

SALES AND DELIVERY CONDITIONS

The following Terms and Conditions of delivery and payment apply only to entrepreneurs as defined in Section 14 BGB [German Civil Code].

1. Area of application

Save as otherwise determined by individual agreement, the Vendor shall deliver exclusively in accordance with the following Terms and Conditions of Sale and Delivery. Any terms and conditions of business of the Customer contradicting or diverging from these Terms and Conditions shall not form an integral part of the contract unless expressly consented to by the Vendor, nor shall they form an integral part of the contract if the Vendor effects delivery unconditionally.

2. Quotation and Signature of the Contract

The order shall only be considered to be accepted upon written confirmation of the order by the Vendor. The Vendor's quotation shall not be binding prior to this date. Any supplements modifications or additional amendments transmitted orally, by telephone, by telefax or by E-mail shall only be valid after written confirmation by the Vendor.

3. Volume of Supply

Dimensions, weights, representations and drawings shall only apply to the supply after clear confirmation in writing. Gross weights and box dimensions are stated approximately, as accurately as possible, and shall not be binding. If not regulated in the following, deliveries under this contract shall be performed in compliance with the conditions set down by the Central Association of the German Electro-technical Industry (ZVEI).

4. Prices

Prices are ex works of the producer excluding packaging. The prices applying are those in effect on the date the contract is entered into unless it is agreed that delivery will not be effected until more than four months after the date of the contract.

5. Terms of Payment

The invoices are made out in EURO. Payment shall be made within 14 days net without any deduction. Payments by checks shall be acceptable, provided commission and other expenses are borne by the Purchaser. Late payments or payments after the due date shall be subject to interest for late payment at a rate equal to 2% above the discount rate of the Deutsche Bundesbank, without any need for prior notice demanding payment.

In case of default in payment the Vendor may claim interest at a rate of 8% p.a. above the respective base interest rate. We reserve the right to claim additional damage. A right of retention or offset against any counterclaims is only permissible if such counterclaims have been recognized or established as res judicata by a court of law.

6. Delivery date

The precondition for compliance with delivery dates is that all the documentation, necessary permits and clearances to be provided by the customer, in particular plans, be received on time and that the payment conditions agreed upon and other obligations of the customer be complied with.

If these preconditions are not performed punctually, the deadlines shall be extended appropriately unless the Vendor is responsible for the delay.

Part deliveries are admissible.

If non-compliance with deadlines is due to force majeure, i.e. to mobilization, war, insurrection or similar events, e.g. strike, lockout, the deadlines shall be extended appropriately.

If the Vendor is in default, the customer may, in the event of damage, demand compensation not exceeding ½% of the price of the delivery in arrears for each full week of delay, but at any event not exceeding 5% of the total value of the delivery in arrears. Any further claims on account of delayed delivery are excluded save as provided for in Section 10 of these Terms and Conditions.

7. Transfer of risk

All risks relating to the delivery shall be transferred to the Purchaser as soon as the goods leave the Manufacturer's plant, even if the parties have agreed to carriage paid delivery.

Risk shall transfer to the customer if dispatch, delivery, commencement or performance is delayed for reasons which are the responsibility of the customer, or if the customer is in default in acceptance for other reasons.

This applies to all kinds of deliveries, repairs, warranty performances and all other kinds of returns to the Vendor. Only if the Purchaser requests explicit, the Vendor shall insure against transport risks at the expense of the Purchaser.

8. Warranty and Liability for shortcoming delivery

Metronix provides a 24 month warranty period for the proper function of the delivered product, if nothing different has been specified in the quotation. The warranty period starts with the transfer of risk to the customer.

The Vendor must be notified of any defects in writing immediately, no later than 8 days after receipt of delivery. Concealed defects must be notified in writing immediately upon discovery thereof. This shall also apply in case of recourse by the customer pursuant to Section 478 and 479 BGB. The Vendor is liable as follows for defects in the products delivered which existed at the time of transfer of risk:

- a) Vendor shall effect subsequent performance, generally by supplying a defect-free product, or, if the Vendor cannot be reasonably expected to supply a replacement, by repair. The Vendor must be allowed adequate time and opportunity to effect subsequent performance. If the Vendor is refused this possibility, it is released and discharged from the obligation to effect subsequent performance and from further claims on account of defects.

- b) If subsequent performance is not effected within the deadline set, the customer is entitled to claim damages in lieu of performance and/or to demand rescission of the contract or reduction of the purchase price. No deadline must be set if the Vendor definitively refuses subsequent performance or if at least three attempts at subsequent performance have been abortive. Any claims other than the aforementioned warranty claims are excluded save as provided for in Section 10.
- c) No claims on account of defects exist in case of only minor deviation from the quality agreed upon or in case of only minor impairment in usability, in case of normal wear and tear and damage resulting after the transfer of risk due to defective or negligent operating means or to special external influences which are not provided for under the terms of the contract. Nor do any claims exist on account of defects with respect to modifications or maintenance work carried out unprofessionally by the customer or third parties or with respect to the consequences arising therefrom.
- d) Claims by the Vendor on account of expenses necessary to effect subsequent performance, in particular costs of transport, travel, labour and materials shall be excluded insofar as such expenses are increased due to the fact that the product delivered has subsequently been taken to another place, unless such removal is in compliance with the contractual use thereof.

9. Vendor's rescission right

If, after entering into the purchase contract, the Vendor discovers that the customer is in unfavourable financial circumstances or if payment terms are not complied with, the Vendor may demand security for counter-performance. In case of orders on call, the Vendor has the right to rescind the delivery contract without setting an extended deadline or to demand the daily price if the products are not called up as agreed or if payment conditions are not complied with.

10. Other liability

- a) Claims for damages and expenses by the customer (hereinafter: claims for damages) for whatsoever legal ground, in particular on account of a violation of obligations from the debt relationship and tortious acts, are excluded.
- b) This does not apply in case of mandatory liability, for instance pursuant to the German Product Liability Act [Produkthaftungsgesetz], in case of intent, gross negligence, on account of fatal or physical injury or damage to health or on account of a breach of material contractual obligations. The claim for damages for a breach of material contractual obligations is, however, limited to foreseeable damage typical of the type of contract unless it is a case of intent or gross negligence or liability on account of fatal or physical injury or damage to health. The aforementioned ruling does not involve a change in the burden of proof to the detriment of the customer.
- c) Insofar as the customer has a claim for damages under the terms of this Section, it shall become time-barred upon expiration of the time-bar period applying to claims on account of defects pursuant to Section 8 e). The statutory time-bar periods apply in case of claims for damages pursuant to the German Product Liability Act.

11. Place of performance and jurisdiction

Braunschweig is the place of performance of delivery and payment.

The courts of Braunschweig have jurisdiction and venue, also in case of litigation relating to bills of exchange and cheques or, at the Vendor's discretion, the court with jurisdiction at the customer's registered office if the customer is a merchant as defined in the German Commercial Code [HGB] or a legal entity under public-law.

12. Reserved title

- a) The Vendor reserves title to the products delivered pending receipt of all payments in connection with the business relationship.
- b) The customer is obliged to treat the products delivered with care; in particular the customer is obliged to have them adequately insured against fire and water damage and theft at its own expense for the replacement value. Any maintenance and service work necessary has to be conducted punctually by the customer at its own expense.
- c) The customer must inform the Vendor forthwith in case of attachment or seizure by third parties.
- d) The customer is entitled to on-sell the products delivered in the normal course of business; however the customer assigns to the Vendor now already all of the claims to which it is entitled on the basis of the sale to its customers or third parties in the amount of the final invoice value (incl. VAT) of the claims of the Vendor. The customer retains the right to collect these claims even after the assignment thereof. The Vendor's authority to collect the claim itself shall not be affected hereby. The Vendor undertakes, however, not to collect the claim unless or until the customer is in default in payment and, in particular, no application to initiate insolvency proceedings has been filed.
- e) If the products delivered are indivisibly mixed with third party products, the Vendor acquires joint title to the new product in proportion to the value of the product delivered with respect to the other products with which it is mixed at the time of such mixing. If the mixing is effected in such a way that the customer's product is to be regarded as the principal product, it shall be deemed agreed that the customer assign proportionate title to the Vendor. The customer shall hold in safekeeping the sole or joint property thus acquired on the Vendor's behalf.
- f) If the realisable value of the Vendor's security exceeds the amount of the claims to be secured by more than 20%, the Vendor shall release security at its discretion at the customer's request.
- g) If the product delivered is recovered or the reserved title enforced on account of default in payment, this shall constitute rescission of the contract unless we expressly determine otherwise.

In case of any violation of obligations by the customer other than default in payment, in particular in case of jeopardizing the products delivered due to the customer's behaviour in breach of duty, the Vendor has the right to recover the products delivered without rescinding the contract. The customer is obliged to release the products delivered.

13. Binding nature of the contract

The contract shall remain effective even in the event that individual items in the provisions are ineffective. The laws of the Federal Republic of Germany shall be the sole authoritative law for construction.