

Special Terms and Conditions for Purchased Parts of Electronic Components on the Free Market

1. Scope

We are specialized in procuring and trading in electronic components that do not originate directly from the manufacturer or from any of their authorized dealers (hereinafter also referred to as the "Goods"). Based on the following Special Terms and Conditions for Purchased Parts of Electronic Components on the Free Market (hereinafter also referred to as "Special Terms and Conditions") the Customer commissions us to purchase and sell the Goods to the Customer in our own name and for our own account:

- 1.1 All of our business relationships with our Customers the subject matter of which is our commissioning with the purchase of Goods in our own name and for our own account and their sale to the Customer shall be governed by these Special Terms and Conditions. They shall apply only if the Customer is an entrepreneur (Section 14 BGB [*German Civil Code*]), a legal entity under public law or a special fund under public law.
- 1.2 In this respect, all deliveries and services effected by us shall be governed by these Special Terms and Conditions exclusively. We do not acknowledge any terms to the contrary or any deviating terms used by the Customer, unless such have been expressly approved by us. Even if we refer to written communication containing or making reference to deviating terms of the Customer or a third party such shall not constitute any agreement to the validity of these terms and conditions.
- 1.3 Our Special Terms and Conditions shall also apply to future business, even if in individual cases we make no reference to the same.
- 1.4 Any individual agreements entered into with the Customer in individual cases (including collateral agreements, supplements and changes) shall in any event have priority over these General Terms and Conditions. Subject to proof to the contrary, the contents of such agreements shall be gov-

erned by a written contract and/or our written acknowledgment.

- 1.5 Legally relevant declarations and notifications from the Customer relating to the contract (e.g. setting of deadlines, notification of defects, withdrawal from the contract or price reductions) must be given in writing, i.e. in written or text form [*"text form" as defined under § 126b BGB*] (e.g. letter, email, fax). Any legal formal requirements and additional supporting evidence, in particular in cases of doubt relating to the lawful entitlement of the declaring party, shall remain unaffected hereby.

- 1.6 In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC), as amended at the time the contract is concluded.

2. Commissioning

- 2.1 The Customer commissions us to purchase Goods in our own name and for our own account, stating both the price the Customer is willing to pay to us, the respective quantities and characteristics (e.g. weights, dimensions, values in use, capacity, tolerances and technical specifications) as well as depictions (e.g. drawings and images) of the required Goods and to sell them to the Customer.

- 2.2 We will purchase the Goods in our own name and for our own account and sell them to the Customer.

3. Offer

- 3.1 If we find Goods that correspond to the Customer's specifications, we will submit a written offer to the Customer.
- 3.2 However, we shall also be entitled to submit another offer to the Customer.

4. Conclusion of Contract

- 4.1 Our offer is binding. The acceptance period for the

Customer for this shall be agreed individually or shall be specified by us in the offer. Should this not be the case, the Customer can accept our offer only within a 2-day time period.

- 4.2 The order shall be governed by our written offer. If the Customer has any objections as to the contents of the offer, the Customer must oppose such offer without delay. Otherwise, the contract shall take effect in accordance with our offer.
- 4.3 Any obvious errors (e.g. spelling or calculation errors) and incomplete information must be pointed out to us by the Customer so that we can correct and/or complete the information before acceptance; otherwise, the contract shall be deemed not concluded.
- 4.4 Any information provided by us relating to the Goods (e.g. weights, dimensions, values in use, capacity, tolerances and technical specifications) as well as the depictions thereof provided by us (e.g. drawings and images) shall only be deemed approximates unless the usability of such information for the contractually intended purpose requires precise conformity. These shall not constitute guaranteed characteristics but are descriptions or designations of the delivery or service.
- 4.5 The purchase contract shall not come into effect until the Goods have been approved by the Customer in accordance with clause 6 of these Special Terms and Conditions.

5. Prices and Payment

- 5.1 The prices stated in our offer shall be authoritative. Unless otherwise agreed, our prices shall be EXW (Incoterms) Pforzheim and shall be exclusive of packaging, freight, insurance, customs duties and value-added-tax.
- 5.2 In the case of sale by dispatch (clause 8.1 below) the Customer shall bear the transport costs ex warehouse (Pforzheim) as well as the costs of any transport insurance that the Customer may require. Any customs duties, fees, taxes and other public charges shall be borne by the Customer.

- 5.3 Upon receipt of the order, the Customer will receive a pro forma invoice in which we confirm that we have received the order. This pro forma invoice does not yet constitute acceptance of your order. A contract is not yet concluded by the pro forma invoice.

Due to our obligation to provide advance performance, the amount indicated in the pro forma invoice must be transferred to the account specified in the pro forma invoice within the time period individually agreed or specified by us in the offer. In the absence of an agreed deadline, the pro forma invoice amount must be transferred to the account specified in the pro forma invoice within 2 days of receipt of the pro forma invoice. The deduction of a cash discount shall not be permitted.

If the Customer does not approve the Goods in accordance with clause 6 of these Special Conditions, the entire amount relating to the rejected order (Goods) will be refunded to the Customer without delay.

- 5.4 The Customer may only offset counterclaims that are undisputed or recognized by non-appealable judgment. The Customer may only enforce a right of retention if such right is based on the same contractual relationship.

6. Inspection and Approval of the Goods

If the Customer accepts our offer, the Customer will receive a sample of the Goods for inspection purposes in order to verify compliance with the Customer's specifications and to decide immediately whether to approve the Goods.

At the request of the Customer, the inspection of the Goods can also be waived.

7. Delivery Time, Delay in Delivery

- 7.1 The delivery time is agreed on an individual basis or is specified by us upon acceptance of the order.
- 7.2 The agreed delivery time shall commence with the conclusion of the contract.

7.3 Delivery times and delivery dates shall be deemed met if readiness for dispatch has been notified.

7.4 If we are not able to meet binding delivery deadlines for reasons for which we are not responsible (unavailability of performance), we will inform the Customer of this without delay and at the same time will inform the Customer of the expected new delivery time. If performance is not available within the new delivery period either, we shall be entitled to withdraw from the contract, either in whole or in part; we will reimburse any consideration already provided by the Customer without delay.

7.5 The onset of our being in default of delivery shall be determined on the basis of the statutory provisions. In any case, however, a reminder by the Customer shall be required. If we are in default of delivery, the Customer may demand, to the exclusion of further claims, a flat-rate compensation for the damage caused to him by the delay. The flat-rate compensation for damage shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay but shall not exceed, however, 5% of the delivery value of the Goods that are delivered late. We reserve the right to prove that the Customer has not suffered any damage at all or that the amount of the damage was significantly below the above flat rate. Any further compensation paid by us for the damage caused by the delay shall be excluded. Such shall not apply if we have acted on intent, with gross negligence or maliciously, in the case of claims for injury to life, limb or health and if a fixed date of delivery within the meaning of the law has been agreed and a performance guarantee has been given or a procurement risk has been assumed in accordance with Section 276 BGB and in the case of compulsory statutory liability.

8. Delivery, Place of Performance, Passing of Risk, Default in Acceptance

8.1 Delivery shall be effected EXW (Incoterms). Upon the request and at the expense of the Customer, the Goods will also be shipped to another point of

destination (sale by dispatch). Unless otherwise agreed, we shall have the right to determine the respective type of shipment (in particular select the shipping company, dispatch route, packaging) ourselves.

8.2 We shall be entitled to effect partial deliveries if:

- the partial delivery can be used by the Customer within the framework of the contractually intended purpose,
- delivery of the remaining Goods ordered is ensured and if
- the Customer does not incur any significant additional effort or expense on account of this (unless we agree to bear such costs).

8.3 The risk of accidental loss and accidental deterioration of the Goods shall pass to the Customer upon delivery, in the event of sale by dispatch it shall pass with the delivery of the Goods to the carrier.

8.4 If we select the shipping method, the route or the carrier, we shall only be liable for gross negligence with regard to such selection.

8.5 If the Customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Customer is responsible, we shall be entitled to demand compensation for the damage incurred thereby, including additional expenditures (e.g. storage costs). The right to provide proof of a higher damage as well as our claims laid down by law (including but not limited to the reimbursement of additional expenditures, reasonable compensation, termination) shall remain unaffected; however, the flat rate shall be set off against further monetary claims. The Customer shall have the right to prove that we have suffered no damage at all or that the damage was significantly below the above flat rate.

9. Force Majeure

We shall not be liable if delivery is impossible or is delayed insofar as this is caused by Force

Majeure or by other events which were not foreseeable at the time the contract was concluded and for which we are not responsible (e.g. all kinds of disruptions in operations, difficulties in the procurement of materials or energy, transport delays, strike, lawful lockouts, shortage of labor, energy or raw materials, difficulties in obtaining the required official permits, pandemics or epidemics, governmental measures or non-delivery, incorrect or untimely delivery by suppliers even though a matching cover transaction has been concluded by us). If such events render our delivery or service significantly more difficult or impossible and if the impediment is not only temporary, we shall be entitled to withdraw from the contract. In the event of impediments that are of temporary duration, the delivery or service periods shall be extended or the delivery or service dates postponed for the duration of the impediment, plus an appropriate lead time. If the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, the Customer shall be entitled to withdraw from the contract by way of an immediate written declaration made to us.

10. Retention of Title

We retain title to all Goods delivered by us until payment of all and any claims arising from previous contracts have been paid in full.

11. Claims for Defects

11.1 Our duty to inspect the Goods shall be limited to defects that become manifest by means of external examination, including the delivery documents (e.g. transport damage, incorrect and short delivery) during our incoming goods inspection or our quality control during sampling.

11.2 The Customer shall indemnify us and hold us harmless from and against all and any warranty claims of the Customer, insofar as the material defect already existed when the Goods were delivered to us. An indemnification obligation of the Customer shall not exist if the material defect in the Goods arose after the Goods were delivered to us, provided such material defect could not have

been averted by using the care and diligence of a prudent businessman.

12. Used Goods

Any warranty and any other liability on our part shall be completely excluded with respect to used Goods. However, this exclusion of liability shall not apply if we have acted fraudulently or on intent.

13. Other Liability

13.1 Unless otherwise provided for in these Special Terms and Conditions, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the provisions laid down by law.

13.2 We shall be liable for damages, irrespective of the legal grounds on which such claims are based, in the event of intent and gross negligence. In the event of slight negligence we shall be liable only

(a) for damage resulting from injury to life, limb or health;

(b) for damage resulting from the breach of an essential contractual

obligation (fundamental obligation going to the root of the contract the fulfilment of which is essential for the proper execution of the contract in the first place and the observance of which the Customer regularly relies on and may rely on);

in this case, however, our liability shall be limited to the compensation of foreseeable damage that typically occurs.

13.3 The limitations of liability resulting from the above clauses 13.2. and clause 12, sentence 1, shall also apply in the event of breaches of duty by or to the benefit of persons whose fault we are responsible for in accordance with statutory provisions. The limitations of liability shall not apply if we have fraudulently concealed a defect or have furnished a guarantee for the quality of the Goods and for liability under the Product Liability Act.

13.4 The Customer may only withdraw from the contract or give notice of termination based on a breach of duty that does not consist of a defect if we are responsible for the breach of duty. Unrestricted right of termination of the Customer (in particular pursuant to Sections 650, 648 BGB) shall be excluded. In all other respects, the legal requirements and legal consequences shall apply.

13.5 The statutory provisions on the burden of proof shall remain unaffected by the above stipulations.

14. Statute of Limitation

14.1 In derogation of Section 438 [1], number 3, BGB, the general limitation period for claims for material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence with acceptance.

14.2 However, if the Goods are a building or an object that, in conformity with its customary manner of utilization, has been used for a building and has caused its defectiveness (building material), claims will become statute-barred in 5 years from delivery in accordance with the statutory provision (Section 438 [1], no. 2, BGB). Any additional special provisions on limitation periods laid down by law shall remain unaffected (in particular Section 438 [1], no. 1, [3], Sections 444, 445b BGB).

14.3 The aforesaid limitation periods stipulated by sales law shall also apply to contractual and non-contractual claims for damages by the Customer based on a defect of the Goods – unless the standard statutory limitation periods (Sections 195, 199 BGB) would, in an individual case, result in shorter limitation periods. However, claims for damages of the Customer in accordance with clauses 12, sentence 2, 13 [2], sentence 1 and sentence 2 (a) above, as well as claims under the Product Liability Act shall become statute-barred in accordance with the statutory limitation periods exclusively.

15. Place of Jurisdiction, Place of Performance and Applicable Law

15.1 Place of performance shall for both parties be the principal place of business of our company.

15.2 If the Customer is a registered trader with seat in the European Union, Switzerland, Norway or Iceland when the proceedings are initiated, place of jurisdiction for all and any legal disputes arising out of the contractual relationship, its creation and effectiveness shall for both parties be the court competent at our company's principal place of business. In derogation hereof, we may, at our discretion, also bring an action at the seat of the Customer.

15.3 To the extent that clause 15.2 above is not applicable, all and any legal disputes arising out of the contractual relationship, its creation and effectiveness shall be settled by final and binding decision in accordance with the Rules of Arbitration of the German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)), excluding the jurisdiction of the courts. Place of arbitration shall be Karlsruhe, Germany. The language of the arbitration proceedings shall be German.

15.4 The contractual relationship shall be governed by German law exclusively, excluding the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).