain competitive with respect to process technology could have a material adverse effect on the Company.

Manufacturing Interruptions. Any substantial interruption with respect to any of  
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the Company's manufacturing operations, either as a result of a labor dispute, equipment failure or other cause, could have a material adverse effect on the Company. The Company may also be materially adversely affected by fluctuations in manufacturing yields.

Essential Manufacturing Materials. Certain of the raw materials used by the  
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Company in the manufacture of its products are available from a limited number of suppliers. For example, several types of the integrated circuit packages purchased by AMD, as well as by the majority of other companies in the semiconductor industry, are principally supplied by Japanese companies. Shortages could occur in various essential materials due to interruption of supply or increased demand in the industry. If AMD were unable to procure certain of such materials, it would be required to reduce its manufacturing operations which could have a material adverse effect on the Company. To date, AMD has not experienced significant difficulty in obtaining the necessary raw materials.

International Manufacturing. Nearly all product assembly and final testing of  
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the Company's products are performed at the Company's manufacturing facilities in Penang, Malaysia; Bangkok, Thailand; and Singapore; or by subcontractors in Asia. AMD has a 50-year land lease in Suzhou, China, to be used for the construction and operation of an additional assembly and test facility. Foreign manufacturing and construction of foreign facilities entail political and economic risks, including political instability, expropriation, currency controls and fluctuations, changes in freight and interest rates, and loss or modification of exemptions for taxes and tariffs. For example, if AMD were unable to assemble and test its products abroad, or if air transportation between the United States and the Company's overseas facilities were disrupted, there could be a material adverse effect on the Company.

Debt Restrictions. The Credit Agreement and the Indenture related to the  
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Senior Secured Notes contain significant covenants that limit the Company's and its subsidiaries' ability to engage in various transactions and require satisfaction of specified financial performance criteria. In addition, the occurrence of certain events (including, without limitation, failure to comply with the foregoing covenants, material inaccuracies of representations and warranties, certain defaults under or acceleration of other indebtedness and events of bankruptcy or insolvency) would, in certain cases after notice and grace periods, constitute events of default permitting acceleration of indebtedness. The limitations imposed by the Credit Agreement and the Indenture are substantial, and failure to comply with such limitations could have a material adverse effect on the Company.

Dependence on Third Parties for Programmable Logic Software. Customers utilizing  
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programmable logic devices must use special software packages, generally provided by the suppliers of the programmable logic devices, to program these devices. AMD provides its programmable logic device customers with software which it licenses from third parties and is dependent upon third parties for the software and continuing improvements in the quality of the software. No assurance can be made that the Company will be able to maintain its existing relationships with these third parties. An inability of AMD to continue to obtain appropriate software and improvements from third parties or to develop its own software internally could materially adversely affect the Company's Vantis business, including the timing of new or improved product introductions, which could have a material adverse effect on the Company.

Technological Change and Industry Standards. The market for the Company's  
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products is generally characterized by rapid technological developments, evolving industry standards, changes in customer requirements, frequent new product introductions and enhancements, short product life cycles and severe price competition. The establishment of industry standards is a function of market acceptance. Currently accepted industry standards may change. The Company's success depends substantially upon its ability, on a cost-effective and timely basis, to continue to enhance its existing products and to develop and introduce new products that take advantage of technological advances and adhere to evolving industry standards. An unexpected change in one or more of the technologies related to its products, in market demand for products based on a particular technology or on accepted industry standards could have a material adverse effect on the Company. There can be no assurance that AMD will be able to develop new products in a timely and satisfactory manner to address new industry standards and technological changes, or to respond to new product announcements by others, or that any such new products will achieve market acceptance.

Product Incompatibility. While AMD submits its products to rigorous internal and  
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external testing, there can be no assurance that the Company's products will be compatible with all industry-standard software and hardware. Any inability of the Company's customers to achieve such compatibility or compatibility with other software or hardware after the Company's products are shipped in volume could have a material adverse effect on the Company. There can be no assurance that AMD will be successful in correcting any such compatibility problems that are discovered or that such corrections will be acceptable to customers or made in a timely manner. In addition, the mere announcement of an incompatibility problem relating to the Company's products could have a material adverse effect on the Company.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS  
OF OPERATIONS AND FINANCIAL CONDITION

Competition. The IC industry is intensely competitive and, historically, has  
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experienced rapid technological advances in product and system technologies together with substantial price reductions in maturing products. After a product is introduced, prices normally decrease over time as production efficiency and competition increase, and as a successive generation of products is developed and introduced for sale. Technological advances in the industry result in frequent product introductions, regular price reductions, short product life cycles and increased product performance. Competition in the sale of ICs is

based on performance, product quality and reliability, price, compatibility with industry standards, software and hardware compatibility, marketing and distribution capability, brand recognition, financial strength and ability to deliver in large volumes on a timely basis.

Fluctuations in Operating Results. The Company's operating results are subject

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to substantial quarterly and annual fluctuations due to a variety of factors, including the effects of competition with Intel in the microprocessor industry, competitive pricing pressures, anticipated decreases in unit average selling prices of the Company's products, production capacity levels and fluctuations in manufacturing yields, availability and cost of products from the Company's suppliers, the gain or loss of significant customers, new product introductions by AMD or its competitors, changes in the mix of products sold and in the mix of sales by distribution channels, market acceptance of new or enhanced versions of the Company's products, seasonal customer demand, the timing of significant orders and the timing and extent of product development costs. In addition, operating results could be adversely affected by general economic and other conditions causing a downturn in the market for semiconductor devices, or otherwise affecting the timing of customer orders or causing order cancellations or rescheduling. The Company's customers may change delivery schedules or cancel orders without significant penalty. Many of the factors listed above are outside of the Company's control. These factors are difficult to forecast, and these or other factors could materially adversely affect the Company's quarterly or annual operating results.

Order Revision and Cancellation Policies. AMD manufactures and markets standard

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lines of products. Sales are made primarily pursuant to purchase orders for current delivery, or agreements covering purchases over a period of time, which are frequently subject to revision and cancellation without penalty. As a result, AMD must commit resources to the production of products without having received advance purchase commitments from customers. Any inability to sell products to which it had devoted significant resources could have a material adverse effect on the Company. Distributors typically maintain an inventory of the Company's products. Pursuant to the Company's agreements with distributors, AMD protects its distributors' inventory of the Company's products against price reductions as well as products that are slow moving or have been discontinued. These agreements, which may be canceled by either party on a specified notice, generally contain a provision for the return of the Company's products in the event the agreement with the distributor is terminated. The price protection and return rights AMD offers to its distributors may materially adversely affect the Company.

Key Personnel. The Company's future success depends upon the continued service

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of numerous key engineering, manufacturing, sales and executive personnel. There can be no assurance that AMD will be able to continue to attract and retain qualified personnel necessary for the development and manufacture of its products. Loss of the service of, or failure to recruit, key engineering design personnel could be significantly detrimental to the Company's product development programs or otherwise have a material adverse effect on the Company.

Product Defects. One or more of the Company's products may possibly be found to

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be defective after AMD has already shipped such products in volume, requiring a product replacement, recall, or a software fix which would cure such defect but impede performance. Product returns could impose substantial costs on AMD and have a material adverse effect on the Company.

Intellectual Property Rights; Potential Litigation. Although the Company

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attempts to protect its intellectual property rights through patents, copyrights, trade secrets, trademarks and other measures, there can be no assurance that the Company will be able to protect its technology or other intellectual property adequately or that competitors will not be able to develop similar technology independently. There can be no assurance that any patent applications that the Company may file will be issued or that foreign intellectual property laws will protect the Company's intellectual property rights. There can be no assurance that any patent licensed by or issued to the Company will not be challenged, invalidated or circumvented or that the rights



granted thereunder will provide competitive advantages to the Company. Furthermore, there can be no assurance that others will not independently develop similar products, duplicate the Company's products or design around the Company's patents and other rights.

From time to time, AMD has been notified that it may be infringing intellectual property rights of others. If any such claims are asserted against the Company, the Company may seek to obtain a license under the third party's intellectual property rights. AMD could decide, in the alternative, to resort to litigation to challenge such claims. Such challenges could be extremely expensive and time-consuming and could materially adversely affect the Company. No assurance can be given that all necessary licenses can be obtained on satisfactory terms, or that litigation may always be avoided or successfully concluded.

Environmental Regulations. The failure to comply with present or future

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 governmental regulations related to the use, storage, handling, discharge or disposal of toxic, volatile or otherwise hazardous chemicals used in the manufacturing process could result in fines being imposed on the Company, suspension of production, alteration of the Company's manufacturing processes or cessation of operations. Such regulations could require the Company to acquire expensive remediation equipment or to incur other expenses to comply with environmental regulations. Any failure by the Company to control the use, disposal or storage of, or adequately restrict the discharge of, hazardous substances could subject the Company to future liabilities and could have a material adverse effect on the Company.

International Sales. AMD derives a substantial portion of its revenues from its

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 sales subsidiaries located in Europe and Asia Pacific. The Company's international sales operations entail political and economic risks, including expropriation, currency controls, exchange rate fluctuations, changes in freight rates and changes in rates for taxes and tariffs.

Domestic and International Economic Conditions. The Company's business is

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 subject to general economic conditions, both in the United States and abroad. A significant decline in economic conditions in any significant geographic area could have a material adverse effect on the Company.

Volatility of Stock Price; Ability to Access Capital. Based on the trading

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 history of its stock, AMD believes factors such as quarterly fluctuations in the Company's financial results, announcements of new products by AMD or its competitors and general conditions in the semiconductor industry have caused and are likely to continue to cause the market price of AMD common stock to fluctuate substantially. Technology company stocks in general have experienced extreme price and volume fluctuations that often have been unrelated to the operating performance of the companies. This market volatility may adversely affect the market price of the Company's common stock and consequently limit the Company's ability to raise capital. In addition, an actual or anticipated shortfall in revenue, gross margins or earnings from securities analysts' expectations could have an immediate effect on the trading price of AMD common stock in any given period.

Earthquake Danger. The Company's corporate headquarters, a portion of its

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 manufacturing facilities, assembly and research and development activities and certain other critical business operations are located near major earthquake fault lines. The Company could be materially adversely affected in the event of a major earthquake.

CONSOLIDATED STATEMENTS OF OPERATIONS

Three Years Ended December 29, 1996 (Thousands except per share amounts)	1996	1995	1994
Net sales .....	\$ 1,953,019	\$ 2,468,379	\$ 2,155,453
Expenses:			
Cost of sales .....	1,440,828	1,417,007	1,013,589

Research and development .....	400,703	416,521	295,326
Marketing, general and administrative .....	364,798	412,651	377,503
	<u>2,206,329</u>	<u>2,246,179</u>	<u>1,686,418</u>
Operating income (loss) .....	(253,310)	222,200	469,035
Litigation settlement .....	--	--	(58,000)
Interest income and other, net .....	59,391	32,465	17,134
Interest expense .....	(14,837)	(3,059)	(4,410)
Income (loss) before income taxes and equity in joint venture	(208,756)	251,606	423,759
Provision (benefit) for income taxes .....	(85,008)	70,206	142,232
Income (loss) before equity in joint venture .....	(123,748)	181,400	281,527
Equity in net income (loss) of joint venture .....	54,798	34,926	(10,585)
Net income (loss) .....	(68,950)	216,326	270,942
Preferred stock dividends .....	--	10	10,350
Net income (loss) applicable to common stockholders .....	<u>\$ (68,950)</u>	<u>\$ 216,316</u>	<u>\$ 260,592</u>
Net income (loss) per common share:			
Primary .....	<u>\$ (0.51)</u>	<u>\$ 1.59</u>	<u>\$ 2.06</u>
Fully diluted .....	<u>\$ (0.51)</u>	<u>\$ 1.57</u>	<u>\$ 2.02</u>
Shares used in per share calculation:			
Primary .....	135,687	136,208	126,674
Fully diluted .....	135,687	137,815	134,142

See accompanying notes

18

CONSOLIDATED BALANCE SHEETS

DECEMBER 29, 1996, AND DECEMBER 31, 1995 (THOUSANDS EXCEPT SHARE AND PER SHARE AMOUNTS)	1996	1995
<b>Assets</b>		
<b>Current assets:</b>		
Cash and cash equivalents .....	\$ 166,194	\$ 126,316
Short-term investments .....	220,004	383,349
Total cash, cash equivalents, and short-term investments .....	386,198	509,665
Accounts receivable, net of allowance for doubtful accounts of \$9,809 in 1996, and \$15,618 in 1995 .....	220,028	284,238
<b>Inventories:</b>		
Raw materials .....	22,050	29,494
Work-in-process .....	83,853	68,827
Finished goods .....	48,107	57,665
Total inventories .....	154,010	155,986
Deferred income taxes .....	140,850	147,489
Tax refund receivable .....	99,909	2,107
Prepaid expenses and other current assets .....	28,082	38,457
Total current assets .....	1,029,077	1,137,942
<b>Property, plant, and equipment:</b>		
Land .....	32,244	28,851
Buildings and leasehold improvements .....	938,573	893,646
Equipment .....	1,963,808	1,843,662
Construction in progress .....	392,143	180,742
Total property, plant, and equipment .....	3,326,768	2,946,901
Accumulated depreciation and amortization .....	(1,539,366)	(1,305,267)
Property, plant, and equipment, net .....	1,787,402	1,641,634
Investment in joint venture .....	197,205	176,821
Other assets .....	131,599	122,070
	<u>\$ 3,145,283</u>	<u>\$ 3,078,467</u>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current liabilities:</b>		
Notes payable to banks .....	\$ 14,692	\$ 26,770
Accounts payable .....	224,139	241,916
Accrued compensation and benefits .....	66,745	106,347
Accrued liabilities .....	103,436	103,404
Income tax payable .....	51,324	56,297
Deferred income on shipments to distributors .....	95,466	100,057
Current portion of long-term debt and capital lease obligations .....	27,671	41,642
Total current liabilities .....	583,473	676,433
Deferred income taxes .....	95,102	84,607

Long-term debt and capital lease obligations, less current portion.....	444,830	214,965
Commitments and contingencies.....	-	-
Stockholders' equity:		
Capital stock:		
Common stock, par value \$.01; 250,000,000 shares authorized; 137,580,296 shares issued and outstanding in 1996, and 132,182,019 in 1995 .....	1,380	1,050
Capital in excess of par value .....	957,226	908,989
Retained earnings .....	1,063,272	1,192,423
	-----	-----
Total stockholders' equity .....	2,021,878	2,102,462
	=====	=====
	\$ 3,145,283	\$ 3,078,467

See accompanying notes

19

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY  
Three Years Ended December 29, 1996  
(Thousands)

	Preferred Stock		Common Stock		Capital in Excess of Par Value	Retained Earnings	Total Stockholders' Equity
	Number of Shares	Amount	Number of Shares	Amount			
December 26, 1993 .....	16,422	\$ 74,844	94,300	\$1,236	\$ 620,266	\$ 655,460	\$ 1,351,806
Issuance of common stock .....	--	--	4,676	316	65,170	--	65,486
Issuance of shares:							
Employee stock plans .....	--	--	1,970	19	16,911	--	16,930
Fujitsu Limited .....	--	--	1,000	10	22,625	--	22,635
Compensation recognized under employee stock plans .....	--	--	--	--	1,971	--	1,971
Conversion of preferred stock to common stock .....	(16,078)	(74,810)	19,973	3	106,199	--	31,392
Income tax benefits realized from employee stock option exercises .....	--	--	--	--	37,433	--	37,433
Preferred stock dividends .....	--	--	--	--	--	(10,350)	(10,350)
Reincorporation into a Delaware Corporation .....	--	--	--	(625)	625	--	--
Net income .....	--	--	--	--	--	270,942	270,942
Net change in unrealized gain/loss from available-for-sale investments .....	--	--	--	--	--	9,109	9,109
	-----	-----	-----	-----	-----	-----	-----
December 25, 1994 .....	344	34	121,919	959	871,200	925,161	1,797,354
Changes in stockholders' equity of NexGen in the six months ended June 30, 1995 .....	18,161	93,548	(24,530)	352	(171,994)	23,803	(54,291)
Issuance of NexGen preferred stock .....	1,376	12,653	--	--	--	--	12,653
Conversion of preferred stock to common stock - NexGen .....	(19,537)	(106,201)	19,970	2	106,199	--	--
Issuance of NexGen common stock in connection with Initial Public Offering .....	--	--	4,542	271	65,340	--	65,611
NexGen warrants exercised .....	--	--	1,178	--	--	--	--
Issuance of shares for employee stock plans .....	--	--	2,283	22	23,518	--	23,540
Compensation recognized under employee stock plans .....	--	--	--	--	2,483	--	2,483
Conversion of preferred stock to common stock .....	(344)	(34)	6,853	69	(2,536)	--	(2,501)
Reincorporation into a Delaware Corporation .....	--	--	(33)	(625)	625	--	--
Income tax benefits realized from employee stock option exercises .....	--	--	--	--	15,189	--	15,189
Preferred stock dividends .....	--	--	--	--	--	(10)	(10)
Redemption of stockholder rights .....	--	--	--	--	(1,035)	--	(1,035)
Net income .....	--	--	--	--	--	216,326	216,326
Net change in unrealized gain/loss from available-for-sale investments and translation adjustment .....	--	--	--	--	--	27,143	27,143
	-----	-----	-----	-----	-----	-----	-----
December 31, 1995 .....	--	--	132,182	1,050	909,989	1,192,423	2,102,462
Issuance of shares:							
Employee stock plans .....	--	--	3,838	315	27,433	--	27,748
Fujitsu Limited .....	--	--	1,000	10	16,525	--	16,535
Compensation recognized under employee stock plans .....	--	--	--	--	24	--	24
Warrants exercised .....	--	--	560	5	2,755	--	2,760
Income tax benefits realized from employee stock option exercises .....	--	--	--	--	1,500	--	1,500
Net loss .....	--	--	--	--	--	(68,950)	(68,950)
Net change in unrealized gain/loss from available-for-sale investments and translation adjustment .....	--	--	--	--	--	(60,201)	(60,201)
	-----	-----	-----	-----	-----	-----	-----
December 29, 1996 .....	--	\$ --	137,580	\$1,380	\$ 957,226	\$1,063,272	\$ 2,021,878

See accompanying notes

20

CONSOLIDATED STATEMENTS OF CASH FLOWS

Three Years Ended December 29, 1996  
(Thousands)

	1996	1995	1994
<b>Cash flows from operating activities:</b>			
Net income (loss)	\$ (68,950)	\$ 216,326	\$ 270,942
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	332,640	264,675	217,665
Accrual for litigation settlement	--	--	58,000
Net loss on sale of property, plant, and equipment	11,953	2,152	276
Write-down of property, plant, and equipment	1,081	611	2,230
Net gain realized on sale of available-for-sale securities	(41,022)	(2,707)	--
Compensation recognized under employee stock plans	24	2,483	1,971
Undistributed (income) loss of joint venture	(54,798)	(34,926)	10,585
Changes in operating assets and liabilities:			
Net (increase) decrease in receivables, inventories, prepaid expenses, and other assets	28,096	19,548	(128,914)
Payment of litigation settlement	--	(58,000)	--
Net (increase) decrease in deferred income taxes	17,134	(925)	(32,543)
Increase (decrease) in tax refund receivable and income tax payable	(110,058)	11,772	61,910
Net increase (decrease) in payables and accrued liabilities	(42,863)	124,058	63,737
<b>Net cash provided by operating activities</b>	<b>73,237</b>	<b>545,067</b>	<b>525,859</b>
<b>Cash flows from investing activities:</b>			
Purchase of property, plant, and equipment	(485,018)	(625,900)	(552,271)
Proceeds from sale of property, plant, and equipment	2,489	4,834	2,058
Purchase of available-for-sale securities	(633,476)	(817,888)	(56,328)
Proceeds from sale of available-for-sale securities	840,492	756,373	4,849
Purchase of held-to-maturity debt securities	--	(648,012)	(1,245,167)
Proceeds from maturities of held-to-maturity debt securities	--	642,229	1,416,431
Investment in joint venture	--	(18,019)	(139,175)
<b>Net cash used in investing activities</b>	<b>(275,513)</b>	<b>(706,383)</b>	<b>(569,603)</b>
<b>Cash flows from financing activities:</b>			
Proceeds from borrowings	447,877	246,345	42,025
Payments on debt and capital lease obligations	(252,766)	(142,937)	(70,288)
Proceeds from issuance of stock	47,043	101,804	136,443
Expenses for conversion of preferred stock and redemption of stockholder rights	--	(3,536)	--
Payments of preferred stock dividends	--	(10)	(10,350)
<b>Net cash provided by financing activities</b>	<b>242,154</b>	<b>201,666</b>	<b>97,830</b>
<b>Net increase in cash and cash equivalents</b>	<b>39,878</b>	<b>40,350</b>	<b>54,086</b>
Cash and cash equivalents at beginning of year	126,316	85,966	63,911
<b>Cash and cash equivalents at end of year</b>	<b>\$ 166,194</b>	<b>\$ 126,316</b>	<b>\$ 117,997</b>
<b>Supplemental disclosures of cash flow information:</b>			
<b>Cash paid during the year for:</b>			
Interest (net of amounts capitalized)	\$ --	\$ 2,541	\$ 4,125
Income taxes	\$ 375	\$ 60,329	\$ 111,704
<b>Non-cash financing activities:</b>			
Equipment capital leases	\$ 8,705	\$ 24,422	\$ 34,202
Conversion of preferred stock to common stock	\$ --	\$ 270,328	\$ 106,201

See accompanying notes

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 29, 1996, December 31, 1995 and December 25, 1994

NOTE 1. NATURE OF OPERATIONS

AMD is a semiconductor manufacturer with manufacturing facilities in the U.S. and Asia and sales offices throughout the world. The Company's products include a wide variety of industry-standard integrated circuits (ICs) which are used in many diverse product applications such as telecommunications equipment, data and network communications equipment, consumer electronics, personal computers (PCs) and workstations.

NOTE 2. BUSINESS COMBINATION

On January 17, 1996, the Company acquired NexGen, Inc. (NexGen) in a tax-free

reorganization in which NexGen was merged directly into the Company. At the date of the merger, the Company reserved approximately 33.6 million total shares to be exchanged, which represented eight-tenths (0.8) of a share of the common stock of AMD for each share of the common stock of NexGen outstanding or subject to an assumed warrant or option. The merger has been accounted for under the pooling-of-interests method. The Consolidated Financial Statements have been prepared to give retroactive effect to the merger of NexGen with and into AMD on January 17, 1996.

Prior to its merger with AMD, NexGen reported on a fiscal year ending June 30. In the accompanying Consolidated Financial Statements and the Notes thereto, NexGen, Inc.'s financial position and operating results as of and for the year ended June 30, 1995 have been combined with the Company's financial position and operating results as of and for the year ended December 25, 1994. NexGen, Inc.'s financial position and operating results for 1995, which were restated to a December 31, 1995 year-end, have been combined with the Company's financial position and operating results as of and for the year ended December 31, 1995. Accordingly, NexGen, Inc.'s operating results for the six months ended June 30, 1995 were duplicated in each of the years ended December 25, 1994 and December 31, 1995. NexGen, Inc.'s revenues and net loss for that six-month period were approximately \$20 million and \$34 million, respectively. Consolidated stockholders' equity was reduced by approximately \$54 million, which represents NexGen, Inc.'s net stockholders' equity activity for the six months ended June 30, 1995 in order to eliminate the duplication of stockholders' equity activity during that period. As a result of the combination of NexGen, Inc.'s financial position as of June 30, 1995 with the financial position of AMD as of December 25, 1994, the beginning cash and cash equivalents balance in 1995 in the accompanying 1996 Consolidated Statements of Cash Flows does not equal the December 25, 1994 cash and cash equivalents balance.

A reconciliation of net sales, net income (loss), and net income per common share of the Company, as previously reported, NexGen and combined, including the NexGen income tax benefit, is as follows:

(Thousands except per share amounts)	1995 -----	1994 -----
Net Sales:		
AMD, as previously reported	\$2,429,724	\$2,134,659
NexGen	38,655	20,794
	-----	-----
Combined	\$2,468,379	\$2,155,453
	=====	=====
Net Income (Loss):		
AMD, as previously reported	\$ 300,521	\$ 305,266
NexGen	(126,727)	(45,795)
NexGen income tax benefit	42,532	11,471
	-----	-----
Combined	\$ 216,326	\$ 270,942
	=====	=====
Net Income Per Common Share (Primary):		
AMD, as previously reported	\$ 2.85	\$ 3.02
	=====	=====
Combined	\$ 1.59	\$ 2.06
	=====	=====
Net Income Per Common Share (Fully Diluted):		
AMD, as previously reported	\$ 2.81	\$ 2.92
	=====	=====
Combined	\$ 1.57	\$ 2.02
	=====	=====

NOTE 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

FISCAL YEAR.

The Company uses a 52- to 53-week fiscal year ending on the last Sunday in December, which resulted in a 52-week year ended December 29, 1996. This compares with a 53-week fiscal year for 1995 and a 52-week fiscal year for 1994, which ended on December 31 and 25, respectively.

PRINCIPLES OF CONSOLIDATION

The Consolidated Financial Statements include the accounts of the Company and its subsidiaries. Upon consolidation, all significant intercompany accounts and transactions are eliminated. Also included in the financial statements of the Company, under the equity method of accounting, is the Company's 49.95 percent investment in Fujitsu AMD Semiconductor Limited (FASL).

#### FOREIGN CURRENCY TRANSLATION

The U.S. dollar is the functional currency for the Company's wholly owned foreign subsidiaries. Translation adjustments, resulting from the process of translating foreign currency financial statements into U.S. dollars, are included in operations. The functional currency of the Company's unconsolidated joint venture is the Japanese yen. The translation adjustment relating to the translation of these statements was approximately \$28 million and \$6 million at December 29, 1996 and December 31, 1995, respectively, and is included in stockholders' equity.

#### CASH EQUIVALENTS

Cash equivalents consist of financial instruments which are readily convertible to cash and have original maturities of three months or less at the time of acquisition.

#### INVESTMENTS

The Company classifies its marketable debt and equity securities into held-to-maturity and available-for-sale categories in accordance with the provisions of the Statement of Financial Accounting Standards No. 115 (SFAS No. 115), "Accounting for Certain Investments in Debt and Equity Securities." In accordance with the FASB staff Special Report, "A Guide to Implementation of Statement 115 on Accounting for Certain Investments in Debt and Equity Securities," the Company chose to reclassify, as of December 31, 1995, all cash equivalents and short-term investments that were classified as held-to-maturity at that time from held-to-maturity to available-for-sale. Securities classified as available-for-sale are reported at fair market value with the related unrealized gains and losses included in retained earnings. Realized gains and losses and declines in value of securities judged to be other than temporary are included in interest income and other, net. Interest and dividends on all securities are included in interest income and other, net.

Investments with maturities between three and twelve months are considered short-term investments. Short-term investments consist of money market auction preferred stocks and debt securities such as commercial paper, time deposits, certificates of deposit, bankers' acceptances, and marketable direct obligations of the United States Treasury.

#### FOREIGN EXCHANGE FORWARD CONTRACTS

Foreign exchange forward contracts are used to hedge the Company's net monetary asset positions in its foreign subsidiaries and the Company's liabilities for products purchased from FASL. Realized gains and losses from these hedges are included in operations. Premiums and discounts, if any, are amortized over the life of the contract and included in operations.

#### INTEREST RATE SWAPS

The Company enters into interest rate swaps primarily to reduce its interest rate exposure by changing a portion of the Company's interest rate exposure from a floating rate to a fixed rate basis. The differential between fixed and floating rates to be paid or received is accrued and recognized as an adjustment to interest expense. Accordingly, the related amount payable to or receivable from counterparties is included in other current assets or accrued liabilities.

#### INVENTORIES

Inventories are stated principally at standard cost adjusted to approximate the lower of cost (first-in, first-out method) or market (net realizable value).

Property, plant, and equipment is stated at cost. Depreciation and amortization are provided principally on the straight-line basis over the estimated useful lives of the assets for financial reporting purposes and on accelerated methods for tax purposes. Estimated useful lives for financial reporting purposes are as follows: machinery and equipment 3 to 5 years; buildings up to 26 years; and leasehold improvements are the shorter of the remaining terms of the leases or the estimated economic useful lives of the improvements.

Effective January 1, 1996 the Company adopted Statement of Financial Accounting Standards No. 121 (SFAS 121), "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of." SFAS 121 requires recognition of impairment of long-lived assets in the event the net book value of such assets exceeds the future undiscounted cash flows attributable to such assets. Adoption of SFAS 121 has not had a material impact on the Company's financial position or results of operations.

#### DEFERRED INCOME ON SHIPMENTS TO DISTRIBUTORS

A portion of sales is made to distributors under terms allowing certain rights of return and price protection on unsold merchandise held by the distributors. Pursuant to the Company's agreements with distributors, AMD protects its distributors' inventory of the Company's products against price reductions as well as products that are slow moving or have been discontinued. These agreements, which may be canceled by either party on a specified notice, generally contain a provision for the return of the Company's products in the event the agreement with the distributor is terminated. Accordingly, recognition of sales to distributors and related gross profits are deferred until the merchandise is resold by the distributors.

#### ADVERTISING EXPENSES

The Company accounts for advertising costs as expense in the period in which they are incurred. Advertising expense for 1996, 1995 and 1994 was approximately \$44 million, \$44 million and \$32 million, respectively.

#### NET INCOME (LOSS) PER COMMON SHARE

Primary net income per common share is based upon weighted-average common and dilutive common equivalent shares outstanding using the treasury stock method. Dilutive common equivalent shares include stock options, warrants, and restricted stock. Fully diluted net income per common share is computed using the weighted-average common and dilutive common equivalent shares outstanding, plus other dilutive shares outstanding which are not common equivalent shares. Other dilutive shares which are not common equivalent shares include convertible preferred stock. Primary net loss per common share excludes common equivalent shares as their effect on the net loss per share would be anti-dilutive. All share information has been adjusted on a retroactive basis herein to give effect to the merger with NexGen and the conversion of NexGen shares on a 0.8 to one share of AMD common stock.

#### EMPLOYEE STOCK PLANS

The Company accounts for its stock option plans and its employee stock purchase plan in accordance with provisions of the Accounting Principles Board's Opinion No. 25 (APB 25), "Accounting For Stock Issued to Employees." In 1995, the Financial Accounting Standards Board released the Statement of Financial Accounting Standards No. 123 (SFAS 123), "Accounting for Stock-Based Compensation." SFAS 123 provides an alternative to APB 25 and is effective for fiscal years beginning after December 15, 1995. As allowed under SFAS 123, the Company continues to account for its employee stock plans in accordance with the provisions of APB 25. See Note 12.

#### USE OF ESTIMATES

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results inevitably will differ from those estimates, and such differences may be material to the financial statements.

#### YEAR-END ADJUSTMENTS (UNAUDITED)

The Company made certain year-end adjustments in 1995, resulting from changes in

estimates related to the Nx586 product which was developed by NexGen. These adjustments were material to the results of the fourth quarter. These adjustments, related to accounts receivable and inventory, were charged primarily to net sales and cost of sales and reduced 1995 operating income by approximately \$52 million. These adjustments had no impact on the Company's operating results in 1996.

FINANCIAL PRESENTATION.

Certain prior year amounts on the Consolidated Financial Statements have been reclassified to conform to the 1996 presentation.

NOTE 4. FINANCIAL INSTRUMENTS

FINANCIAL INSTRUMENTS WITH OFF-BALANCE-SHEET RISK

As part of the Company's asset and liability management, the Company enters into various types of transactions that involve financial instruments with off-balance-sheet risk. These instruments are entered into in order to manage financial market risk, including interest rate and foreign exchange risk. The notional values, carrying amounts and fair values are tabled below.

Foreign exchange forward contracts

The Company enters into foreign exchange forward contracts to buy and sell currencies as economic hedges of its net monetary asset positions in its foreign subsidiaries and liabilities for products purchased from FASL. The hedging transactions in 1996 were denominated in lira, yen, French franc, deutsche mark and pound sterling. The maturities of these contracts are generally less than six months.

Interest rate swaps

Approximately \$150 million of interest rate swaps matured in 1996 when the Company repaid its \$150 million four-year term loan. Additionally, during 1996 the Company engaged in interest rate swaps primarily to reduce its interest rate exposure on a building lease obligation by changing a portion of the Company's interest rate obligation from a floating rate to a fixed rate basis without exchanges of the underlying notional amounts. The fixed interest rates are based on one to five year swap rates, and the floating interest rates are based on three or six months LIBOR. These remaining interest rate swaps with a notional amount of \$40 million will mature in 1997.

FAIR VALUE OF FINANCIAL INSTRUMENTS WITH OFF-BALANCE-SHEET RISK

The estimates of fair value were obtained using prevailing financial market information as of December 29, 1996. In certain instances where judgment is required in estimating fair value, price quotes were obtained from certain of the Company's counterparty financial institutions.

(Thousands)	1996			1995		
	Notional amount	Carrying amount	Fair value	Notional amount	Carrying amount	Fair value
Interest rate instruments:						
Swaps	\$40,000	\$(1,011)	\$(437)	\$190,000	\$(1,186)	\$(1,694)
Foreign exchange instruments:						
Foreign exchange forward contracts	25,340	138	121	36,670	(192)	(102)

AVAILABLE-FOR-SALE SECURITIES

The following is a summary of available-for-sale securities included in cash and cash equivalents and short-term investments as of December 29, 1996 and December 31, 1995:



(Thousands)	1996	1995
	-----	-----
Certificates of deposit	\$ --	\$ 15,002
Treasury notes	2,017	10,437
Federal agency notes	32,698	14,065
Security repurchase agreements	12,000	53,370
Commercial paper	42,551	14,914
Other debt securities	458	434
	-----	-----
Total cash equivalents	\$ 89,724	\$108,222
	=====	=====
Certificates of deposit	\$ 48,112	\$ 70,551
Municipal notes and bonds	--	52,256
Corporate notes	18,954	37,898
Treasury notes	52,744	60,989
Commercial paper	95,194	46,656
Money market auction preferred stocks	5,000	114,999
	-----	-----
Total short-term investments	\$220,004	\$383,349
	=====	=====

On November 15, 1995, the FASB staff issued a Special Report, "A Guide to Implementation of Statement 115 on Accounting for Certain Investments in Debt and Equity Securities." In accordance with provisions in that Special Report, the Company chose to reclassify cash equivalents and short-term investments from held-to-maturity to available-for-sale. At the date of the transfer, the amortized cost of those securities was approximately \$481 million. Since the securities transferred on December 31, 1995 were short-term in nature, changes in market interest rates did not have a significant impact on the fair value of these securities. The net unrealized gains on these securities at December 29, 1996 and December 31, 1995 were immaterial.

25

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The available-for-sale equity securities that the Company held, included in other assets, had a cost and fair value of approximately \$15 million and \$23 million, respectively, as of December 29, 1996, and a cost and fair value of approximately \$15 million and \$75 million, respectively, as of December 31, 1995. At December 29, 1996, the total net unrealized gain on these equity securities, net of tax, was approximately \$5 million. During 1996, pre-tax gains of \$41 million were recognized, and the unrealized gain decreased by approximately \$14 million, net of tax, from December 31, 1995. The entire, net of tax, unrealized gain is included in retained earnings.

As of December 29, 1996, the Company did not own any securities classified as trading.

#### FAIR VALUE OF OTHER FINANCIAL INSTRUMENTS

The carrying value of short-term debt approximates fair value due to its short-term maturity. The fair value of long-term debt was estimated using discounted cash flow analysis based on estimated interest rates for similar types of borrowing arrangements.

The carrying amounts and estimated fair values of the Company's other financial instruments are as follows:

(Thousands)	1996		1995	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
	-----	-----	-----	-----
Short-term debt:				
Notes payable	\$ 14,692	\$ 14,692	\$ 26,770	\$ 26,770
Long-term debt (excluding capital leases)	413,870	451,293	179,301	180,920
	-----	-----	-----	-----

#### NOTE 5. CONCENTRATIONS OF CREDIT RISK

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash equivalents, short-term investments, trade receivables and financial instruments used in hedging activities.

The Company places its cash equivalents and short-term investments with high credit quality financial institutions and, by policy, limits the amount of credit exposure with any one financial institution. Investments in time deposits and certificates of deposit are acquired from banks having combined capital, surplus, and undistributed profits of not less than \$200 million. Investments in commercial paper and money market auction preferred stocks of industrial firms and financial institutions are rated A1, P1 or better, investments in tax-exempt securities including municipal notes and bonds are rated AA, Aa or better, and investments in repurchase agreements must have securities of the type and quality listed above as collateral.

Concentrations of credit risk with respect to trade receivables are limited because a large number of geographically diverse customers make up the Company's customer base, thus spreading the trade credit risk. The Company controls credit risk through credit approvals, credit limits, and monitoring procedures. The Company performs in-depth credit evaluations of all new customers and requires letters of credit, bank guarantees and advance payments, if deemed necessary. Bad debt expenses have not been material.

The counterparties to the agreements relating to the Company's foreign exchange and interest rate instruments consist of a number of major, high credit quality, international financial institutions. The Company does not believe that there is significant risk of nonperformance by these counterparties because the Company monitors their credit ratings, and limits the financial exposure and the amount of agreements entered into with any one financial institution. While the notional amounts of financial instruments are often used to express the volume of these transactions, the potential accounting loss on these transactions if all counterparties failed to perform is limited to the amounts, if any, by which the counterparties' obligations under the contracts exceed the obligations of the Company to the counterparties.

#### NOTE 6. OTHER RISKS

##### PRODUCTS

Flash memory devices contributed a significant portion of the Company's revenues in 1996. The Company expects that its ability to maintain or expand its total current levels of revenues in the future will depend upon, among other things, its success in developing and marketing in a timely manner its future generations of K86 RISC SUPERSCALAR microprocessor products, and future generations of Flash memory devices.

26

##### MARKETS

The markets for the Company's products are characterized by rapid technological developments, evolving industry standards, changes in customer requirements, frequent new product introductions and enhancements, and short product life cycles. The market for microprocessors is primarily dependent upon the market for PCs, and the market for Flash memory devices is primarily dependent upon the market for communications devices. From time to time, the PC industry has experienced significant downturns, often in connection with, or in anticipation of, declines in general economic conditions. These downturns have been characterized by diminished product demand, production overcapacity, and resultant accelerated erosion of average selling prices. The Company's business could be materially and adversely affected by industry-wide fluctuations in the PC marketplace in the future.

##### INVENTORIES

Given the volatility of the market, the Company makes inventory provisions for potentially excess and obsolete inventory based on backlog and forecasted demand. However, such backlog demand is subject to revisions, cancellations, and rescheduling. Actual demand will inevitably differ from such anticipated demand, and such differences may have a material effect on the financial statements.

##### CUSTOMERS

The Company markets and sells its products primarily to a broad base of customers comprised of distributors and OEMs of computation and communication equipment. One of the Company's distributors, Arrow Electronics, Inc., accounted for approximately 13 percent of 1996 net sales. No other distributor or OEM customer accounted for 10 percent or more of net sales in 1996.

#### INTERNATIONAL OPERATIONS

The Company derives more than half of its revenues from international sales. However, only a portion of the Company's international sales were denominated in foreign currencies. Further, the Company does not have any sales denominated in the local currencies of those countries which have highly inflationary economies.

Nearly all product assembly and final testing of the Company's products are performed at the Company's manufacturing facilities in Penang, Malaysia; Bangkok, Thailand; and Singapore; or by subcontractors in Asia. Wafer fabrication of certain products is performed at foundries in Asia. FASL wafer fabrication facilities are located in Aizu-Wakamatsu, Japan. Foreign manufacturing entails political and economic risks, including political instability, expropriation, currency controls and fluctuations, changes in freight and interest rates, and loss or modification of exemptions for taxes and tariffs. For example, if AMD were unable to assemble and test its products abroad, or if air transportation between the United States and the Company's overseas facilities were disrupted, there could be a material adverse effect on the Company's operations.

#### MATERIALS

Certain of the raw materials used by the Company in the manufacture of its products are available from a limited number of suppliers. For example, several types of the integrated circuit packages purchased by AMD, as well as by the majority of other companies in the semiconductor industry, are principally supplied by Japanese companies. Shortages could occur in various essential materials due to interruption of supply or increased demand in the industry. If AMD were unable to procure certain of such materials, it would be required to reduce its manufacturing operations, which could have a material adverse effect on the Company. To date, AMD has not experienced significant difficulty in obtaining the necessary raw materials.

#### NOTE 7. WARRANTS

On May 24, 1995, the effective date of NexGen, Inc.'s initial public offering, all previously issued preferred series warrants were converted into warrants to purchase common stock. The following summarizes the warrants outstanding as of December 29, 1996:

	Warrants -----	Warrant Price -----
Warrants issued in connection with Promissory Notes and Preferred Stock Offering, expiring on January 17, 2000	93,280	\$9.38
Warrants issued in connection with consulting services, expiring on July 15, 1997	331,808	5.00
Warrants issued to sales agent, expiring on August 17, 1998	14,140 -----	6.25 -----
Total warrants issued and outstanding as of December 29, 1996	439,228 =====	\$5.00 - \$9.38 =====

For the year ended December 29, 1996 warrants previously issued to purchase 136,944 shares of common stock were exercised on a cashless basis for 79,849 shares of common stock. All warrants are currently exercisable at December 29, 1996.

NOTE 8. INCOME TAXES

Provision (benefit) for income taxes consists of:

(Thousands)	1996	1995	1994
	-----	-----	-----
Current:			
U.S. Federal	\$ (102,213)	\$58,683	\$154,448
U.S. State and Local	(1,026)	1,855	13,001
Foreign National and Local	1,097	10,594	7,350
Deferred:			
U.S. Federal	16,280	1,295	(29,733)
U.S. State and Local	854	(3,167)	(2,820)
Foreign National and Local	--	946	(14)
	-----	-----	-----
Provision (benefit) for income taxes	\$ (85,008)	\$70,206	\$142,232
	=====	=====	=====

Tax benefits resulting from the exercise of nonqualified stock options and the disqualifying disposition of shares acquired under the Company's incentive stock option and stock purchase plans reduced taxes currently payable as shown above by approximately \$2 million, \$15 million and \$37 million in 1996, 1995 and 1994, respectively. Such benefits were credited to capital in excess of par value when realized.

Under SFAS No. 109, deferred income taxes reflect the net tax effects of tax carryforwards and temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities as of December 29, 1996 and December 31, 1995 are as follows:

(Thousands)	1996	1995
	-----	-----
Deferred tax assets:		
Net operating loss carryovers subject to limitation	\$ 50,225	\$ 62,796
Deferred distributor income	45,594	40,583
Inventory reserves	30,145	29,665
Accrued expenses not currently deductible	17,297	35,639
Federal and state tax credit carryovers	57,959	6,249
Other	61,957	49,850
	-----	-----
Total deferred tax assets	263,177	224,782
Less: valuation allowance	(22,062)	(33,386)
	-----	-----
Net deferred tax assets	241,115	191,396
	-----	-----
Deferred tax liabilities:		
Depreciation	(154,217)	(109,141)
Other	(41,150)	(19,373)
	-----	-----
Total deferred tax liabilities	(195,367)	(128,514)
	-----	-----
Net deferred tax assets	\$ 45,748	\$ 62,882
	=====	=====

Realization of the Company's net deferred tax assets is dependent on future taxable income. The Company believes that it is more likely than not that such assets will be realized, however, ultimate realization could be negatively impacted by market conditions and other variables not known or anticipated at this time.

Pretax income from foreign operations was approximately \$33 million in 1996, \$61 million in 1995 and \$46 million in 1994.

The net operating loss carryovers subject to limitation described above are the result of certain ownership changes as defined in Section 382 of the Internal Revenue Code. Availability of these carryovers generally occurs ratably from 1996 through 2001. The federal and state tax credit carryovers expire beginning

in the year 2003 through 2011.

The following is a reconciliation between statutory federal income taxes and the total provision (benefit) for income taxes:

(Thousands except percent)	1996		1995		1994	
	Tax	Rate	Tax	Rate	Tax	Rate
Statutory federal income tax provision (benefit)	\$(73,065)	(35.0)%	\$88,062	35.0%	\$148,316	35.0%
State taxes net of federal benefit	(520)	(0.2)	216	0.1	6,601	1.6
Tax exempt Foreign Sales Corporation income	(2,283)	(1.1)	(6,848)	(2.7)	(8,955)	(2.1)
Foreign income at other than U.S. rates	(9,782)	(4.7)	(11,503)	(4.6)	(9,633)	(2.3)
Other	642	0.3	279	0.1	5,903	1.4
	-----	-----	-----	-----	-----	-----
	\$(85,008)	(40.7)%	\$70,206	27.9%	\$142,232	33.6%
	=====	=====	=====	=====	=====	=====

No provision has been made for income taxes on approximately \$296 million of cumulative undistributed earnings of certain foreign subsidiaries because it is the Company's intention to permanently invest such earnings. If such earnings were distributed, additional taxes of approximately \$102 million would accrue.

The Company's assembly and test plant in Thailand is operated under a tax holiday which expires in 1998. The net impact of this tax holiday was a decrease in the net loss of approximately \$3 million (\$0.02 per share) in 1996.

NOTE 9. DEBT

Significant elements of uncommitted, unsecured revolving lines of credit are:

(Thousands except percent)	1996	1995
Total lines of credit	\$234,501	\$345,801
Portion of lines of credit available to foreign subsidiaries	84,501	95,801
Amounts outstanding at year-end:		
Short-term	14,692	26,770
Short-term borrowings:		
Average daily borrowings	15,389	29,666
Maximum amount outstanding at any month-end	22,971	36,105
Weighted-average interest rate	2.36%	4.19%
Average interest rate on amounts outstanding at year-end	1.47%	4.41%

Interest on foreign and short-term domestic borrowings is negotiated at the time of the borrowing.

Information with respect to the Company's long-term debt and capital lease obligations at year-end is:

(Thousands)	1996	1995
11% Senior Secured Notes with interest payable semiannually and principal on August 1, 2003	\$400,000	\$ --
Term loan with variable interest paid in August, 1996	--	150,000
10%-11% Convertible notes paid in March, 1996	--	1,774
Promissory notes with principal and 6.88% interest payable annually through January, 2000, secured by a partnership interest	8,489	10,276
12% Note paid in May, 1996	--	10,000

Mortgage with principal and 9.88% interest payable in monthly installments through April, 2007	1,930	2,167
Obligations under capital leases	58,631	77,306
Obligations secured by equipment	3,388	4,990
Other	63	94
	-----	-----
	472,501	256,607
Less: current portion	(27,671)	(41,642)
	-----	-----
Long-term debt and capital lease obligations, less current portion	\$444,830	\$214,965
	=====	=====

29

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

In August, 1996 the Company sold \$400 million of Senior Secured Notes due August 1, 2003 under its shelf registration declared effective by the Securities and Exchange Commission on May 17, 1994. Due to the sale of the Senior Secured Notes, the Company fully utilized this shelf registration. Interest on the Senior Secured Notes accrues at the rate of 11 percent per annum and is payable semiannually in arrears on February 1 and August 1 of each year, commencing February 1, 1997. The Senior Secured Notes are secured by substantially all of the assets of Fab 25 and its ancillary facilities, and are redeemable at the Company's option after August 1, 2001.

On July 19, 1996, the Company entered into a syndicated bank loan agreement (the Credit Agreement) which provides for a new \$400 million term loan and revolving credit facility which became available concurrently with the sale of the Senior Secured Notes. The Credit Agreement replaced the Company's unsecured and unused \$250 million line of credit and its unsecured \$150 million four-year term loan. The Credit Agreement provides for a \$150 million three-year secured revolving line of credit (which can be extended for one additional year, subject to approval of the lending banks) and a \$250 million four-year secured term loan available to the Company for a period of six months after the closing of the sale of Senior Secured Notes and which the Company utilized fully in January, 1997.

For each of the next five years and beyond, long-term debt and capital lease obligations are:

(Thousands)	Long-term Debt (Principal only)	Capital Leases
	-----	-----
1997	\$ 3,802	\$28,085
1998	4,033	23,370
1999	2,326	8,911
2000	2,493	2,511
2001	167	--
Beyond 2001	401,049	--
	-----	-----
Total	413,870	62,877
Less: amount representing interest	--	4,246
	-----	-----
Total at present value	\$413,870	\$58,631
	=====	=====

Obligations under the lease agreements are collateralized by the assets leased. Total assets leased were approximately \$134 million and \$142 million at December 29, 1996 and December 31, 1995, respectively. Accumulated amortization of these leased assets was approximately \$72 million and \$71 million at December 29, 1996 and December 31, 1995, respectively.

The above debt agreements contain provisions regarding limits on the Company's and its subsidiaries' ability to engage in various transactions and require satisfaction of specified financial performance criteria. At December 29, 1996, the Company was in compliance with all restrictive covenants of such debt agreements and all retained earnings were restricted as to payments of cash dividends on common stock.

## NOTE 10. INTEREST EXPENSE &amp; INTEREST INCOME AND OTHER, NET

## INTEREST EXPENSE

	1996	1995	1994
Interest expense	\$ 32,507	\$ 21,102	\$12,704
Interest capitalized	(17,670)	(18,043)	(8,294)
	-----	-----	-----
	\$ 14,837	\$ 3,059	\$ 4,410
	=====	=====	=====

In 1996, interest expense primarily consisted of interest expense incurred on the Company's Senior Secured Notes sold in August, 1996 and interest capitalized primarily related to equipment installation in Feb 25. In 1995, interest expense primarily consisted of interest payments on the \$150 million four-year term loan the Company entered into on January 5, 1995, and interest capitalized primarily related to the construction of Feb 25.

## INTEREST INCOME AND OTHER, NET

(Thousands)	1996	1995	1994
Interest income	\$19,564	\$29,518	\$23,331
Other income (loss)	39,827	2,947	(6,197)
	-----	-----	-----
	\$59,391	\$32,465	\$17,134
	=====	=====	=====

30

In 1996 and 1995, other income primarily consisted of gains resulting from the sales of equity investments. In 1994, other loss primarily consisted of the \$33 million settlement cost related to the class action lawsuits and stockholders' derivative action offset by an \$18 million gain resulting from an award of damages in the arbitration proceedings with Intel. Also included in other income (loss) for all years presented is the net gain (loss) on the sale of assets.

## NOTE 11. FOREIGN AND DOMESTIC OPERATIONS

AMD manufactures and markets standard lines of products. The Company's products include a wide variety of industry-standard ICs which are used in many diverse product applications such as telecommunications equipment, data and network communications equipment, consumer electronics, PCs and workstations.

Operations outside the United States include both manufacturing and sales. Manufacturing subsidiaries are located in Malaysia, Thailand and Singapore. Sales subsidiaries are in Europe and Asia Pacific.

The following is a summary of operations by entities within geographic areas for the three years ended December 29, 1996:

(Thousands)	1996	1995	1994
Sales to unaffiliated customers:			
North America	\$1,418,871	\$1,780,240	\$1,544,844
Europe	378,136	491,293	483,632
Asia Pacific	156,012	196,846	126,977
	-----	-----	-----
	\$1,953,019	\$2,468,379	\$2,155,453
	=====	=====	=====
Transfers between geographic areas (eliminated in consolidation):			
North America	\$ 578,581	\$ 743,117	\$ 563,303
Asia Pacific	383,684	396,158	323,050
	-----	-----	-----
	\$ 962,265	\$1,139,275	\$ 886,353
	=====	=====	=====
Operating income (loss):			
North America	\$ (289,324)	\$ 164,549	\$ 423,027
Europe	(3,905)	18,922	15,860





Outstanding at end of year	18,651	\$12.17	16,329	\$0.50 - \$35.88	15,752	\$0.50 - \$30.25
Available for grant at beginning of year	751		3,386		1,419	
Available for grant at end of year	3,845		751		3,150	

The following table summarizes information about options outstanding at December 29, 1996:

(Shares in thousands)	Options Outstanding			Options Exercisable	
	Number Outstanding at 12/29/96	Weighted- Average Remaining Contractual Life (Years)	Weighted- Average Price	Number Exercisable at 12/29/96	Weighted- Average Exercise Price
Range of Exercise Prices					
\$0.01 - \$9.38	4,873	5.75	\$ 5.33	4,216	\$ 5.13
\$9.50 - \$11.88	6,251	8.46	11.68	1,032	10.92
\$12.13 - \$14.75	5,083	8.78	13.98	905	12.97
\$14.88 - \$35.88	2,444	7.37	23.34	1,287	21.96
	-----	----	-----	-----	-----
\$0.01 - \$35.88	18,651	7.69	\$12.17	7,440	\$ 9.80
	=====	=====	=====	=====	=====

#### STOCK PURCHASE PLAN

The Company has an employee stock purchase plan (ESPP) that allows participating employees to purchase, through payroll deductions, shares of the Company's common stock at 85 percent of the fair market value at specified dates. At December 29, 1996, 6,700 employees were eligible to participate in the plan and 551,765 common shares remained available for issuance under the plan. A summary of stock purchased under the plan is shown below.

(Thousands except employee participants)	1996	1995	1994
Aggregate purchase price	\$13,138	\$11,457	\$ 8,115
Shares purchased	1,035	501	412
Employee participants	2,963	2,825	1,941
	-----	-----	-----

#### STOCK APPRECIATION RIGHTS PLANS

The Company maintains three stock appreciation rights plans under which stock appreciation rights (SARs) either have been or may be granted to key employees. The number of SARs exercised plus common stock issued under the stock option plans may not exceed the number of shares authorized under the stock option plans. SARs may be granted in tandem with outstanding stock options, in tandem with future stock option grants or independently of any stock options. Generally, the terms of SARs granted under the plans are similar to those of options granted under the stock option plans, including exercise prices, exercise dates and expiration dates. To date, the Company has granted only limited SARs, which become exercisable only in the event of certain changes in control of the Company.

#### RESTRICTED STOCK AWARD PLAN

The Company established the 1987 restricted stock award plan under which up to two million shares of common stock may be issued to employees, subject to terms and conditions determined at the discretion of the Board of Directors. The Company entered into agreements to issue 320,609 and 226,427 shares in 1996 and

1995, respectively. To date, agreements covering 230,212 shares have been canceled without issuance and 1,333,891 shares have been issued pursuant to prior agreements. At December 29, 1996, agreements covering 656,109 shares were outstanding under the plan and 10,000 shares remained available for future awards. Outstanding awards vest under varying terms within five years.

#### STOCK-BASED COMPENSATION

As permitted under Statement of Financial Accounting Standards No. 123 (SFAS 123), "Accounting for Stock-Based Compensation," the Company has elected to follow Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" (APB 25), and related Interpretations, in accounting for stock-based awards to employees. Under APB 25, the Company generally recognized no compensation expense with respect to such awards.

Pro forma information regarding net income (loss) and net income (loss) per share is required by SFAS 123 for awards granted after December 31, 1994 as if the Company had accounted for its stock-based awards to employees under the fair value method of SFAS 123. The fair value of the Company's stock-based awards to employees was estimated using a Black-Scholes option pricing model. The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options which have no vesting restrictions and are fully transferable. In addition, the Black-Scholes model requires the input of highly subjective assumptions including the expected stock price volatility. Because the Company's stock-based awards to employees have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of its stock-based awards to employees. The fair value of the Company's stock-based awards to employees was estimated assuming no expected dividends and the following weighted-average assumptions:

	Options		ESPP	
	1996	1995	1996	1995
Expected life (years)	3.16	2.43	0.25	0.25
Expected stock price volatility	48.02%	53.29%	47.81%	42.15%
Risk-free interest rate	6.44%	5.88%	5.29%	5.69%

For pro forma purposes, the estimated fair value of the Company's stock-based awards to employees is amortized over the options' vesting period (for options) and the three-month purchase period (for stock purchases under the ESPP). The Company's pro forma information follows:

(Thousands except per share amounts)	1996	1995
Net income (loss) -- as reported	\$ (68,950)	\$ 216,326
Net income (loss) -- pro forma	(89,451)	205,047
Primary net income (loss) per share -- as reported	(0.51)	1.59
Primary net income (loss) per share -- pro forma	(0.66)	1.51
Fully diluted net income (loss) per share -- as reported	(0.51)	1.57
Fully diluted net income (loss) per share -- pro forma	(0.66)	1.49

Because SFAS 123 is applicable only to awards granted subsequent to December 31, 1994, its pro forma effect will not be fully reflected until approximately 1999. A total of 10,332,224 options were granted during 1996 with exercise prices equal to the market price of the stock on the grant date. The weighted-average exercise price and weighted-average fair value

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

of these options were \$13.44 and \$5.15, respectively. A total of 912,994 options were granted during 1996 with exercise prices less than the market price of the stock on the grant date. The weighted-average exercise price and weighted-average fair value of these options were \$7.49 and \$12.14, respectively.

The weighted-average fair value of stock purchase rights during 1996 was \$4.07

per share.

NOTE 13. OTHER EMPLOYEE BENEFIT PLANS

PROFIT SHARING PROGRAM

The Company has a profit sharing program to which the Board of Directors has authorized semiannual contributions. There were no profit sharing contributions in 1996. Profit sharing contributions were approximately \$45 million in 1995 and \$57 million in 1994.

RETIREMENT SAVINGS PLAN

The Company has a retirement savings plan, commonly known as a 401(k) plan, that allows participating United States employees to contribute from 1 percent to 15 percent of their pre-tax salary subject to I.R.S. limits. The Company makes a matching contribution calculated at 50 cents on each dollar of the first 3 percent of participant contributions, to a maximum of 1.5 percent of eligible compensation. The Company's contributions to the 401(k) plan were approximately \$5 million, \$4 million and \$4 million for 1996, 1995 and 1994, respectively. There are four investment funds in which each employee may invest contributions in whole percentage increments. NexGen had a 401(k) plan which allowed employees to contribute from one percent to ten percent of their pre-tax salary subject to I.R.S. limits. NexGen did not match employee contributions.

NOTE 14. COMMITMENTS

The Company leases certain of its facilities under agreements which expire at various dates through 2011. The Company also leases certain of its manufacturing and office equipment for terms ranging from one to five years. Rent expense was approximately \$40 million, \$37 million and \$32 million in 1996, 1995 and 1994, respectively.

For each of the next five years and beyond, noncancelable long-term operating lease obligations and commitments to purchase manufacturing supplies and services are as follows:

(Thousands)	Operating Leases	Purchase Commitments
1997	\$30,943	\$4,945
1998	22,721	4,945
1999	15,779	4,745
2000	11,180	3,674
2001	4,384	2,977
Beyond 2001	10,017	8,392

The operating leases of the Company's corporate marketing, general and administrative facility expire in December, 1998. The leases provide the Company with an option to purchase the facility for \$40 million during the lease term. At the end of the lease term, the Company is obligated to either purchase the facility or to arrange for its sale to a third party with a guarantee of residual value to the seller equal to the option purchase price.

At December 29, 1996, the Company had commitments of approximately \$105 million for the construction or acquisition of additional property, plant, and equipment.

AMD Saxony Manufacturing GmbH (AMD Saxony), a German subsidiary wholly owned by the Company through a German holding company, is building a 900,000 square foot submicron integrated circuit manufacturing and design facility in Dresden, in the State of Saxony, Germany (the Dresden Facility) over the next five years at a presently estimated cost of approximately \$1.5 billion. The Dresden Facility is being designed for the production of microprocessors and other advanced logic products. The Federal Republic of Germany and the State of Saxony have agreed to support the project in the form of (i) a guarantee of 65% of the bank debt to be incurred by AMD Saxony up to a maximum of DM1.65 billion, (ii) investment grants and subsidies totaling DM500.5 million, and (iii) interest subsidies from the State of Saxony totaling DM300 million. In March, 1997 AMD Saxony will be entering into a loan agreement with a consortium of banks led by Dresdner Bank AG under which facilities totaling DM1.65 billion will be made available. In connection with the financing, the Company has agreed to invest

in AMD Saxony over the next three years equity and subordinated loans in an amount totaling approximately DM507.5 million. Until the Dresden Facility has been completed, AMD has also agreed to guarantee AMD Saxony's obligations under the loan agreement up to a maximum of DM217.5 million. After completion of the Dresden Facility, AMD has agreed to make available to AMD Saxony up to DM145 million if the subsidiary does not meet its fixed charge coverage ratio covenant. Finally, AMD has agreed to undertake certain contingent obligations, including various obligations to fund project cost overruns. The Company began site preparation of the Dresden Facility in the fourth quarter of 1996, and plans to commence construction during the second quarter of 1997. The planned Dresden Facility costs are denominated in deutsche marks and, therefore, are subject to change due to foreign exchange rate fluctuations. The Company plans to hedge future foreign exchange exposure for the Dresden Facility.

In December, 1995 the Company signed a five-year, comprehensive cross-license agreement with Intel. The cross-license is royalty-bearing for the Company's products that use certain Intel technologies. The Company is required to pay Intel minimum non-refundable royalties during the years 1997 through 2000.

#### NOTE 15. INVESTMENT IN JOINT VENTURE

In 1993, AMD and Fujitsu Limited formed a joint venture, Fujitsu AMD Semiconductor Limited (FASL), for the development and manufacture of non-volatile memory devices. Through FASL, the two companies have constructed and are operating an advanced integrated circuit manufacturing facility in Aizu-Wakamatsu, Japan, to produce Flash memory devices. The Company's share of FASL is 49.95 percent and the investment is being accounted for under the equity method. In 1995, the Company invested an additional \$18 million in FASL. The Company's share of FASL net income during 1996 was \$55 million, net of income taxes of approximately \$30 million. At December 29, 1996, the adjustment related to the translation of the FASL financial statements into U.S. dollars resulted in a decrease of approximately \$28 million to the investment in FASL. In 1996 and 1995, the Company made Flash memory device purchases of \$234 million and \$128 million, respectively, from FASL. There were no purchases in 1994. At December 29, 1996 and December 31, 1995, amounts owed to FASL for Flash memory device purchases were \$27 million and \$39 million, respectively. In 1996 and 1995, the Company earned royalty revenue, as a result of purchases from FASL, of \$21 million and \$11 million, respectively.

Pursuant to a cross-equity provision between AMD and Fujitsu Limited, the Company purchased approximately \$13 million of Fujitsu Limited shares. Under the same provision, Fujitsu Limited has purchased 3 million shares of AMD common stock, and is required to purchase an additional 1.5 million shares over the next several years, for a total investment not to exceed \$100 million.

In March of 1996, FASL began construction of a second Flash memory device wafer fabrication facility (FASL II) at a site contiguous to the existing FASL facility in Aizu-Wakamatsu, Japan. The facility is expected to cost approximately \$1.1 billion when fully equipped. Capital expenditures for FASL II construction are expected to be funded by cash generated from FASL operations and, if necessary, borrowings by FASL. To the extent that FASL is unable to secure the necessary funds for FASL II, AMD may be required to contribute cash or guarantee third-party loans in proportion to its percentage interest in FASL. At December 29, 1996, AMD had loan guarantees of \$39 million outstanding with respect to such loans.

The following is condensed unaudited financial data of FASL:

Three years ended December 29, 1996  
(Unaudited)  
(Thousands)

	1996	1995	1994
Net sales	\$400,099	\$252,069	\$ -
Gross profit	223,035	145,226	-
Operating income (loss)	168,562	117,411	(32,203)
Net income (loss)	121,973	107,563	(32,293)

December 29, 1996 and  
 December 31, 1995  
 (Unaudited)  
 (Thousands)

	1996	1995
Current assets	\$ 97,693	\$161,810
Non-current assets	542,684	326,252
Current liabilities	215,524	107,524
Non-current liabilities	474	284

The Company's share of the above FASL net income (loss) differs from the equity in net income (loss) of joint venture reported on the Consolidated Statements of Operations due to differences in tax rates, as the above table reflects the FASL tax expense (benefit) and the Statements of Operations reflects the tax AMD would expect to pay if the Company's share of FASL profits were remitted to AMD as a dividend.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 16. CONTINGENCIES

LITIGATION

MCDALD V. SANDERS, ET AL.; KOZLOWSKI, ET AL. V. SANDERS, ET AL. The McDaid complaint was filed November 3, 1995 and the Kozlowski complaint was filed November 15, 1995. Both actions allege violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, against the Company and certain individual officers and directors (the Individual Defendants), and purportedly were filed on behalf of all persons who purchased or otherwise acquired common stock of the Company during the period April 11, 1995 through September 22, 1995. The complaints seek damages allegedly caused by alleged materially misleading statements and/or material omissions by the Company and the Individual Defendants regarding the Company's development of its AMD-K5, -K6 and -K7 microprocessors, which statements and omissions, the plaintiffs claim, allegedly operated to inflate artificially the price paid for the Company's common stock during the period. The complaints seek compensatory damages in an amount to be proven at trial, fees and costs, and extraordinary equitable and/or injunctive relief. The court has consolidated both actions into one. Defendants filed answers in the consolidated action in May, 1996 and discovery has begun. Based upon information presently known to management, the Company does not believe that the ultimate resolution of this lawsuit will have a material adverse effect on the financial condition or results of operations of the Company.

AMD V. ALTERA CORPORATION. This litigation, which began in 1994, involves multiple claims and counterclaims for patent infringement relating to the Company's and Altera Corporation's programmable logic devices. On June 27, 1996, a jury returned a verdict and found that four of the eight patents-in-suit were licensed to Altera. The parties have stipulated that the court, not a jury, will decide which of the remaining AMD patents-in-suit fall within the scope of the license that the jury found. The court will hear the first of two phases regarding the remaining patents in April, 1997. Based upon information presently known to management, the Company does not believe that the ultimate resolution of this lawsuit will have a material adverse effect on the financial condition or results of operations of the Company.

ENVIRONMENTAL MATTERS

CLEAN-UP ORDERS. Since 1981, the Company has discovered, investigated and begun remediation of three sites where releases from underground chemical tanks at its facilities in Santa Clara County, California adversely affected the ground water. The chemicals released into the ground water were commonly in use in the semiconductor industry in the wafer fabrication process prior to 1979. At least one of the released chemicals (which is no longer used by the Company) has been identified as a probable carcinogen.

In 1991, the Company received four Final Site Clean-up Requirements Orders from the California Regional Water Quality Control Board, San Francisco Bay Region relating to the three sites. One of the orders named the Company as well as TRW

Microwave, Inc. and Philips Semiconductors Corporation. Another of the orders named the Company as well as National Semiconductor Corporation.

The three sites in Santa Clara County are on the National Priorities List (Superfund). If the Company fails to satisfy federal compliance requirements or inadequately performs the compliance measures, the government (a) can bring an action to enforce compliance, or (b) can undertake the desired response actions itself and later bring an action to recover its costs, and penalties, which is up to three times the costs of clean-up activities, if appropriate. With regard to certain claims related to this matter the statute of limitations has been tolled.

The Company has computed and recorded the estimated environmental liability in accordance with applicable accounting rules and has not recorded any potential insurance recoveries in determining the estimated costs of the cleanup. The amount of environmental charges to earnings has not been material during the last three fiscal years. The Company believes that the potential liability, if any, in excess of amounts already accrued with respect to the foregoing environmental matters will not have a material adverse effect on the financial condition or results of operations of the Company.

#### OTHER MATTERS

The Company is a defendant or plaintiff in various other actions which arose in the normal course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on the financial condition or results of operations of the Company.

36

REPORT OF ERNST & YOUNG LLP

INDEPENDENT AUDITORS

The Board of Directors and Stockholders  
Advanced Micro Devices, Inc.

We have audited the accompanying consolidated balance sheets of Advanced Micro Devices, Inc. at December 29, 1996 and December 31, 1995, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 29, 1996. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Advanced Micro Devices, Inc. at December 29, 1996 and December 31, 1995, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 29, 1996, in conformity with generally accepted accounting principles.

/s/ERNST & YOUNG LLP  
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San Jose, California  
January 9, 1997

37

1996 and 1995 by Quarter (Unaudited) (Thousands except per share and market price amounts)	Dec. 29, 1996	Sep. 29, 1996	Jun. 30, 1996	Mar. 31, 1996	Dec. 31, 1995	Oct. 1, 1995	Jul. 2, 1995	Apr. 2, 1995
Net sales .....	\$496,868	\$456,862	\$ 455,077	\$544,212	\$595,178	\$606,953	\$638,867	\$627,381
Expenses:								
Cost of sales .....	354,622	337,692	379,779	368,735	427,058	368,359	315,905	305,685
Research and development .....	107,499	105,656	92,768	94,780	107,715	106,237	105,695	96,874
Marketing, general and administrative ....	88,292	90,432	83,063	103,011	100,766	102,549	106,602	102,734
	550,413	533,780	555,610	566,526	635,539	577,145	528,202	505,293
Operating income (loss) .....	(53,545)	(76,918)	(100,533)	(22,314)	(40,361)	29,808	110,665	122,088
Interest income and other, net .....	4,079	4,214	23,039	28,059	8,024	10,408	6,975	7,058
Interest expense .....	(7,601)	(3,443)	(1,812)	(1,981)	(1,665)	(315)	(501)	(578)
Income (loss) before income taxes and equity in joint venture .....	(57,067)	(76,147)	(79,306)	3,764	(34,002)	39,901	117,139	128,568
Provision (benefit) for income taxes .....	(22,826)	(30,459)	(31,723)	--	(21,846)	10,212	39,016	42,824
Income (loss) before equity in joint venture	(34,241)	(45,688)	(47,583)	3,764	(12,156)	29,689	78,123	85,744
Equity in net income (loss) of joint venture	12,998	7,326	12,911	21,563	21,500	12,311	2,529	(1,414)
Net income (loss) .....	(21,243)	(38,362)	(34,672)	25,327	9,344	42,000	80,652	84,330
Preferred stock dividends .....	--	--	--	--	--	--	--	10
Net income (loss) applicable to common stockholders .....	\$(21,243)	\$(38,362)	\$(34,672)	\$ 25,327	\$ 9,344	\$ 42,000	\$ 80,652	\$ 84,320
Net income (loss) per common share								
-- Primary .....	\$ (0.15)	\$ (0.28)	\$ (0.26)	\$ 0.18	\$ 0.07	\$ 0.30	\$ 0.59	\$ 0.66
-- Fully diluted .....	\$ (0.15)	\$ (0.28)	\$ (0.26)	\$ 0.18	\$ 0.07	\$ 0.30	\$ 0.59	\$ 0.63
Shares used in per share calculation								
-- Primary .....	137,693	136,082	135,266	138,399	138,941	139,288	136,950	127,181
-- Fully diluted .....	137,693	136,082	135,266	138,399	139,085	139,434	137,647	134,421
Common stock market price range								
-- High .....	\$ 28.38	\$ 16.25	\$ 19.88	\$ 21.25	\$ 29.25	\$ 36.50	\$ 39.25	\$ 35.88
-- Low .....	\$ 14.13	\$ 10.25	\$ 12.88	\$ 16.13	\$ 16.13	\$ 28.00	\$ 32.13	\$ 23.50

FINANCIAL SUMMARY

Five Years Ended December 29, 1996 (Thousands except per share amounts)	1996	1995	1994	1993	1992
Net sales .....	\$ 1,953,019	\$ 2,468,379	\$ 2,155,453	\$ 1,648,280	\$ 1,514,489
Expenses:					
Cost of sales .....	1,440,828	1,417,007	1,013,589	789,564	746,486
Research and development .....	400,703	416,521	295,326	279,412	237,679
Marketing, general and administrative .....	364,798	412,651	377,503	296,912	272,962
	2,206,329	2,246,179	1,686,418	1,365,888	1,257,127
Operating income (loss) .....	(253,310)	222,200	469,035	282,392	257,362
Litigation settlement .....	--	--	(58,000)	--	--
Interest income and other, net .....	59,391	32,465	17,134	16,931	18,913
Interest expense .....	(14,837)	(3,059)	(4,410)	(4,398)	(17,677)
Income (loss) before income taxes and equity in joint venture .....	(208,756)	251,606	423,759	294,925	258,598
Provision (benefit) for income taxes .....	(85,008)	70,206	142,232	85,935	24,979
Income (loss) before equity in joint venture .....	(123,748)	181,400	281,527	208,990	233,619
Equity in net income (loss) of joint venture .....	54,798	34,926	(10,585)	(634)	--
Net income (loss) .....	(68,950)	216,326	270,942	208,356	233,619
Preferred stock dividends .....	--	10	10,350	10,350	10,350
Net income (loss) applicable to common stockholders ..	\$(68,950)	\$ 216,316	\$ 260,592	\$ 198,006	\$ 223,269
Net income (loss) per common share -- Primary .....	\$ (0.51)	\$ 1.59	\$ 2.06	\$ 1.65	\$ 2.02
-- Fully diluted .....	\$ (0.51)	\$ 1.57	\$ 2.02	\$ 1.64	\$ 1.99
Shares used in per share calculation -- Primary .....	135,687	136,208	126,674	119,925	110,339
-- Fully diluted .....	135,687	137,815	134,142	127,167	117,576
Long-term debt and capital lease obligations, less current portion .....	\$ 444,830	\$ 214,965	\$ 75,752	\$ 90,066	\$ 22,213
Total assets .....	\$ 3,145,283	\$ 3,078,467	\$ 2,525,721	\$ 1,944,953	\$ 1,453,768

AMD's common stock (symbol AMD) is listed on the New York Stock Exchange. The Company has never paid cash dividends on common stock and has no present plans to do so. The number of stockholders of record at January 31, 1997 was 9,963.

AMD, the AMD logo, and combinations thereof are trademarks of Advanced Micro Devices, Inc. Am486, MACH, NexGen, and Nx586 are registered trademarks and AMD-K5, AMD-K6,

K86, K86 RISC SUPERSCALAR, and Nx686 are trademarks of Advanced Micro Devices, Inc.  
Microsoft, MS-DOS, Windows and Windows NT are registered trademarks of Microsoft Corporation.  
Other terms and names used are for identification purposes only and may be trademarks of their respective companies.



EXHIBIT 21

ADVANCED MICRO DEVICES, INC.

LIST OF SUBSIDIARIES

NAME OF SUBSIDIARY -----	STATE OR JURISDICTION IN WHICH INCORPORATED OR ORGANIZED -----
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FOREIGN SUBSIDIARIES  
-----

Advanced Micro Devices S.A.N.V.	Belgium
AMD South America Limitada (1)	Brazil
Advanced Micro Devices (Canada) Limited	Canada
Advanced Micro Devices (Suzhou) Limited (2)	China
Advanced Micro Devices S.A.	France
Advanced Micro Devices GmbH	Germany
AMD Saxony Holding GmbH	Germany
AMD Saxony Manufacturing GmbH (3)	Germany
AMD Foreign Sales Corporation	Guam
Advanced Micro Devices S.p.A.	Italy
AMD Japan Ltd.	Japan
Advanced Micro Devices Sdn. Bhd.	Malaysia
Advanced Micro Devices Export Sdn. Bhd. (4)	Malaysia
Advanced Micro Devices Product Sdn. Bhd. (4)	Malaysia
Advanced Micro Devices Technology Sdn. Bhd. (4)	Malaysia
AMD (Netherlands) B.V. (5)	Netherlands
Advanced Micro Devices (Singapore) Pte. Ltd.	Singapore
AMD Holdings (Singapore) Pte. Ltd. (6)	Singapore
Advanced Micro Devices AB	Sweden
Advanced Micro Devices S.A. (7)	Switzerland
AMD (Thailand) Limited (5)	Thailand
Advanced Micro Devices (U.K.) Limited	United Kingdom

DOMESTIC SUBSIDIARIES  
-----

Advanced Micro Ltd.	California
AMD Corporation	California
AMD Far East Ltd.	Delaware
AMD International Sales & Service, Ltd.	Delaware
AMD Texas Properties, LLC.	Delaware

- (1) Subsidiary of AMD International Sales & Service, Ltd. and AMD Far East Ltd.  
 (2) Subsidiary of AMD Holdings (Singapore) Pte. Ltd.  
 (3) Subsidiary of AMD Saxony Holding GmbH  
 (4) Subsidiary of Advanced Micro Devices Sdn. Bhd.  
 (5) Subsidiary of Advanced Micro Devices Export Sdn. Bhd.  
 (6) Subsidiary of Advanced Micro Devices (Singapore) Pte. Ltd.  
 (7) Subsidiary of AMD International Sales & Service, Ltd.

## EXHIBIT 24

POWER OF ATTORNEY  
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KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints W. J. Sanders III and Marvin D. Burkett, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign Advanced Micro Devices, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 29, 1996, and any and all amendments thereto, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Signature - -----	Title -----	Date -----
/s/ W. J. Sanders III ----- W. J. Sanders III	Chairman of the Board and Chief Executive Officer  (Principal Executive Officer)	February 17, 1997
/s/ Richard Previte ----- Richard Previte	Director, President and Chief Operating Officer	February 24, 1997
/s/ S. Atiq Raza ----- S. Atiq Raza	Director, Senior Vice President and Chief Technical Officer	March 4, 1997
/s/ Friedrich Baur ----- Friedrich Baur	Director	February 24, 1997
/s/ Charles M. Blalack ----- Charles M. Blalack	Director	February 17, 1997
/s/ R. Gene Brown ----- R. Gene Brown	Director	February 17, 1997
/s/ Joe. L. Roby ----- Joe L. Roby	Director	February 19, 1997
/s/ Leonard Silverman ----- Leonard Silverman	Director	February 18, 1997

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