

## **Retronic GmbH**

### **General Terms & Conditions of Sale & Delivery**

#### **for use with Traders**

**Status: 10. July 2015**

#### **I. Application and controlling provisions**

1. All deliveries, services and offers by Retronic GmbH of Hamburg (hereinafter called the Vendor) shall be effected solely in pursuance of these General Terms & Conditions of Sale & Delivery. The same shall be an integral part of all contracts which the Vendor may conclude with its contractual partners (hereinafter called the Customers) governing the deliveries or services which it offers. They shall also apply to all future deliveries, services or offers made to the Customer, even if they are not separately agreed again.

2. They shall apply even if the Customer cites his own terms and conditions of business, unless these terms and conditions have been expressly agreed by the Vendor. Even if the Vendor refers to a letter containing the Customer's terms and conditions of business, or those of a third party, or if he cites the same, no agreement to the application of these terms and conditions of business shall inhere therein.

3. Supplements and amendments to agreements concluded, including these Terms & Conditions of Sale & Delivery, shall only be valid if they are in writing. The Vendor's sales staff is not entitled to make verbal ancillary agreements or to give verbal assurances which go beyond the contents of the written contract.

#### **II. Offer and conclusion of contract**

1. All the Vendor's offers shall be subject to amendment and be non-binding unless they are expressly designated as binding or contain a particular acceptance deadline.

2. The Vendor may accept orders or commissions within seven days following receipt. Shipment of the goods so ordered shall also be deemed to be an acceptance.

3. The Customer is entitled to correct inapplicable data or exhibits of the order in writing within 24 hours.

The right of withdrawal is excluded.

#### **III. Delivery and delivery period**

1. Delivery periods and deadlines shall be binding periods or deadlines only if such are expressly agreed. Otherwise our delivery periods shall be only approximate statements.

2. The delivery period shall begin upon dispatch of the order confirmation, but not prior to the supply of any requisite documents, licenses and approvals by the Customer, and not prior to receipt of an agreed payment.

3. The delivery period shall have been met if the goods have left the works by the time it has expired.

4. Irrespective of its rights should the Customer be in arrears, the Vendor may require an extension to the

delivery and service periods or a deferral of delivery and service deadlines for the time in which the Customer fails to meet his contractual duties to the Vendor.

5. The Vendor shall not be liable for impossibility of delivery or for delays of delivery insofar as these have been caused by force majeure or other events which were unforeseeable at the time when the contract was concluded and for which the Vendor is not culpable (e.g. interruptions to business of all kinds, difficulties in procuring materials or energy, transport delays, strikes, legal lock-outs, lack of labor, energy or raw materials, difficulties in procuring requisite licenses from official bodies, measures taken by official bodies, or failure of suppliers to make deliveries, to make deliveries on time, or to deliver correctly). Similarly the Vendor shall not be liable if the supplier of the vendor becomes insolvent or is not able to effect performance for other reasons. Insofar as such events significantly impede or prevent the Vendor from supplying the delivery or service and such impediment is of more than temporary duration, the Vendor shall be entitled to withdraw from contract.

In case of temporary impediments, the delivery or service periods, or the delivery or service deadlines, shall be extended or deferred by the period of the impediment plus a reasonable run-in period.

6. The Vendor shall be entitled to make part deliveries within the delivery period if

- the part delivery can be used by the Customer by way of its contractual purpose,

- the delivery of the remaining goods under order is assured, and

- the Customer incurs no significant extra expenditure or additional costs thereby (unless the Vendor declares itself prepared to undertake these costs).

7. Should the Vendor be in arrears of a delivery or service, or should he be unable, for whatever reason, to make a delivery or service, the Vendor's liability for damages shall be restricted in accordance with Section XI of these General Terms & Conditions of Sale & Delivery.

8. Changes in construction or design intended to improve technology or to satisfy legal requirements shall be reserved during the delivery period, providing the item of sale is not significantly altered and the Customer may reasonably be expected to accept the said changes.

9. In the case of electronic components, over-deliveries and under-deliveries of up to 3% of the confirmed amount shall be permitted. The quantity actually delivered shall be charged.

#### **IV. Shipping, packaging and scope of delivery**

1. Goods shall be so packaged and shipped by such method as we shall duly and properly think fit.

2. Shipments will be insured by the Vendor against theft, breakage, damage in transport, damage by fire

or water, or any other insurable risks, only if the Customer should so expressly desire, and only at his expense.

#### **V. Passing of risk**

1. Risk shall pass to the purchaser as soon as the shipment is transferred to the person engaged in forwarding it or has left the Vendor's store for purposes of shipment. This shall apply even if part deliveries are made or the Vendor has undertaken other services. Should shipment or transfer be delayed, be or become impossible due to a circumstance whose cause lies in the Customer's area of responsibility or for which the Vendor is not culpable, risk shall pass to the Customer from the day when the Vendor is ready to dispatch and has notified the Customer thereof.

2. The Customer shall pay storage costs following passing of risk. Storage costs for storage by the Vendor shall be 0.25% per week elapsed of the sum invoiced for the items of sale in store. The Customer shall be allowed to prove that the Vendor has incurred no loss, or a lower loss. The Vendor shall be allowed to prove that a higher loss has been incurred.

#### **VI. Cancellation costs**

Should the Customer withdraw without grounds from an order once issued, the Vendor, irrespective of his entitlement to claim higher actual damages, shall be entitled to charge 10% of the sale price for the costs incurred in handling the order and for loss of profit. The Customer shall be allowed to prove that the loss has been smaller.

#### **VII. Prices and amendments to price**

1. Prices shall apply to the extent of service and delivery set out in the confirmations of order. Additional and special services shall be charged separately. Prices will be in EUR ex works plus packaging, statutory VAT, customs duties in the case of export deliveries, and any other public charges.

2. Insofar as the agreed prices are based on the Vendor's list prices and the delivery is scheduled to be made only after more than four months following conclusion of contract, the Vendor's list prices in force at the time of delivery shall apply (each less an agreed fixed or percentage rebate).

#### **VIII. Zahlungsbedingungen**

1. The sale price and the charges for ancillary services shall be due on transfer of the item of sale and shall be payable within 30 days following delivery without deduction.

2. Submission of checks and bills of exchange shall be deemed to be payment only once they have been cleared. Acceptance of bills of exchange shall always require a prior written agreement with the Vendor. Should bills of exchange be accepted, the usual banker's discount and collection fees shall be charged. These must be paid immediately in cash.

3. Should the Customer be in arrears of payment, the Vendor shall be entitled to charge arrears interest

amounting to 8 percentage points above the base rate (Section 247 of the German Civil Code (BGB)). The Vendor shall be allowed to prove a higher loss.

4. Retention of payments due to counterclaims by the Customer which are not recognized by the Vendor shall not be permitted, nor shall any offset against such counterclaims be allowed. Offset against counterclaims by the Customer or retention of payments due to such claims shall only be permitted insofar as the said counterclaims are undisputed or have been finally confirmed at law.

5. The Vendor shall be entitled to carry out or perform such deliveries and services as are still outstanding only in return for advance payment or submission of security if, following conclusion of contract, it becomes cognizant of circumstances liable to impair the Customer's credit standing significantly and as a result of which payment of the Vendor's unsettled receivables by the Customer, under the contractual relations concerned, is under threat.

#### **IX. Reservation of title**

1. Goods so delivered shall remain the Vendor's property until settlement of all Vendor's present or future accounts receivable (including all balances receivable under current account). Goods, and goods covered by reservation of title replacing them under this proviso, shall hereinafter be called Reserved Goods.

2. The Customer shall keep the Reserved Goods for the Vendor free of charge.

3. The purchaser shall be entitled, until such time as realization takes place (Section 8), to process and resell the Reserved Goods in the normal course of business. Liens and assignments as security shall not be allowed.

4. Should the Reserved Goods be processed by the purchaser, it is hereby agreed that such processing shall be done in the name and for the account of the Vendor as manufacturer and that the Vendor shall acquire title, or – should such processing have involved materials belonging to more than one proprietor, or should the value of the goods so processed be greater than the value of the Reserved Goods – shall acquire joint title (ownership in fractional shares) to the newly created entity in the proportion of the value of the Reserved Goods to the value of the newly created entity. Should no such acquisition of title be forthcoming to the Vendor, the Customer transfers here and now his future title, or joint title (in the proportion set out above) to the newly created entity as security to the Vendor. Should the Reserved Goods be combined or inextricably mixed with other entities to form a uniform entity, and should one of the other entities be necessarily viewed as the principal entity, the Vendor – insofar as the principal entity belongs to him – shall transfer to the purchaser joint title to the uniform entity in the proportion set out in Clause 1.

5. Should the Reserved Goods be re-sold, the purchaser here and now, by way of security, assigns to the Vendor the receivable due thereby from the buyer, such assignment to be pro rata in accordance with share of joint title should the Vendor enjoy joint title to the Reserved Goods. The same shall apply to any other receivables created in lieu of the Reserved Goods or with respect otherwise to the Reserved Goods, such as insurance claims or claims arising from tortious acts in case of loss or destruction. The Vendor hereby, subject to revocation, authorizes the purchaser to collect the receivables assigned to the Vendor in his own name for the Vendor's account. The Vendor may revoke this authority to collect only in case of realization.

6. Should third parties lay claim to the Reserved Goods, particularly by lien, the purchaser shall immediately cite the Vendor's title and inform the Vendor thereof, in order to enable it to assert its proprietary rights. Insofar as the third party is not able to reimburse the Vendor for the costs arising thereby both in and out of court, the purchaser shall be liable to the Vendor.

7. The Vendor shall, if so required, release the Reserved Goods and such entities or receivables replacing them as he may choose insofar as their value exceeds the secured receivables by more than 50%.

8. Should the Vendor, as a result of conduct by the purchaser in breach of contract – particularly arrears of payment – withdraw from the contract (case of realization), the Vendor shall be entitled to require the return of the Reserved Goods.

#### **X. Duty of complaint, guarantee**

1. The guarantee period in the case of new goods shall be one year from delivery. A delivery of used items agreed with the Customer in the individual case shall be to the exclusion of all and any guarantee.

2. Goods, once delivered to the Customer, or to the third party appointed by the Customer, must be examined carefully. They shall be deemed to have been approved if the Vendor does not receive a complaint regarding obvious defects, or regarding other defects which were identifiable in an immediate, careful examination, such complaint to be received in written form within seven days following delivery of the item of sale, or otherwise to be received in written form within seven working days following discovery of the defect, or the time when the defect was identifiable by the Customer. Should the Vendor so require, the item of sale of which complaint is made must be returned carriage paid to the Vendor. Should the complaint be justified, the Vendor shall reimburse the costs incurred via the cheapest form of carriage; this shall not apply insofar as the costs are increased because the item of sale is situated at a location other than the location of its appropriate use.

3. In case of material defects in items so delivered, the Vendor shall have a duty, and be entitled, initially to make repair or replacement delivery, as he shall choose within a reasonable period. Should repair or replacement delivery fail, i.e. if either or both are impossible, cannot reasonably be expected, are refused or unreasonably delayed, the Customer may withdraw from contract or reduce the purchase price appropriately.

4. Should the Vendor's operating or maintenance instructions fail to be followed, should changes be made to the products, parts replaced or consumable materials be used which fail to meet the original specifications, all guarantee shall lapse.

5. The assignment and / or pledge guarantee performance right of the purchaser to a third party shall be barred.

#### **XI. Liability**

1. The Vendor's liability for damages, on whatever legal grounds, shall be limited in pursuance of this section XI insofar as the case is associated with culpability.

2. The Vendor shall not be liable

a) in case of simple negligence;

b) in case of gross negligence,

unless the case involves a breach of cardinal contractual duties.

3. Insofar as the Vendor is liable on the merits for damages under Section XI.2, liability shall be restricted to loss which the Vendor, upon conclusion of contract, foresaw as a possible consequence of a breach of contract, or in consideration of circumstances of which he was then cognizant or must have been cognizant. Compensation for indirect loss and consequential damage resulting from defects in the item of sale shall further only be payable insofar as such loss or damage is typically to be expected given appropriate use of the item of sale.

4. The foregoing exclusions and restrictions of liability shall apply to the same extent in favour of the Vendor's governing bodies, legal representatives, employees and other vicarious agents.

5. Insofar as the Vendor gives technical information or acts as a consultant, and this information or consultancy form no part of the scope of performances due and contractually agreed, this shall be made without charge and to the exclusion of all and any liability.

6. The foregoing restrictions shall not apply to the Vendor's liability for deliberate acts, for guaranteed quality features, for damage to life, body or health, or under the Product Liability Act.

#### **XII. Place of fulfilment and place of jurisdiction**

1. The place of fulfilment shall be Hamburg.

2. Should the Customer be a registered trader, a legal entity under public law, or a public-law special fund, the place of jurisdiction for all disputes arising from

the contract shall be Hamburg. The Vendor shall also be entitled to sue at the Customer's head office.

3. German law alone shall apply, to the exclusion of legislation on the international sale of movable goods and the EU law of sale and purchase, even if the Customer has the registered office of its company abroad.

### **XIII. Concluding provisions and miscellaneous**

1. Transfer of the Customer's rights and duties under the contract concluded with ourselves shall only be valid with the Vendor's written agreement.

2. Insofar as the contract or these General Terms & Conditions of Sale & Delivery contain lacunae, such legally effective regulations to fill these lacunae shall be deemed to be agreed as the contracting partners would have agreed, considering the commercial objectives of the contract and the purpose of these General Terms & Conditions of Sale & Delivery, if they had been cognizant of the said lacuna.