

GENERAL TERMS AND CONDITIONS OF PURCHASE METRONIX MESSGERAETE UND ELEKTRONIK GMBH

I.

General provisions

Only the following Terms and Conditions shall be valid for orders of Metronix Messgeraete und Eletronik GmbH (hereinafter “**Client**”). Conflicting conditions or those deviating from Client's Terms and Conditions, particularly the Terms of Sale and Delivery of Contractor, also where these are included in order confunations or other confunations of any kind whatsoever, shall not apply, unless Client has agreed to their validity expressly and in writing. The following Terms and Conditions shall apply even if Client accepts Contractor's delivery without reservation while being aware of Contractor's conflicting Terms and Conditions or those that deviate from Client's Terms and Conditions. This shall apply even if Contractor states that it is willing to deliver according to its Terms and Conditions only.

II.

Order and order confirmation

- 1.** For the scope of the order, the written declarations of both parties shall be authoritative. If an agreement is concluded without such mutual written declarations, Client's written order shall be binding. Orders shall be confirmed by Contractor within 5 working days, specifying the reference number. If Contractor does not confirm Client's order within 10 working days, Client shall be entitled to cancel the order. The order confirmation must be made in a manner suitable for its permanent reproduction in writing, the person making the declaration must be named and the completion of the declaration must be shown through the reproduction of a signature of the name (text form).
- 2.** If an order is accepted with deviation, this must be clearly indicated by Contractor. Changes or additions to the order or the scope of the order shall require the approval of Client to be valid, which must be given in writing or in text form.

III.

Orders for computer, electronic and control software

1. If Client orders computer, electronic, control or other software (hereinafter generally "**software**"), Contractor shall observe the requirements specifications and all other expertise transmitted verbally or in writing by Client or one of Client's customers (hereinafter "**contractual expertise**") in the development and manufacturing of the software. The requirements specifications provided and contractual expertise made available to Contractor shall remain the absolute property of Client. Furthermore, Client is and shall remain sole owner of all property, copyright, exploitation and patent rights as well as all other rights to the requirements specifications and contractual expertise.
2. The Parties agree that the software developed and manufactured by Contractor, particularly the flowcharts, manufacturing documents and source programs, as well as all associated descriptions, documentation and data carriers (CDs, DVDs etc.) shall become the sole and absolute property of Client. Furthermore, the Parties agree that all copyright, exploitation and patent rights to the software and the associated descriptions, documentation and data carriers shall be transferred to Client with the provision that Client shall become the exclusive owner of these rights and neither Contractor nor other third parties shall be permitted to exercise these rights in any way, in whole or in part, without the prior written permission of Client. In particular, Contractor shall not be permitted to use the software or associated descriptions, documentation or data carriers for its own purposes or to pass them on to third parties without prior written permission of Client.
3. Contractor shall be obligated to make corresponding arrangements with its employees involved in development and manufacturing of the software, or any subcontractors or freelancers employed by Contractor, to ensure that the aforementioned rights to the software and the associated descriptions, documentation and data carriers are transferred to Client according to the aforementioned provisions.
4. Contractor shall warrant that the software it creates or develops is free of third-party property rights that restrict or impair the use of the software by Contractor and/or its customers. To this extent, Contractor shall indemnify Client from all claims from third parties due to infringement of industrial property rights by its products or services and the associated costs.

5. The Parties shall notify each other immediately if third parties assert infringement of property rights by the products or services of Contractor or lodge claims due to infringement of their property rights.
6. If claims due to infringement of industrial property rights have been brought against Client or are expected to be brought, Contractor shall be entitled to modify or replace, at Contractor's own costs, the software it has developed and manufactured in a scope that can be reasonably demanded of Client or its customer. If it is not possible to do so or to obtain usage rights with reasonable effort, Contractor shall be liable to Client for all past and future costs arising to Client for the infringement of third-party property rights.

IV.

Supplier's Declaration

Each delivery shall always be accompanied by a Supplier's Declaration in accordance with the relevant applicable EC regulation. For framework agreements, a long-term Supplier's Declaration with a validity of one year shall be sufficient. Client shall be notified of any changes in this regard in writing or text form immediately, without the need for prompting.

V.

Delivery dates

1. Agreed delivery dates and delivery periods shall be binding. Compliance with the delivery date or delivery period shall be based, depending on the kind of performance promised to be rendered by the Contractor, on receipt of the goods or proper provision of the service as well as transfer of the documentation at the location of receipt specified by Client or on the acceptance or on the expiration of the deadline the timeliness of successful acceptance.
2. If failure to comply with the deadline for the Contractor's delivery or service is proven to be due to mobilization, war, civil unrest, strike, lockout or the occurrence of similarly serious unforeseeable events that affect compliance with the deadline, the deadline shall be extended appropriately.
3. In the event of delay in delivery, Client shall be entitled – insofar as it proves that it has been harmed by the delay – to claim damages for the delay amounting to 0.2% of the price of the delivery per complete week, subject to a limit of 2%, for the part of the de-

livery that could not be put into service for its intended purpose due to the delay. All other rights of Client arising from a delayed delivery shall remain unaffected. The Contractor is permitted to show that Client did not suffer any damage at all or suffered only a damage lower than contemplated in the penalty. This does not result in a shift of the burden of proof.

4. If Client and Contractor shall agree on a contractual penalty in excess of this amount sum, the right of Client to rescind from the contract and/or assert other rights shall likewise remain unaffected. Client shall be entitled to demand the contractual penalty until the last payment, even if it has accepted Contractor's delivery or service without special reservation.
5. If Contractor can foresee that agreed-upon delivery dates cannot be met, the Contractor shall contact Client immediately. Client's rights arising from late deliveries in accordance with the contract, these Terms and Conditions or the law shall not be restricted even if Contractor contacts Client in accordance with its aforementioned obligation.

VI.

Delivery instructions and delivery notices

1. The delivery papers shall include the reference numbers specified by Client (unless otherwise agreed, these are the order, material and item no.) and shall accompany the delivery. Immediately after delivery, the delivery notice shall be sent to Client in duplicate, specifying the exact designation, quantity, weight (gross and net), type and packaging. If Client and Contractor use electronic forms of communication, the delivery notice shall be transmitted with the aforementioned content in text form.
2. If Client does not receive the delivery notice for a delivery in a timely manner or the above information is missing from the delivery note, the goods shall be stored at Contractor's cost and risk until client has received all of the aforementioned information.

VII.

Passing of Risk

The risk of accidental loss or deterioration shall be borne by Contractor until the goods are delivered to Client's facility. If factory acceptance is required for a good or service, this risk shall be borne until the good or service is accepted by Client.

VIII.

Receipt of the delivery and acceptance of the good or service

1. For overdeliveries that exceed the customary amount, Client shall reserve the right to return the surplus delivered goods at Contractor's cost.
2. In cases of mobilization, war, civil unrest, strike, lockout or the occurrence of similarly serious unforeseeable events that affect receipt, Client shall be entitled to postpone receipt of the delivery from Contractor accordingly.
3. If goods are manufactured under a manufacturing contract that requires acceptance, the acceptance shall take place in the ordinary course of business immediately after receipt or start of operation of the relevant goods.

IX.

Payment

1. Unless otherwise agreed, payment, including sales tax, shall be made at the option of Client on the fifteenth (15th) day of the following month with a 3% discount or within 90 days, each calculated from the date of the invoice and receipt of the complete delivery, including transmission of the documentation and any test certificates. The invoice date shall be deemed to be the date of invoice receipt if the invoice was sent to the address specified by Client in its order. However, the payment periods shall not begin before the agreed delivery date.
2. Payment shall be made in cash. If the parties in deviating from this provision agree on payment in bills of exchange or similar documents, the Client has to bear all charges, fees and taxes.
3. The invoice must include all of Client's order information. The order information must be listed by line item and price, specifying the line item number, according to Client's order.

X.

Safety regulations

1. Contractor shall be obligated to comply with recognized rules of technology, particularly regulations and directives regarding design, accident prevention and environmental protection issued by the government, regulatory agencies, trade associations and the German Association of Electrical, Electronic & Information Technologies (VDE).
2. In particular, Contractor shall be obligated to comply with the provisions of the German Act Governing the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment (ElektroG) in the respective applicable version and to ensure that the delivered goods do not contain any of the substances prohibited by Section 5 of ElektroG in the applicable version. If delivered goods contain even small amounts of the prohibited substances lead, mercury, cadmium or hexavalent chromium, Contractor shall be obligated to notify Client of this immediately so that Client has the opportunity to fulfill the requirements of ElektroG, particularly Section 5 of ElektroG in the respective applicable version.
3. Client shall be entitled to inspect the supplier's manufacturing process at any appropriate time and to a practicable extent. Contractor shall ensure that Client shall also be granted the same right of inspection by Contractor's subsuppliers.
4. The compliance with safety regulations beyond the framework as set forth above and resulting from the specific order (e.g. APEX) remains unaffected.

XI.

Warranty

1. As soon as any defects of the delivery have been identified as timely practical in the ordinary course of business, Contractor shall provide notice of these immediately in writing or text form unless other agreements have been made – specifically in quality assurance agreements – in which Client is relieved of its duties of inspection and complaint in accordance with Section 377 German Commercial Code (HGB). The notice of complaint shall be deemed timely if it is received by Contractor within five (5) work-days after the respective defect is found. To this extent, Contractor shall waive its right to objection of late complaint.

2. Client shall be entitled to demand, at its option, subsequent performance by means of repair or replacement with goods that are free of defects. In this case, Contractor shall be obligated to bear the expenses necessary for subsequent performance, particularly costs for transport, labor and materials. For defects that cannot be remedied within a time reasonable to Client due to their nature or severity, even by delivering goods without defects, Client shall be entitled immediately or, for defects that can be remedied, only after a reasonable extension has been granted but proven fruitless, to reduce the purchase price or withdraw from the contract.
3. No deadline shall be required if Contractor has seriously and finally refused subsequent performance, subsequent performance has failed or the deadline is unreasonable for Client. A repair shall be deemed failed after the second unsuccessful attempt unless otherwise specifically indicated by the nature of the object or the behavior of Contractor.

Furthermore, no deadline shall be required if Client had to take back the object due to a defect for which a claim was lodged by a consumer and which already existed at delivery, either by Client's purchaser in the supply chain or directly by the consumer due to defectiveness or if the consumer has reduced the purchase price.

XII.

Product liability

1. Without prejudice to any product liability of Client in its outward relationship to third parties, the following shall apply for the Contractor's liability in relationship to Client: if a claim is brought against Client for damages originating from the domain and organizational area of Contractor, Client shall notify Contractor in writing or text form immediately. Contractor shall have the option to participate, at its own costs, in the legal defense against the third party. In every case, Contractor shall, at Client's request, provide Client with a bank guarantee as a surety of Client's right of indemnity or damage claim against Contractor, according to the reason and the amount substantiated by Client. If a claim is lodged against Client in relation to a third party in a manner binding to Client (specifically judgment, acknowledgment or settlement), Contractor shall indemnify Client from liability or reimburse Client for any amounts paid by Client to the third party. Client shall not, without consulting with Contractor, acknowledge Client's liability towards the third party or reach a settlement with the third party regarding liability. If Client and Contractor do not reach an agreement within a reasonable period regarding how to proceed jointly with regard to an acknowledgment of liability or a settlement, Client

shall be entitled to make corresponding statements toward the third party, which then shall also form the basis for Contractor's liability.

2. Contractor shall be obligated to reimburse Client for any expenses arising from or associated with present or future product recalls carried out by Client, insofar as the cause for the product recall is in the domain and organizational area of Contractor.
3. If the responsibility for the liability of Client as part of product liability towards third parties is in the domain and organizational area of both Contractor and Client, the scope of liability in their internal relationship shall be based on the proportion of respective responsibility in the corresponding application of Section 254 of the German Civil Code (BGB).
4. Contractor shall be obligated to maintain a product liability insurance policy with an amount of coverage of at least €2.5 million per incident of injury/property damage (lump sum). Client shall remain entitled to assert additional claims for damages against Contractor.

XIII.

Quality assurance

Contractor shall carry continuous quality assurance, and shall provide evidence of the same upon the request of Client. If a quality assurance system according to DIN 9000 ff. or other recognized certification is in place, evidence of the same shall be provided to Client without the need for prompting. Client shall be entitled to verify Contractor's quality assurance system on-site or designate third parties to do so. Contractor shall grant Client or the persons designated by Client access to Contractor's production facilities after prior arrangements.

XIV.

Special Tools/Instruments and Tools of Client

1. "Special tools" shall include all prototypes, tools, models, molds, measuring instruments, test instruments, cutting tools, test tools, drawings and templates and all other tools necessary for manufacturing the goods that Contractor has not used or purchased before Client ordered the goods and are acquired by Contractor at its cost for the sole purpose of manufacturing the goods ordered by Client. This shall not include those in-

struments and tools provided to Contractor by Client for manufacturing of the goods (cf. XIV.5 below).

2. Contractor shall be obligated to obtain Client's written approval – which approval may not be unreasonably withheld – if Contractor wants to obtain the special tools from suppliers other than those it has used previously or other than those suggested by Client. In particular, reason withhold the approval shall be a significant quality difference from the previously used supplier's products or the suppliers of the special tools suggested by Client.
3. Contractor shall keep the special tools in proper condition and maintain them regularly so that proper manufacturing of the goods is guaranteed.
4. Upon termination of the cooperation Contractor is obligated to offer the used special tools for purchase to the fair market value if Contractor has used the special tools exclusively for the manufacture of goods ordered by Client. Client is free in its decision regarding the purchase of the special tools.
5. The Contractor will keep the instruments and tools provided to it by Client for manufacturing of the goods in proper condition and maintain them regularly. Such instruments and tools are in the property of Client. The Contractor has to evidence the property of the Client by the appropriate labels. The Contractor has to refrain from any disposal of the tools and instruments of the Client. If measures of enforcement are directed against the tools and instruments of the Client, the Contractor will immediately inform the Client. Upon termination of the cooperation, the Contractor has to return the tools and instruments of the Client upon request of the Client at the Contractor's cost to the Client.

XV.

Industrial property rights

1. If a third party brings a claim against Client based on infringement of industrial property rights by the delivery or service provided by Contractor and used in accordance with the contract, Contractor shall be liable to Client as follows:
 - a) Contractor shall, at its option and at its own cost, either obtain usage rights for the respective delivery or service, modify them so that the property rights are not infringed or replace them. If this is not possible in a reasonable time to be set by Client

in writing or in text form, Client shall be entitled to the remedies to rescind the contract or reduce the payment. Instead of rescinding the contract or reducing the payment, Client shall also be entitled to, at Contractor's costs, obtain the required permission for delivery, commissioning, use, resale etc. of the delivery or service.

- b) Contractor's liability for damages shall be based on legal provisions in case of infringement of third-party industrial property rights.
2. Contractor shall be obligated to hand over to Client the inventions, developments or expertise gained or acquired by it or its employees in conjunction with the delivery owed after one or several orders, even if they are not subject to property law.

XVI.

Confidentiality/drawings

Contractor shall be obliged to treat confidentially Client's orders and all commercial and technical details related to them. Information furnished by Client, drawings made by it or by Contractor on the basis of such information etc. shall not be used or exploited for any other purpose without the prior written consent of Client. The reception or approval of drawings and samples presented by Contractor shall not affect its exclusive responsibility for them.

XVII.

Set-off

Set-off by Contractor shall be permitted only in the event of uncontested or legally established claims against Client.

XVIII.

Assignment

Rights arising from an order may be assigned or transferred to third parties only by mutual agreement. Approval of Client shall be deemed granted if Contractor has conceded an extended retention of title to its supplier in the ordinary course of business.

XIX.

Subsuppliers of Contractor

Contractor shall be responsible for ensuring that the performance of subsuppliers toward the Client is free of defects in accordance with legal requirements. In particular, Contractor shall not be entitled to exclude its liability in accordance with these Terms and Conditions because it has no enforceable claim to recourse against its supplier.

XX.

References

Contractor shall make reference to Client only with Client's written consent.

XXI.

Place of performance, applicable law and jurisdiction

1. Place of performance is Client's place of business.
2. The exclusive jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be, at Client's option, either Client's headquarters or Contractor's headquarters; this does only apply if Contractor is a merchant.
3. The contractual relationships shall be governed solely by German law, excluding the United Nations Convention on Contracts for the International Sale of Goods.

XXII.

Final provisions

1. Should any provision of these Terms and Conditions or a provision in other agreements between the parties be or become wholly or partly invalid, this shall have no effect on the validity of the remaining provisions of these Terms and Conditions or of the other agreements. In this case, both parties are obligated to replace the invalid provision by a valid provision which comes as close as possible to the economic and legal purpose of the invalid provision. The same shall apply in the case of a contractual gap..

2. Amendments or supplements of the Terms and Conditions or other agreements between the parties must be made in writing. This shall also apply to amendments to this clause or waiver hereof.