

General Terms and Conditions of Purchase – Sontheimer Elektroschaltgeräte GmbH

Art. 1 Scope of application, form

(1) These General Terms and Conditions of Purchase (GTCP) shall apply to all business relationships with our business partners and suppliers ("Seller"). The GTCP shall only apply if the Seller is an entrepreneur (section 14 German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTCP shall apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether the Seller manufactures the Goods itself or purchases them from suppliers (sections 433, 650 German Civil Code (BGB)). Unless otherwise agreed, the GTCP as amended at the time of the Buyer's purchase order or, as applicable, with the wording last communicated to the Buyer in text form shall also apply as a framework agreement for equivalent future contracts without an obligation on our part to refer to them again in each individual case.

(3) These GTCP shall apply exclusively. Any different, conflicting or supplementary General Terms and Conditions of the Seller shall only become an integral part of the Contract if and to the extent that we have expressly consented to their application in writing. This requirement of consent applies in any event, for example, even if the Seller refers to its own GTC as part of the acknowledgement of the order and we do not expressly object to this.

(4) Individual agreements (e.g. framework supply contracts, quality assurance agreements) and specifications in our order shall have priority over the GTCP. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) as amended at the time of conclusion of the Contract.

(5) Legally relevant declarations and notifications by the Seller in relation to the Contract (e.g. setting of time-limits, reminder, termination) must be made in writing. Written form within the meaning of these GTCP includes written and text form (e.g. letter, email, fax). Legal formal requirements and further proof, particularly in the event of doubts regarding the legitimacy of the declarant, shall remain unaffected.

(6) References to the applicability of statutory provisions shall only have a clarifying meaning. Even without such clarification, the statutory provisions therefore apply unless they are directly amended or expressly excluded in these GTCP.

Art. 2 Conclusion of the Contract

(1) Our order is deemed binding at the earliest upon written submission or confirmation. The Seller must point out any obvious errors (e.g. spelling and calculation errors) or incompleteness of the order including the order documents to us for the purpose of correction or completion before acceptance; otherwise the Contract is deemed not to have been concluded.

(2) The Seller is obliged to confirm our order in writing within a period of 2 working days or, in particular, to execute it without reservation by dispatching the Goods (acceptance).

(3) Late acceptance is deemed to be a new offer and requires our acceptance.

Art. 3 Delivery time and delay in delivery

(1) The delivery time stated by us in the order is binding. If the delivery time is not specified in the order and has not been agreed otherwise, it shall be 1 week from the conclusion of the Contract. The Seller is obliged to inform us immediately in writing if it expects to be unable to meet agreed delivery times - for whatever reason.

(2) If the Seller fails to render performance or does not render performance within the agreed delivery time or if it is in default, our rights – in particular to termination and damages – are governed by the statutory provisions. The provisions in para. 3 remain unaffected.

(3) If the Seller is in default, we may – in addition to any further statutory claims – demand lump-sum compensation for our loss caused by default at a rate of 1% of the net price per full calendar week, but in total not exceeding 5% of the net price of the Goods delivered late. We reserve the right to prove that a higher loss has been incurred. The Seller reserves the right to prove that no loss at all or only a significantly smaller loss has been incurred.

Art. 4 Performance, delivery, transfer of risk, default of acceptance

(1) The Seller is not entitled to instruct third parties (e.g. subcontractors) to render the performance owed by it without our prior written consent. The Seller shall bear the procurement risk for its performance unless otherwise agreed in an individual case (e.g. limitation to stock).

(2) Delivery shall be made "free domicile" within Germany to the place specified in the order. If the place of destination is not specified and no other agreement has been made, delivery shall be made to our place of business in Schwabach, Germany. The applicable destination is also the place of performance for the delivery and any subsequent performance (obligation to be performed at the creditor's place of business).

(3) The shipment shall be accompanied by a delivery note stating the date (issue and dispatch), the content of the shipment (article number or data matrix of Sontheimer and quantity) as well as our order identification (date and number) by means of a barcode or data matrix code in accordance with our delivery and packaging instructions (delivery and packaging instructions are available at www.sontheimer.org/LuV).

If the delivery note is absent or incomplete, we shall not be held responsible for any delays in processing and payment resulting therefrom. A corresponding dispatch note with the same content must be sent to us separately from the delivery note.

(4) The risk of accidental loss and accidental deterioration of an object shall pass to us upon delivery at the place of performance. Insofar as an acceptance inspection has been agreed, this shall be relevant for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply accordingly in the event of an acceptance inspection. If we are in default of acceptance, this shall be deemed equivalent to delivery or acceptance.

(5) The statutory provisions shall apply to the occurrence of our default of acceptance. However, the Seller must also expressly offer us its performance if a specific or determinable calendar time has been agreed for an action or cooperation on our part (e.g. provision of materials). If we are in default of acceptance, the Seller may demand compensation for its additional expenses in accordance with the statutory provisions (section 304 German Civil Code (BGB)). If the Contract relates to a non-fungible object to be manufactured by the Seller (individual production), the Seller shall only have further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

Art. 5 Prices and terms of payment

(1) The price stated in the order is binding. All prices include statutory value added tax if this is not shown separately.

(2) Unless otherwise agreed in the individual case, the price includes all performance and collateral performance of the Seller (e.g. assembly, installation) as well as all incidental costs (e.g. proper packaging, transport costs including any transport and liability insurance).

(3) The agreed price is due for payment within 30 calendar days of complete delivery and performance (including acceptance, if applicable) and receipt of a proper invoice. If we make payment within 14 calendar days of receipt of the invoice, the Seller shall grant us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment is deemed to have been made in due time if our transfer order is received by our bank before the expiry of the time for payment; we shall not be responsible for any delays caused by the banks involved in the payment process.

(4) We do not owe any interest on arrears. The statutory provisions apply to default in payment.

(5) We shall be entitled to rights of set-off and retention as well as the defence of unperformed contract to the extent provided by law. In particular, we are entitled to withhold due payments while we still have any claims against the Seller arising from incomplete or defective performance.

(6) The Seller shall have a right of set-off or retention only in respect of counterclaims which have become res judicata or are undisputed.

Art. 6 Confidentiality and retention of title

(1) We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and returned to us after completion of the Contract. The documents must be kept secret from third parties, even after termination of the Contract. The obligation to maintain secrecy shall only expire if and to the extent that the knowledge contained in the documents provided has become publicly known. Special confidentiality agreements and statutory regulations on the protection of secrets shall remain unaffected.

(2) The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) and to tools, templates, samples and other items which we provide to the Seller for production. Such items shall – as long as they are not processed – be stored separately at the Seller's expense and insured to a reasonable extent against destruction and loss.

(3) Any processing, mixing or combination (further processing) of items provided by the Seller shall be carried out for us. The same applies in the event of further processing by us of the Goods supplied, so that we are deemed to be the manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.

(4) The transfer of ownership of the Goods to us shall be unconditional and without regard to the payment of the price. However, if in individual cases we accept an offer of the Seller to transfer ownership conditional on payment of the purchase price, the Seller's retention of title shall expire at the latest upon payment of the purchase price for the goods delivered. We shall remain authorized to resell the goods in the ordinary course of business even before payment of the purchase price with advance assignment of the claim arising therefrom (alternatively, application of the simple retention of title and retention of title extended to resale). This excludes all other forms of retention of title, in particular the enlarged retention of title, the passed-on retention of title and the retention of title extended to further processing.

Art. 7 Defective delivery

(1) The statutory provisions and, exclusively in our favour, the following additions and clarifications shall apply to our rights in the event of material defects and legal defects in the Goods (including incorrect and short delivery as well as improper assembly/installation or defective instructions) and in the event of other breaches of duty by the Seller.

(2) In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the Goods have the agreed quality when the risk passes to us. In any event, those product descriptions which – in particular by designation or reference in our order – are the subject matter of the contract concerned or have been included in the contract in the same manner as these GTCP shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from us, from the Seller or from the manufacturer.

(3) In the case of Goods with digital elements or other digital contents, the Seller owes the provision and updating of the digital contents at least to the extent that this results from an agreement on quality pursuant to para. 2 or other product descriptions by the manufacturer or on its behalf, in particular on the Internet, in advertising or on the Goods label.

(4) We are not obliged to inspect the Goods or to carry out particular investigations about any defects upon conclusion of the Contract. In partial deviation from section 442 (1) sentence 2 of the German Civil Code (BGB), we are therefore also entitled without restriction to claims for defects if the defect remained unknown to us at the time of conclusion of the Contract due to gross negligence.

(5) The statutory provisions (sections 377, 381 German Commercial Code (HGB)) shall apply to the commercial duty to inspect and give notice of defects, subject to the following proviso: Our duty to inspect shall be limited to defects which become apparent during our incoming goods inspection with external examination including the delivery documents (e.g. transport damage, incorrect and short delivery) or which are identifiable during our quality control in the random sampling procedure. If acceptance has been agreed, there is no obligation to inspect. Otherwise, it depends on whether an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Notwithstanding our duty to inspect, our complaint (notice of defect) shall be deemed to have been made without delay and in good time if it is sent within 8 working days of discovery or, in the case of obvious defects, of delivery.

(6) Subsequent performance shall also include the removal of the defective Goods and their re-installation, provided that the Goods were installed in another object or attached to another object in accordance with their type and intended use before the defect became apparent; our statutory claim to reimbursement of any associated expenses (removal and installation costs) remains unaffected. The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, shall be paid by the Seller even if it turns out that there was no actual defect. Our liability for damages in the event of an unjustified request to remedy a defect remains unaffected; in this respect, however, we are only liable if we recognised or due to gross negligence failed to recognise that there was no defect.

(7) Notwithstanding our statutory rights and the provisions in para. 5, the following applies: If the Seller fails to fulfil its obligation of subsequent performance – at our discretion by remedying the defect (rectification of defects) or by delivering an object free of defects (replacement delivery) – within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement of the expenses required for this or a corresponding advance payment from the Seller.

If subsequent performance by the Seller has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), the setting of a time-limit is not necessary; we shall inform the Seller of such circumstances without delay, if possible in advance.

(8) Otherwise, in the event of a material or legal defect, we shall be entitled to reduce the purchase price or to terminate the Contract in accordance with the statutory provisions. In addition, we shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

Art. 8 Supplier recourse

(1) We shall be entitled to our legally determined claims for expenses and recourse within a supply chain (supplier recourse pursuant to sections 478, 445a, 445b and sections 445c, 327 para. 5, 327u German Civil Code (BGB)) without limitation in addition to the claims for defects. In particular, we are entitled to demand exactly the type of subsequent performance (repair or replacement) from the Seller that we owe our customer in the individual case; in the case of Goods with digital elements or other digital contents, this also applies with regard to the provision of necessary updates. Our statutory right of choice (section 439 (1) German Civil Code (BGB)) shall not be restricted hereby.

(2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses pursuant to sections 445a (1), 439 (2), (3), (6) sentence 2, 475 (4) German Civil Code (BGB)), we shall notify the Seller and request a written statement, briefly explaining the facts. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is reached, the claim for defects actually granted by us is deemed to be owed to our customer. In this event, it is the Seller's responsibility to prove the contrary.

(3) Our claims from supplier recourse also apply if the defective Goods have been combined with another product or processed in any other manner by us, our customer or a third party, e.g. by fitting, attachment or installation.

Art. 9 Manufacturer's liability

(1) If the Seller is responsible for product damage, it shall indemnify us against third-party claims to the extent that the cause lies within its sphere of control and organisation and it is itself liable in relation to third parties.

(2) Within the scope of its indemnification obligation, the Seller shall refund expenses pursuant to sections 683, 670 German Civil Code (BGB) which arise from or in connection with a claim by a third party including recalls carried out by us. We shall inform the Seller about the content and scope of recalls insofar as this is possible and reasonable and give the Seller the opportunity to make a statement. Further legal claims remain unaffected.

(3) The Seller must take out and maintain product liability insurance with a lump sum coverage of at least EUR 5 million per personal injury/property damage.

Art. 10 Limitation

(1) The mutual claims of the parties to the Contract will become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.

(2) Notwithstanding section 438 (1) no. 3 German Civil Code (BGB), the general limitation period for claims for defects is 3 years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period shall begin with acceptance. The 3-year limitation period shall also apply accordingly to claims arising from legal defects; in this regard, the statutory limitation period for real claims of third parties for the return of property (section 438 (1) no. 1 German Civil Code (BGB)) shall remain unaffected; furthermore, claims arising from legal defects will not become statute-barred in any event as long as the third party may still assert the right against us, in particular in the absence of a limitation period.

(3) The limitation periods under the law governing the sale of goods including the above extension shall apply to the statutory extent to all contractual claims for defects. If we also have any non-contractual claims for damages due to a defect, the regular statutory limitation period (sections 195, 199 German Civil Code (BGB)) shall apply to this, unless the application of the limitation periods of the law governing the sale of goods leads to a longer limitation period in the individual case.

Art. 11 Choice of law and place of jurisdiction

(1) These GTCP and the contractual relationship between us and the Seller shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Seller is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship shall be our place of business in Schwabach. The same applies if the Seller is an entrepreneur within the meaning of section 14 German Civil Code (BGB). However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCP or a prior individual agreement or at the general place of jurisdiction of the Seller. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.