

# General Terms and Conditions

**for the Supply of Products and Services of Electrical and Electronic Components**

**for commercial transactions between businesses**

Date August 2019

## **Article I: General Provisions**

1. Legal relations between Supplier and Purchaser in connection with supplies and/or services of the Supplier (hereinafter referred to as "Supplies") shall be solely governed by the present General Terms and Conditions. The Purchaser's general terms and conditions shall apply only if expressly accepted by the Supplier in writing. The scope of delivery shall be determined by the congruent mutual written declarations.

2. The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. Sentences 1 and 2 shall apply *mutatis mutandis* to the Purchaser's Documents; these may, however, be made accessible to those third parties to whom the Supplier has rightfully subcontracted Supplies.

3. The Purchaser has the non-exclusive right to use standard software and firmware, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. Without express agreement the Purchaser may make one back-up copy of standard software.

4. Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser.

5. The term „claim for damages" used in the present General Terms and Conditions also includes claims for indemnification for useless expenditure.

## **Article II: Prices, Terms of Payment, and Set-Off**

1. Prices are ex works and excluding packaging; value added tax shall be added at the then applicable rate.

2. If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e. g. for traveling and transport as well as allowances.

3. Payments shall be made free Supplier's paying office.

4. The Purchaser may set off only those claims which are undisputed or non-appealable.

## **Article III: Retention of Title**

The items pertaining to the Supplies shall remain the property of the Supplier until paid for in full to the extent that such retention of title is valid under the relevant law.

The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product.

The retention of title shall not affect the passing of risk under Article V.

## **Article IV: Time for Supplies; Delay**

1. Times set for Supplies shall only be binding if all Documents to be furnished by the Purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the

Purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if the Supplier is responsible for the delay.

2. If non-observance of the times set is due to:

- (a) force majeure, such as mobilization, war, terror attacks, rebellion or similar events (e. g. strike or lockout);
- (b) virus attacks or other attacks on the Supplier's IT systems occurring despite protective measures were in place that complied with the principles of proper care;
- (c) hindrances attributable to national, US or otherwise applicable rules, especially international rules of foreign trade law or to other circumstances for which Supplier is not responsible; or
- (d) the fact that Supplier does not receive its own Supplies in due time or in due form

such times shall be extended accordingly.

3. If the Supplier is responsible for the delay (hereinafter referred to as "Delay") and the Purchaser has demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies which due to the Delay could not be put to the intended use.

4. Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above are excluded in all cases of delayed Supplies, even upon expiry of a time set to the Supplier to effect the Supplies. This shall not apply in cases of liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health. Rescission of the contract by the Purchaser based on statute is limited to cases where the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

5. At the Supplier's request, the Purchaser shall declare within a reasonable period of time whether it, due to the delayed Supplies, rescinds the contract or insists on the delivery of the Supplies.

6. If dispatch or delivery, due to Purchaser's request, is delayed by more than one month after notification of the readiness for dispatch was given, the Purchaser may be charged, for every additional month commenced, storage costs of 0.5 % of the price of the items of the Supplies. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

#### **Article V: Passing Of Risk**

1. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:

(a) if the delivery does not include assembly or erection, at the time when it is shipped or picked up by the carrier. Upon the Purchaser's request, the Supplier shall insure the delivery against the usual risks of transport at the Purchaser's expense;

(b) if the delivery includes assembly or erection, at the day of taking over in the Purchaser's own works or, if so agreed, after a successful trial run.

2. The risk shall pass to the Purchaser if dispatch, delivery, the start or performance of assembly or erection, the taking over in the Purchaser's own works, or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

#### **Article VI: Assembly and Erection**

Unless otherwise agreed in written form, assembly and erection shall be subject to the following provisions:

1. Purchaser shall provide at its own expense and in due time:

(a) all earth and construction work and other ancillary work outside the Supplier's scope, including the necessary skilled and unskilled labor, construction materials and tools;

- (b) the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants;
- (c) energy and water at the point of use including connections, heating and lighting;
- (d) suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances; furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the erection personnel at the site;
- (e) protective clothing and protective devices needed due to particular conditions prevailing on the specific site.

2. Before the erection work starts, the Purchaser shall unsolicitedly make available any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.

3. Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly or erection and any preparatory work must have advanced to such a degree that assembly or erection can be started as agreed and carried out without interruption. Access roads and the site of assembly or erection must be level and clear.

4. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional traveling expenditure of the Supplier or the erection personnel.

5. The Purchaser shall attest to the hours worked by the erection personnel towards the Supplier at weekly intervals and the Purchaser shall immediately confirm in written form if assembly, erection or commissioning has been completed.

6. If, after completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. The same consequences as upon acceptance arise if and when the Purchaser lets the two-week period expire or the Supplies are put to use after completion of agreed test phases, if any.

### **Article VII: Receiving Supplies**

The Purchaser shall not refuse to receive Supplies due to minor defects.

### **Article VIII: Defects**

1. The warranty period is 12 months. It begins with the departure of delivery ex works or of any agreed acceptance of Supplies or, as far as the Supplier has assumed the assembly with the termination. Delayed shipment, acceptance, or assembly for reasons not attributable to the Supplier, ends the warranty period no later than 18 months after notification of the readiness for dispatch. The guarantee expires prematurely if the Supplier or a third party undertakes inappropriate modifications or repairs or if the Supplier, if a defect has occurred does not immediately take all appropriate measures to mitigate the damage and give the Supplier the opportunity to remedy the deficiency.

2. The Supplier undertakes to replace or repair all parts of the deliveries of the Supplier, which demonstrably are defective or unusable due to bad material, faulty design or poor workmanship until the expiration of the warranty period, upon written request of the purchaser as soon as possible after its election. Replaced parts become the property of the Supplier, unless he has expressly waived. The Supplier bears the costs incurred in his work for the repair. If the on-site rectification of defects is not possible, the associated costs, as far as they exceed the usual transport, personnel, travel and subsistence costs, as well as the costs for the installation and removal of the defective parts, shall be borne by the purchaser.

3. The warranty and liability of the Supplier are excluded from damage, undetectable due to bad material, faulty design or poor workmanship, arising from e.g. natural wear and tear, defective maintenance, failure to observe the operating instructions, excessive strain, unsuitable operating resources, chemical or electrolytic effects,

construction or installation work not carried out by the Supplier, and due to other reasons, the Supplier cannot be held responsible for.

4. For deliveries from subcontractors prescribed by the Purchaser, the Supplier shall assume the warranty only within the framework of the warranty obligations of the subcontractors concerned.

5. Due to defects in material, design or workmanship, the Supplier has no rights and claims other than those expressly mentioned in no. 1 to 4.

### **Article IX: Industrial Property Rights and Copyrights; Defects in Title**

1. Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of delivery only. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Article VIII No. 1 as follows:

(a) The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be impossible for the Supplier under reasonable conditions, the Purchaser may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions.

(b) The Supplier's liability to pay damages is governed by Article XII.

(c) The above obligations of the Supplier shall apply only if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the Supplier's discretion. If the Purchaser stops using the Supplies in order to reduce the damage or for other

good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

2. Claims of the Purchaser shall be excluded if it is responsible for the infringement of an IPR.

3. Claims of the Purchaser are also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.

4. In addition, with respect to claims by the Purchaser pursuant to No. 1 a) above, Article VIII shall apply *mutatis mutandis* in the event of an infringement of an IPR.

5. Where other defects in title occur, Article VIII shall apply *mutatis mutandis*.

6. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Article IX, based on a defect in title, are excluded.

#### **Article X: Conditional Performance**

1. The performance of this contract is conditional upon that no hindrances attributable to national, US or otherwise applicable rules, especially international rules of foreign trade law or any embargos or other sanctions exist.

2. The Purchaser shall provide any information and Documents required for export, transport and import purposes.

#### **Article XI: Impossibility of Performance; Adaptation of Contract**



1. To the extent that delivery is impossible, the Purchaser is entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages is, however, limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of liability based on intent, gross negligence or loss of life, bodily injury or damage to health; this does not imply a change in the burden of proof to the detriment of the Purchaser. The Purchaser's right to rescind the contract shall be unaffected.

2. Where events within the meaning of Article IV No. 2 (a) to (c) substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons, the Supplier shall have the right to rescind the contract. The same applies if required export permits are not granted or cannot be used. If the Supplier intends to exercise its right to rescind the contract, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with the Purchaser.

## **Article XII: Other liability**

1. All cases of infringements and their legal consequences as well as all claims of the Supplier, no matter provided for whatever legal reason, are finally regulated in these terms and conditions. In particular, all not expressly mentioned claims for damages, abatement, annulment of the contract or withdrawal from the contract are excluded. In no case can the Supplier claim compensation for damage not caused to the delivered goods themselves, like for example loss of production, loss of use, loss of orders, lost profit and other direct or indirect damage.

2. This exclusion of liability shall not apply in the case of unlawful intent or gross negligence of the Supplier, but does apply to unlawful intent or gross negligence of

its auxiliaries. Furthermore this exclusion of liability does not apply, unless mandatory law provides otherwise.

### **Article XIII: Venue and Applicable Law**

1. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
2. By way of derogation from the rules in no. 1 the plaintiff is also entitled to sue the Supplier at its general venue for disputes with an amount of less than EUR 1 million.
3. The Contract shall be governed by the Substantive law of the Supplier's country.

### **Article XIV: Severability Clause**

The legal invalidity of one or more provisions of this Agreement in no way affects the validity of the remaining provisions. This shall not apply if it would be unreasonably onerous for one of the parties to be obligated to continue the contract.