

Standard Terms and Conditions of Sale and Delivery of SMT ELEKTRONIK GmbH (hereinafter called supplier)
Issue 02/2002

1. General Provisions

- 1.1. No other than the following conditions of sale and delivery shall apply to all deliveries and services.
- 1.2. Diverging terms and conditions of the customer, which the supplier has not recognized expressly, are not binding even if the supplier does not expressly contradict them.
- 1.3. Other agreements, alterations and collateral agreements require written confirmation. The inclusion and interpretation of the terms and conditions of sale and delivery as well as the conclusion and interpretation of legal transactions with the customer are governed by the law of the German Federal Republic.
- 1.4. Should any provisions stated in these terms and conditions of sale and delivery prove to be void, this does not affect the validity of the other provisions.
- 1.5. Place of performance for all obligations resulting directly or indirectly from the contractual relationship, including the liability to pay, is Dresden.
- 1.6. The sole place of jurisdiction for all disputes resulting from the contractual relationship is Dresden.
- 1.7. The supplier is also entitled to sue in a court that is competent for the head office or a branch of the customer.

2. Quotations, orders, scope of performance and conclusion of contract

- 2.1. The supplier accepts only written orders. Amendments made verbally or by telephone require written confirmation.
- 2.2. The written confirmation of order is authoritative for the scope of the contractually due service.
- 2.3. The supplier reserves the right to make changes in design, material selection, specification or type even after sending a confirmation of order if these changes are not contrary to the specification of the customer unless the change noticeably contradicts the justified interests of the customer.
- 2.4. Should the customer cancel the order after receipt of the confirmation of order, the costs incurred by the supplier through cancellation shall be charged to the customer's account.
- 2.5. The supplier reserves the right to make partial deliveries.
- 2.6. The customer is obliged to accept the delivered goods. This condition applies in so far as it does not prejudice to his legal rights concerning liability and warranty.

3. Prices and terms of payment

- 3.1. Prices are valid "ex works" in the absence of specific agreements, however, excluding packaging costs and other expenses of dispatch and transport. The applicable level of value added tax is added to the prices.
- 3.2. The prices are to be inferred from the price list valid at delivery or from the quotation. Quantity discounts are stated in the respective offers.
- 3.3. The supplier reserves the right to raise prices adequately if an increase in costs arises after conclusion of the contract, particularly in the area of prime costs. Prices shall be adapted in adequate proportion to the increase in costs. The increase in costs shall be proved to the customer on request.
- 3.4. Should the customer request alterations to the specifications, the resulting additional costs shall be invoiced to him.
- 3.5. Payment is due without any discount within 30 days after dispatch of the invoice; a 2% discount applies to customers paying within 10 days of the dispatch of the invoice. The customer defaults 30 days after receipt of the invoice. If the customer, who is not a consumer, denies receipt of the supplier's invoice, he defaults 30 days after receipt of the delivery.
- 3.6. Invoices are deemed to have been paid on the day on which the customer's payment is credited to the supplier.
- 3.7. Should the customer negligently fail to pay before the due date according to 3.5, interest at the amount of 5% above the basic interest rate of the German Central Bank (Deutsche Bundesbank) and expenses in the order of 7.50 € shall be charged with reservation of assertion of further claims. The customer has the right to prove that the supplier has incurred no loss at all or a loss of minor value as a consequence of the delay in payment.
- 3.8. Bills of exchange and cheques shall be considered as valid payment only after the amount has been credited to the supplier's account.

4. Delivery period, acceptance and dispatch

- 4.1. The supplier shall make every effort to comply with the stated delivery period. Delivery times are estimated as accurately as possible, but are not binding, unless a precise date of delivery has been stated in the confirmation of order.
- 4.2. The delivery period begins with dispatch of the confirmation of order. If the customer fails to produce the required documents, permissions etc. in time, or fails to meet his contractual or financial obligations, an adequate prolongation of the delivery period shall occur. The same prolongation shall apply to measures regarding industrial action, especially strikes and lockouts, and the occurrence of unforeseen obstructions which are beyond the supplier's control such as delays in delivery from suppliers, disturbances of traffic and production, and material and energy shortages, that have a provable and significant influence on the manufacture and delivery of the article. The supplier shall not be responsible for the aforementioned circumstances even if they occur during an already existing delay in delivery.
- 4.3. The delivery period is complied with if the article has left the works before its expiry or if readiness for delivery has been communicated.
- 4.4. If the supplier fails to deliver after an additional period given by the customer has expired, the customer has the right of cancellation. Claims for damages may not be made in cases of delayed delivery or services. This shall not apply in cases of intention or gross negligence.
- 4.5. If no fixed date of acceptance has been agreed, the customer shall accept delivery of the article within 8 days of being advised of its completion.
- 4.6. If the customer has requested delivery on call, he shall call for the article to be delivered – all articles in case of several articles ordered – within 12 months. Development orders are subject to specific conditions.
- 4.7. If the customer fails to fulfil his obligations stated in 4.5. or 4.6., the supplier is entitled, without prejudice to other legal ways and means, to claim immediate payment, to store the article for the account and at the risk of the customer or to dispose otherwise of the article and to supply the customer at the next possible time. In these cases risk associated with degradation passes to the customer with the communication of readiness for dispatch.
- 4.8. The article shall be dispatched "ex works" in the absence of other agreements. Insurance against theft and other risks will only be provided at the explicit request and at the cost of the customer.

- 4.9. If dispatch is delayed on the customer's request, the costs arising from storage in the supplier's company, or at least ½% of the amount of invoice for every month shall be charged to the customer, beginning one month after the communication of readiness for dispatch. However, after adequate time has been given and ineffectually expired, the supplier shall be entitled to dispose otherwise of the article to be delivered and to supply the customer within an adequate additional period of time.

5. Passing of risk

In the absence of other agreements the INCOTERMS in their current version, which are to be applied to the condition of delivery, are binding. At variance with these, the risk passes to the customer on the day of unfounded refusal of acceptance, in case of inactivity of the customer after expiry of the periods of time designated in 4.5. and 4.6. The risk passes in all cases when the delivered article is put into operation. If the supplier takes back articles for reasons he is not responsible for, the customer shall bear the risk until the goods have arrived at the supplier.

6. Reservation of title

- 6.1. Until fulfilment of all claims resulting from the business relationship, including collateral claims, claims for damages and payments by cheques or bills of exchange, the supplier shall retain title to the sold articles. The supplier shall be obliged to surrender securities, if at least 90% of the accounts have been paid.
- 6.2. The customer shall be obliged to treat the articles under reservation of title with care. He shall be specially obliged to effect an adequate new for old replacement value insurance against damage caused by fire, water or theft. The customer shall assign his claims for compensation, which are due to him from the aforementioned kinds of damage, to the supplier at the invoice amount of the articles.
- 6.3. The customer shall not pledge the articles or assign them for security. In case of attachments and confiscation or other decrees by a third party, he shall inform the supplier immediately.
- 6.4. The processing and manufacture by the customer of goods under reservation of title of the supplier shall be carried out in such a way that the supplier obtains co-ownership at the amount of its invoice value and that a share of the purchase price of the new or transformed article is due to him pro rata to the value of his rights.
- 6.5. The customer shall only resell, process or install the articles under reservation of title provided that there is a framework of an ordered business, if the claims really pass to the supplier.

7. Warranty

- 7.1. The supplier shall, at his own choice, rectify any defects shown to him on his delivered articles within 1 year after delivery up to 2 times by supplying the missing goods or equivalent replacement goods without substantial disadvantage to the customer. If the customer insists on a rectification which ensues disproportionately high costs for the supplier, the latter can refuse the kind of rectification chosen by the customer. The written notice of defects shall reach the supplier, in case of obvious defects, immediately after delivery of the articles, at the latest after 5 days, or, in case of defects that are not obvious, immediately after the defect has become apparent.
- 7.2. The customer has the right to claim the annulment of the contract or a price reduction if attempts of rectification of defects fail. Spare parts and expendable parts or parts for further processing shall be examined by the customer immediately after the delivery, and any defects shall be notified immediately. Any claims of warranty for defects that could have been noticed before installation or manufacture are void after processing and installation.
- 7.3. If the customer arranges for an examination of delivered articles and notifies a defect for which the supplier should be liable in accordance with 7.1., the customer shall bear the costs if no defect is evident.
- 7.4. Further claims of the customer shall be excluded, especially in case of consequential damage caused by a defect if they do not result from the lack of the agreed quality or the quality warranted by the supplier. This does not apply in case of intention or gross negligence on the part of the supplier.
- 7.5. The expenses for the posting and packing of the delivered article are charged to the supplier's account, unless agreed otherwise between the customer and the supplier.

8. Liability

- 8.1. Claims for damages by the customer are excluded – for whatever legal reason, also claims from a tortious act or consequential damage. This is void in the case of damage to life, body or health which ensues from gross negligence of the supplier or intention or gross negligence of a legal representative or vicarious agent or in case of other damage which ensues from gross negligence of the supplier or intention or gross negligence of a legal representative or vicarious agent.
- 8.2. If the customer asserts injuries or damage of property, which are caused by defects of the delivered goods, on the basis of the Product Liability Act, the exclusion of liability is void.
- 8.3. The supplier is not liable for damage resulting from the following reasons:
- unsuitable and improper handling
 - improper installation or putting into use by the customer or a third party
This is void if the installation instructions is faulty and the article has not already been faultlessly installed.
 - non-observation of the instruction manual
 - faulty or careless treatment
 - natural wear
 - chemical, electro-chemical or electric influences if they are not attributable to intention or gross negligence of the supplier
 - prohibited changes or repairs.
- 8.4. Advice given to the customer by the supplier, especially concerning the use of the delivered article, only has legal status when the supplier has given or confirmed it in writing.

9. Copyright

- 9.1. The supplier retains the property rights to drawings, sketches, software, estimates of costs and his other documents attached to the offers and confirmations. The customer must not copy or make them available to third parties without the supplier's consent. The documents and all their copies shall be given back to the supplier on request.
- 9.2. Making technological know-how available to third parties is not permitted without the consent of the supplier.