

# General terms and conditions of sale and delivery (version 04/2013)

Leuze electronic assembly GmbH

## 1. Scope of application, power of representation, distribution restrictions

- 1.1. Our deliveries and services are exclusively based on our terms and conditions of sale and delivery below. The validity of any terms and conditions used by the customer shall be excluded even if we do not expressly object to such terms and conditions and/or perform the delivery. Deviations and additions by the customer are only effective with the express written confirmation of our managing directors or authorized officers. They apply only to the transaction for which they were made.
- 1.2. Our agents and representatives have no authority to give guarantees of quality or durability or other guarantees on our behalf or to make agreements that deviate from these terms and conditions. Any such agreements require our express written confirmation to be effective.
- 1.3. The following terms and conditions shall also apply to all future transactions with the customer.
- 1.4. Our products are goods requiring technical explanation and are intended for specialist trade and not for use by private end users. Installation must be carried out by trained and qualified personnel. Should the customer nevertheless resell our products to private end users, the customer undertakes to have the installation carried out by trained and qualified personnel or to ensure that this is done and to provide appropriate product identification and accompanying documentation, since the product identification and accompanying documentation on our part only satisfy wholesale trade requirements.

## 2. Conclusion of contract, documents, subject to alterations

- 2.1. Information provided prior to the order in the course of order processing, in particular regarding performance, consumption or other individual data, shall only be binding if confirmed as binding by us in writing with the order confirmation or thereafter. Information contained in brochures and advertisements does not constitute a guarantee of quality.
- 2.2. Our offers are subject to change. The contract is only concluded by our written order confirmation or, if no order confirmation is issued, by our delivery, which can take place within 14 days of receipt of the order.
- 2.3. We reserve the right of ownership and copyright to cost estimates, drawings and other documents; they may not be made accessible to third parties.
- 2.4. We expressly reserve the right to make design changes after the conclusion of the contract which are not disadvantageous to the customer. We are not obliged to make such changes to products that have already been delivered.

## 3. Prices, terms of payment

- 3.1. Delivery prices are net and, unless otherwise agreed, ex works, excluding packaging. In the case of delivery abroad, the customer shall bear any customs duties that may be incurred.
- 3.2. VAT shall be invoiced separately at the rates applicable on the day of delivery.
- 3.3. If unforeseeable increases in material prices, labor costs, transport costs, taxes or duties occur between the conclusion of the contract and delivery or performance, we shall be entitled to make a price adjustment corresponding to these factors if delivery is not to be made within 4 months of the conclusion of the contract.
- 3.4. In the event that the scheduled delivery date is postponed by more than 3 months for reasons for which we are not responsible, we reserve the right to change the price in accordance with any changes in labor and material costs between the order confirmation and the actual delivery date.
- 3.5. Invoicing takes place at the time of shipment. If the goods ready for dispatch cannot be dispatched for reasons falling within the customer's scope of risk, the invoice shall nevertheless be issued and due for payment.
- 3.6. Where we have agreed credit terms for you, our invoices are due for payment in full within 30 days of receipt of the invoice at the latest. Discount deductions are only permitted by express agreement. In this case, too, they are permissible only if the customer has settled all outstanding invoice amounts with us or settles them at the same time.
- 3.7. If invoices are not paid within 30 days of receipt of the invoice and no later than 40 days after delivery, the customer shall be in default of payment and we may claim statutory default interest at a rate of 8 percentage points above the applicable base interest rate as well as any further damages caused by default.
- 3.8. We will only accept bills of exchange by special agreement. The acceptance of bills of exchange or checks shall always be on account of performance only. The customer shall always bear any exchange and discount charges.
- 3.9. The customer may only offset undisputed or legally established claims; the same applies to a retention in accordance with § 273 BGB (German Civil Code) due to claims that are not based on the same contractual relationship.

## 4. Packaging, labelling

- 4.1. We take back packaging from the manufacturer's plant empty of residues, free of impurities and sorted according to packaging material.
- 4.2. If the customer affixes additional labels to our product or combines it with other products, the customer shall be obligated to indemnify us against all obligations arising therefrom in the event that claims are asserted against us by government authorities due to a violation of European regulations on labels.

## 5. Partial deliveries, deadlines, delay

- 5.1. Partial deliveries and partial services are permissible insofar as this is reasonable for the customer.
- 5.2. The deadlines and dates specified by us are non-binding unless expressly agreed otherwise in writing. The deadline or date shall be deemed to have been met if the consignment has been made available for collection or dispatched from our manufacturing plant by the deadline or date, if the customer has been notified that it is ready for dispatch, or if it has been collected. We are only obliged to execute and deliver if the customer has made all agreed payments. If payments, in particular agreed advance payments, or obligations to cooperate on the part of the customer are made late or not fulfilled on time, all delivery periods shall be extended accordingly.
- 5.3. We shall not be responsible for delays in delivery and performance due to force majeure and unforeseeable events which make delivery considerably more difficult or impossible for us, even in the case of bindingly agreed deadlines and dates. Such circumstances entitle us to postpone the delivery or service for the duration of the hindrance plus a reasonable starting period. This shall also apply in cases of unforeseeable events which affect the operations of a sub-supplier and for which neither the sub-supplier nor we are responsible.
- 5.4. All deliveries are subject to correct and timely delivery by our suppliers.
- 5.5. If we exceed deadlines or dates that are binding in accordance with clause 5.2, the customer shall only be entitled to withdraw from the contract for the delayed delivery or to claim damages for non-performance if a reasonable grace period set by the customer with a threat of refusal has expired without result.
- 5.6. If a contractual penalty has been agreed, a reservation of contractual penalty must be declared upon acceptance.
- 5.7. The customer is obligated to declare upon our request within a reasonable period of time whether they will withdraw from the contract due to the delay in delivery and/or demand damages in lieu of performance or insist on delivery.
- 5.8. In the event of delay, the customer may demand, in addition to delivery, compensation for any proven damage caused by the delay. However, this claim shall be limited to 0.5% of the delivery value of the affected delivery per week of delay, and to a maximum of 5% of the delivery value of the affected delivery, unless we are guilty of intent or gross negligence. The right of the customer to withdraw from the contract after expiry of a reasonable grace period in accordance with point 5.5 and/or to claim damages for non-performance in accordance with the provision in point 9 remains unaffected.

## 6. Transfer of risk, acceptance

- 6.1. In the case of deliveries, the risk shall pass to the customer as soon as the consignment is made available for collection at our manufacturing plant, or has been handed over to the transport provider, or has left our warehouse for dispatch. If shipment is delayed at the request of the customer or for reasons for which the customer is responsible, the risk shall pass to the customer upon notification of readiness for shipment.
- 6.2. In the case of other services, the risk shall pass to the customer as soon as we notify them of completion. Formal acceptance shall only take place if this has been agreed or if we expressly request it.

## **7. Rights of use to software**

- 7.1. The customer shall have the non-exclusive right to use standard software with the agreed performance features in unchanged form on the agreed equipment. The customer may make two backup copies without express agreement, which must be marked as such.

## **8. Complaints and warranty**

- 8.1. Unless otherwise agreed, the contractually owed quality results exclusively from our product specification valid at the time the contract is concluded. Unless otherwise agreed, we expressly do not warrant that the goods are suitable for a specific or general purpose.
- 8.2. The customer must inspect received goods for defects immediately upon arrival. They must notify us in writing of any recognizable defects in the delivery immediately, at the latest within three working days of receipt of the delivery, and of any other defects within three working days of discovery. Otherwise the delivery shall be deemed approved. This does not apply to fraudulently concealed defects.
- 8.3. The customer shall give us the opportunity to examine the complaint, in particular to make damaged goods and their packaging available for inspection by us. If there is a risk to operational safety or if there is a threat of disproportionately large damage, the customer must inform us immediately in writing to coordinate any customer-initiated remedies with us.
- 8.4. If the customer demands subsequent performance due to a defect, we can choose whether we rectify the defect ourselves or deliver defect-free goods as a replacement. Replaced goods must be returned to us. Any returned goods that may have been radioactively, microbiologically or otherwise contaminated must be declared and decontaminated accordingly prior to return shipment. If a repair or replacement delivery is not possible or is refused or does not take place or fails for other reasons within a reasonable period determined by the customer, the customer may, at their discretion, withdraw from the contract or reduce the purchase price or claim damages in accordance with clause 9.
- 8.5. Of the costs arising from the repair or replacement delivery, we shall bear the costs of the replacement part, including shipping, insofar as the complaint proves to be justified and there is a legal obligation to do so. Any further costs incurred by the customer shall be borne by the customer. This shall also apply to increased expenses incurred because the goods were subsequently transported to a location other than the customer's subsidiary, unless the transport is in accordance with their intended use. Necessary assembly and travel costs incurred in connection with unjustified notices of defects shall be paid by the customer, unless the absence of a defect was not apparent to the customer.
- 8.6. Warranty claims are not valid for damage or defects of the goods caused by faulty operation, negligent maintenance, natural wear and tear, the processing of parts not conforming to the drawing, or bad parts whose dimensions exceed the specified tolerances and the like.
- 8.7. All warranty claims, with the exception of any claims under clause 9, shall expire 12 months after delivery.

## **9. Liability**

- 9.1. We are liable for our own intent and gross negligence as well as the intent and gross negligence of our legal representatives and vicarious agents. Insofar as we, our legal representatives and vicarious agents are not guilty of intent, liability shall, however, be limited to the foreseeable damage typical of the contract.
- 9.2. We shall also be liable in the event of culpable injury to life, limb or health by us, our legal representatives or vicarious agents and in the event of fraudulent concealment of a defect or the assumption of a guarantee. In the latter case, the scope of liability is determined by the guarantee declaration.
- 9.3. We shall also be liable in the event of culpable breach by us, our legal representatives or vicarious agents of obligations which are essential for the performance of the contract and on the fulfillment of which the customer regularly relies and may rely. Insofar as we, our legal representatives and vicarious agents are not guilty of intent, liability shall, however, be limited to the foreseeable damage typical of the contract.
- 9.4. We are also liable in cases of mandatory statutory liability, for example under the Product Liability Act.
- 9.5. Otherwise, liability – regardless of the legal grounds – is excluded.
- 9.6. The customer shall inform and consult us immediately and comprehensively if they wish to make a claim against us in accordance with the above provisions. In particular, the customer shall give us the opportunity to investigate the damage.

## **10. Retention of title**

- 10.1. The delivered contractual products shall remain our property (reserved goods) until all claims arising from the business relationship between us and the customer have been paid in full. The customer is authorized to dispose of the reserved goods in the ordinary course of business. In the case of current invoices, the reserved title shall be deemed security for the balance carried forward.
- 10.2. The customer is obligated to treat the reserved goods with care; in particular, they are obligated to sufficiently insure it at their own expense against fire, water and theft at replacement value.
- 10.3. The processing or transformation of the reserved goods by the contractual partner shall always be carried out on our behalf. If reserved goods are processed with other items not owned by us to form a new item, we shall acquire co-ownership of the new item in the ratio of the value of the reserved goods to the other processed items at the time of processing. In all other respects, the same shall apply to the item created by processing as to the item delivered by us under reservation of title.
- 10.4. If the reserved goods are combined or mixed with other items by the customer to form a single item and if one of the other items is to be regarded as the main item, we shall be entitled to pro rata co-ownership of the resulting item in the ratio of the value of the reserved goods to the other combined or mixed items at the time of combination or mixing, which the customer hereby assigns to us. We hereby accept this transfer of ownership. The customer shall hold the sole ownership or co-ownership thus created for us.
- 10.5. The customer hereby assigns to us as security all claims against third parties arising from the resale of the reserved goods, including all ancillary rights, irrespective of whether the reserved goods have been processed, combined, mixed or transformed. We hereby accept the assignment. The customer is obligated to retain ownership of the delivery items vis-à-vis their recipient until the purchase price has been paid in full. The customer is authorized to collect the resulting purchase price claims for our account until revocation or until payment to us has ceased. The customer is also not entitled to assign this claim, even for the purpose of collecting the claim through factoring, unless the factoring party is bound to assign our share in the claim to us for as long as our claims are still outstanding against the customer. We will only revoke the direct debit authorization if the customer is in default of payment, if the customer's financial situation deteriorates, or if an application is made to open insolvency proceedings against the customer's assets. If the direct debit authorization is revoked, the customer is obliged to provide us with all information required to collect the claims on request by submitting the corresponding supply contracts with their customers, the invoices and an overview of the payments made by the customer's customers.
- 10.6. The contractual partner must inform us immediately in writing of any access by third parties to the reserved goods or the items in which we have (co-)ownership, in particular any enforcement measures, and of any access by third parties to our claims, and must hand over to us the documents required to assert our rights. Insofar as the third party is not able to reimburse us for the judicial and extrajudicial costs, in particular those of an action pursuant to § 771 ZPO, the customer shall be liable for any loss incurred by us.
- 10.7. In the event of conduct by the customer in breach of contract, in particular in the event of default in payment, we shall be entitled to reclaim the reserved goods.
- 10.8. Our right to withdraw from the contract remains unaffected by this.
- 10.9. We undertake to release the securities to which we are entitled at the request of the customer to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is our responsibility.

## **11. Applicable law, place of performance and jurisdiction, severability clause**

- 11.1. The law of the Federal Republic of Germany shall apply exclusively, excluding the UN Convention on Contracts for the International Sale of Goods.
- 11.2. The place of performance for all liabilities as well as the place of jurisdiction shall be the registered office of our company in Owen, Germany, if the customer is a merchant, a person under public law, or a special fund under public law. International jurisdiction through German courts is agreed for foreign customers. We are also entitled to take legal action at the customer's place of business. The agreement on the place of jurisdiction shall also apply to proceedings involving checks and bills of exchange.
- 11.3. Should any provision of these terms and conditions of sale and delivery and any further agreements be or become invalid, this shall not affect the validity of the remainder of the contract. The contracting parties are obliged to replace the invalid provision with a provision that comes as close as possible to the economic purpose of the invalid provision. The above shall also apply in the case of a regulatory gap.