

**General terms for the supply
of products and services of the
electrical and electronics industry intended for use in business
with entrepreneurs**

as from 16.05.2013	rev.: 02 as from 15.12.2017	Dok. 127	
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I. General Provisions

1. Scope of Application of the General Terms and Conditions

For the scope of the deliveries or services (hereinafter: deliveries) written declarations from both sides are standard. The purchaser's general terms and conditions however only apply if the supplier or provider (hereinafter: supplier) has expressly consented in writing.

2. Documents

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 may only be made accessible to third parties after the supplier consents and are to be returned immediately upon request if the contract is not awarded to the supplier. Sentences 1 and 2 shall apply accordingly to the purchaser's documents; these may however be made accessible to third parties to whom the supplier may rightfully transfer supplies.

3. Standard Software

The purchaser has the non-exclusive right to usage of standard software provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The purchaser may not create a back-up copy without express agreement.

4. Partial Deliveries

Partial deliveries are permissible if they are reasonable for the purchaser.

II. Prices and Conditions of Payment

1. The prices are quoted ex works excluding packaging plus the respective applicable statutory turnover tax.
2. If the supplier is responsible for installation or assembly and other terms have not been agreed upon, the purchaser shall pay the agreed remuneration as well as any incidental costs required, e. g. travel costs, costs for the transport of tools and equipment and personal luggage as well as allowances.
3. Payments are to be made without any deductions to the supplier's pay office.
4. The purchaser can only offset those claims that are uncontested or legally valid.

III. Retention of title

1. The objects to be delivered (goods subject to retention of title) remain the property of the supplier until all claims to which he is entitled arising from the business connection are fulfilled by the purchaser. If the value of all security interests that the supplier is entitled to exceeds the total of all secured claims by more than 20%, the supplier shall release a corresponding part of the security interest if so requested by the purchaser.
2. For the duration of the retention of title, the purchaser may not pledge or transfer by way of security. Reselling is allowed only in the ordinary course of business and only on the condition that the reseller receives the payment from his client or makes the reservation that ownership is transferred to the client when he has paid for the goods subject to retention of title. The claims arising from the resale shall be transferred with immediate effect to the supplier by the purchaser. The supplier hereby accepts the transfer. The supplier irrevocably authorises the purchaser to collect the claims transferred to the supplier for his account on his own behalf. The purchaser is not permitted to transfer these claims.
3. In case of breach of duty by the purchaser, especially when in default, the supplier has a right to cancel the contract and take back the retained

goods after unsuccessful lapse of the appropriate deadline for performance set for the purchaser. The statutory provisions that a time limit is not needed remain unaffected. The purchaser has the obligation to surrender the Retained Goods.

IV. Deadlines for Delivery; Default

1. Adhering to deadlines for deliveries requires the timely receipt of all documents to be delivered by the supplier, necessary authorisations and approvals, especially for plans as well as adhering to the agreed upon conditions of payment and other obligations by the purchaser. If these conditions are not met in good time, the deadlines extend appropriately; this does not apply if the supplier is responsible for the delay.
2. If deadlines are not adhered to due to force majeure, e.g. mobilisation, war, riots or similar events e.g. strikes and lock-outs, the deadlines will extend accordingly.
3. If the supplier defaults, the purchaser can demand compensation – if he can prove that he incurred a loss as a result. This compensation is limited to the predictable damages that are typical for this type contracts.
4. The purchaser's claims for compensation due to delays in delivery as also for compensation claims in lieu of performance, which go beyond the boundaries mentioned in no. 3, are excluded in all cases of delayed deliveries, even after lapse of a deadline given to the supplier for delivery. This does not apply if in cases of intent, gross negligence or due to threat to life, body or health one is strictly liable. The purchaser can only withdraw from the contract within the framework of statutory provisions if the supplier is responsible for the delay of the delivery. An alteration of the burden of proof to the detriment of the purchaser is not implied by the preceding regulations.
5. At the Supplier's request the Purchaser shall declare within a reasonable period of time whether the Purchaser cancels the contract due to the delayed Supplies or insists on the Supplies to be carried out.
6. If dispatch or delivery at the request of the purchaser is delayed by more than one month after showing readiness to dispatch, the purchaser can be charged a monthly storage fee of 0.5% of the price of the object to be delivered. However a maximum of 5% can be charged. The contractual parties are at liberty to prove higher or lower storage costs.

V. Risk Transfer

1. Even where delivery has been agreed freight free, the risk shall pass to the purchaser as follows:
 - a) in the event of deliveries without installation or assembly if they were brought for dispatch or have been collected. At the request and on the account of the purchaser, deliveries made by the supplier will be insured against the usual transport risks;
 - b) in the event of deliveries with installation or assembly on the day of takeover at the premises or if agreed upon, after a flawless test run.
2. If the dispatch, the delivery, the commencement, the execution of implementation or assembly, takeover in the premises or the test run is delayed and the purchaser is responsible for it or if the purchaser defaults acceptance, the risk is transferred to the purchaser.

VI. Installation and Assembly

Unless otherwise agreed in writing, installation/assembly shall be subject to the following provisions:

1. The purchaser shall provide at own expense and in good time:

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Certified to DIN EN ISO 9001:2008 (Reg. No. 2117/3158) and to DIN EN ISO 14001:2009 (Reg. No. 2117/3157)				

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| <p>a) all ground, building and other ancillary jobs that are not typical for the sector including the required professionals and assistants, building materials and tools,</p> <p>b) the requisites and materials such as scaffolding, lifting equipment and other equipment, fuel and lubricants,</p> <p>c) energy and water at the point of use including connections, heating and lighting,</p> <p>d) sufficient large, appropriate, dry and lockable rooms at the assembly site for storing machine parts, apparatus, materials, tools etc. and appropriate working and recess rooms including appropriate sanitary facilities for the assembly staff; moreover, the purchaser must take all those measures which he would take to protect his own property in order to protect the supplier's and the assembly staff property on the construction site.</p> <p>e) Protective clothing and protective devices which are necessary due to special conditions prevailing at the specific assembly site.</p> <p>2. Prior to commencement of the assembly work, the purchaser must provide the necessary information about the position of concealed electricity, gas, water supply lines or similar facilities as well as the necessary statistic information without being prompted.</p> <p>3. Prior to commencement of the installation or assembly the supplies and objects that are necessary for commencement of work must be available at the installation or assembly site and all preparation work should have advanced to such an extent that the installation or assembly can commence as agreed upon and can be carried out without interruption. The roads and the installation or assembly site must be levelled and cleared.</p> <p>4. If the installation, assembly or start-up is subject to delays for which the supplier is not responsible, the purchaser must bear reasonable costs incurred for idle times and any additional travelling of the Supplier or the assembly personnel.</p> <p>5. The purchaser must confirm on a weekly basis the hours worked by the assembly staff and immediately confirm in writing when the installation, assembly or start-up has been completed.</p> <p>6. If the supplier demands acceptance of the delivery upon completion, the purchaser must comply therewith within two weeks. In default thereof, the acceptance is deemed to have been made. Also, the acceptance is deemed to have been made if the delivery is put to use upon completion of an agreed upon test phase where applicable.</p> | <p>4. In case of notice of defects, payments of the purchaser may withhold payments to a reasonable extent taking into account the defect that has arisen. The purchaser can only withhold payments if notice of defects is justified beyond doubt. If a notice of defects is made wrongfully, the supplier is entitled to demand compensation from the purchaser for the expenses he has incurred</p> <p>5. The supplier shall first be granted the opportunity for supplementary performance within an appropriate period.</p> <p>6. Should the supplementary performance fail, the purchaser can withdraw from the contract or reduce the remuneration irrespective of any claims for compensation as per art. XI.</p> <p>7. Claims for defects do not exist if deviations from the agreed upon characteristics are slight, if usability is only slightly impaired, in case of natural wear and tear or in case of damages which occur after transfer of risk as a result of wrongful or negligent handling, excessive usage, inappropriate operating materials, poor construction work, inappropriate construction ground or due to specific external influences which are not presupposed as per the contract as also non-reproducible software errors. If the purchaser or third parties carry out inappropriate changes or repairs, there will be no claims for defects for this and the consequences arising therefrom.</p> <p>8. The purchaser's claims arising from expenses necessary for supplementary performance particularly transport, work and material costs are excluded if the expenses increase because the object to be delivered has subsequently been brought to a place other than the purchaser's branch location unless shipment corresponds to the intended use.</p> <p>9. The purchaser's recourse claims against the supplier as per § 478 of the German Civil Code (entrepreneur's recourse) only exist if the purchaser had not made any agreements that go beyond the statutory claims for defects with his customer. Additionally, no. 8 applies accordingly to the scope of the purchaser's recourse claim against the supplier as per § 478 of the German Civil Code.</p> <p>10. Furthermore, the provisions of art. XI (other claims for compensation) shall apply for compensation claims. Any other claims asserted by the purchaser against the supplier and his agents or other claims than those regulated in this art. VIII due to material defects are excluded.</p> |
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VII. Acceptance

The purchaser may not refuse acceptance of deliveries due to slight defects.

VIII. Material Defects

The supplier is liable as follows for material defects:

1. All parts or services which exhibit material defects within the limitation period – without considering the service life – are to be improved, re-delivered or provided once again free of charge at the supplier's choice if the cause was already present at the time of risk transfer.
2. Claims for material defects become time barred in 12 months. This does not apply if the law prescribes longer terms as per §§ 438 paragraph 1 no. 2 (buildings and things for buildings), 479 paragraph 1 (Recourse claim) and 634a par. 1 no. 2 (construction defects) of the German Civil Code as also in cases of threat to life, body or health, in case of intentional breach of duty or breach of duty due to gross negligence on the part of the supplier and in case of malicious concealment of a defect. The statutory regulations on suspension of statute of limitation and recommencement of the deadlines remain unaffected.
3. The purchaser must report material defects in writing to the supplier immediately.

IX. Industrial Property Rights and Copyrights; Defects of Title

1. Unless otherwise agreed upon, the supplier shall make delivery solely in the country of the place of delivery free from third party industrial property rights and copyrights (hereinafter: trademark rights). If a third party asserts justified claims due to breach of trademark rights as a result of deliveries made by the purchaser and used as agreed upon, the supplier is liable to the purchaser as follows within the term set in art. VIII art. 2:
 - a) The supplier will choose – and at his own costs – whether to obtain user rights for the concerned deliveries, change it in such a way that the trademark right is not breached or exchange it. If the supplier is not able to do this under appropriate conditions, the purchaser is entitled to his right to withdraw or reduce the price.
 - b) The duty of the supplier to compensate conforms to art. XI.
 - c) The above obligations of the supplier shall only exist if the purchaser immediately informs the supplier in writing about the claims asserted by a third party and all defensive measures and composition trials shall remain reserved. If the purchaser stops the delivery due to reduction of damages or other good reason, he shall be obliged to inform the third party that there is no recognition of breach of trademark rights connected with discontinuation of use.

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2. Claims asserted by the purchaser are excluded if the purchaser is responsible for the breach of trademark right.
3. Claims asserted by the purchaser are excluded if the breach of trademark right is caused by the purchaser's special specifications, by usage that the supplier did not foresee or it is caused due to the delivery being used by the purchaser in an altered manner or with products that were not supplied by the supplier.
4. In addition, with respect to the breach of trademark rights, the provisions of art. VII no. 4, 5 and 9 shall apply mutatis mutandis to the claims of the purchaser regulated in no. 1 a).
5. Where other defects in title occur, the provisions of art. VIII shall apply mutatis mutandis.
6. Further claims asserted by the purchaser exceeding the claims provided for in this art. IX against the supplier and his assistance due to a defect in title are excluded.

X. Impossibility of performance; Contract Adaptation

1. If delivery is impossible, the purchaser is entitled to demand compensation unless the supplier is not responsible for the impossibility. However, the purchaser's claim for compensation is limited to foreseeable damages that are typical for this type of contracts. This limitation does not apply if one is strictly liable in cases of intent, gross negligence or due to threat to life, body or health; an alteration of the burden of proof to the detriment of the purchaser is not connected to this. The purchaser's right to withdraw from the contract remains unaffected.
2. Where unforeseeable events within the meaning of art. IV no. 2 substantially alter the economic meaning or the content of the delivery or affects the supplier's operation, the contract will be adapted in good faith. If this is not possible, the supplier has the right to withdraw from the contract. Should he wish to exercise this right to withdraw, he must immediately inform the purchaser upon knowing the scope of the event and also then when an extension of the delivery period was agreed upon.

XI. Other Compensation Claims

1. Hans von Mangoldt GmbH is liable according to the statutory provisions. However, the claim for compensation is limited as follows:
 - a) In the event of simple negligence, it will be liable only for threat to life, body or health.
 - b) In the event of intent by agents, in case of gross negligence of the legal representatives, employees or assistants, liability will be limited to the foreseeable damages that arise typically. Liability is additionally limited to the total of the sum insured of the third party insurance amounting to at least five million Euros per case. The limitation does not apply to damages as a result of threat to life, body or health.
 - c) In the event of breach of a cardinal duty, Hans von Mangoldt GmbH in deviation from lit. a) in the event of simple negligence; however, it shall be limited as in b). A duty is said to be cardinal if its fulfilment facilitates execution of the contract and the contractual partners can have faith in it being adhered to.
2. Mandatory provisions of the product liability act remain unaffected. In case of such breach of duty, especially default upon contract conclusion or crime, Hans von Mangoldt GmbH will not assume further liability than regulated above. The legal representatives, managerial staff and simple employees of von Mangoldt GmbH will not be liable beyond the extent to which the seller himself is liable.

XII. Legal Venue and Applicable Law

1. Sole legal venue is, if the purchaser is a businessman, the supplier's domicile for all disputes arising directly or indirectly from the contractual relationship. The supplier, however, shall also be entitled to sue at the purchaser's domicile.
2. For the legal relationships in connection with this contract shall be governed by German substantive law to the exclusion of the UN Convention on the International Sale of Goods (CISG).

XIII. Binding Force of the Contract

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

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