

General Terms and Conditions of Purchase | NET New Electronic Technology GmbH

NET New Electronic Technology GmbH - Hereinafter referred to as the Purchaser

These terms and conditions shall apply for

1. all persons who, when entering into a contract, are acting in a commercial or self-employed professional capacity (entrepreneur).
2. legal entities under public law or a special fund under public law.

I. General information

All goods and services are subject to these terms and conditions. Differing terms and conditions of the Supplier shall not automatically become part of the contract upon acceptance of the order, unless the applicability of such is expressly approved by the Purchaser. This shall also apply if the Purchaser accepts deliveries from the Supplier without reservation in awareness of the latter's differing terms and conditions. Silence shall by no means constitute acceptance of any differing terms and conditions. In the course of an ongoing business relationship, these terms and conditions shall also apply for future contracts without the necessity for a separate express declaration to this effect.

The agreements reached between the Parties in writing are final and conclusive. Verbal agreements shall only be valid if confirmed in writing.

II. Ordering

Supply agreements (order and acceptance) and call-offs, including any alterations or amendments thereto, must be made in writing. Supply agreements (order and acceptance) and call-offs can also be made by way of remote data transmission.

Where an order does not expressly contain an acceptance deadline, the Purchaser shall be bound to it for a period of one week from the date thereof. The date on which the order acceptance is received by the Purchaser shall be decisive for determining whether the order was accepted in time.

The Purchaser may request modifications to the design and construction of the deliverable to the extent reasonable for the Supplier. The effects of such modifications, particularly with regard to higher or lower costs and delivery dates, shall be agreed amicably and appropriately. If the Supplier has a better technical or economical solution to a technical inquiry, this shall be offered additionally to the Purchaser.

The Purchaser shall be entitled to cancel the contract at any time by written declaration, stating the reason for doing so, if the ordered products can no longer be used in its business operations due to circumstances that arise after the contract has been signed. In this case, the Supplier shall be reimbursed for any partial services performed or goods supplied.

III. Payment, invoice and delivery note

Payment shall be made by bank transfer or check.

Where premature deliveries are accepted, the agreed delivery date shall be decisive for the date of payment.

In the event of faulty delivery, the Purchaser shall be entitled to withhold payment proportionate to the value thereof until such time as the order has been duly and properly completed.

In the absence of any written agreement to the contrary, the price shall include VAT, delivery and transportation to the address stipulated in the contract, including packaging, as well as any ancillary services provided by the Supplier (e.g. assembly, installation). If, according to the agreement reached, the price does not include packaging and the cost of the packaging (which is not provided merely on a loan basis) is not expressly determined, this shall be invoiced at proven cost price. At the Purchaser's request,

the Supplier shall take back the packaging at its own expense. Unless otherwise agreed, the Purchaser shall, after delivery of the goods and receipt of the invoice, pay the purchase price within 30 days with a 3% cash discount or within 60 days net. The period for payment begins as soon as the delivery or service has been accepted in full by the Purchaser and the properly issued invoice has been received.

Without the Purchaser's prior written consent, which may not be refused unfairly, the Supplier shall not be entitled to assign its payment claims against the Purchaser or have them collected by third parties. If, contrary to sentence 1 above, the Supplier assigns its claims against the Purchaser to a third party without the Purchaser's consent, the assignment shall nevertheless be effective. The Purchaser may then however, at its discretion, make payment to the Supplier or the third party with discharging effect.

One copy of the invoice shall be sent to the Purchaser. It must include supplier number, number and date of order (or purchase agreement and call-off date), additional information about the Purchaser (account details), VAT identification number for cross-border deliveries within the European Union, destination, number and date of delivery note and amount of items invoiced. The invoice must refer to one delivery note only. Standard delivery notes (DIN 4991) shall be used for all deliveries.

The Supplier shall only be entitled to set-off or retention where any counterclaims have been established with legally binding effect or are undisputed.

IV. Notification of defects

The Purchaser shall inform the Supplier immediately in writing of any defects in the delivery as soon as such have been detected in the normal course of business. In this respect, the Supplier shall waive the right to claim belated notification of defects. Notification of defects shall be deemed to have been reported immediately if received by the Supplier within 10 working days of the date of delivery.

V. Confidentiality, retention of title

The Parties shall be obligated to treat all and any business and technical information that is not general knowledge, of which they become aware during the course of the business relationship, as trade secrets.

Drawings, models, templates, patterns, and similar items must not be handed over or otherwise made available to unauthorized third parties. The reproduction of such items and documents shall only be permitted within the framework of operational requirements and copyright stipulations. Subcontractors shall be bound to this obligation accordingly.

The Parties may only use their business relationship for advertising purposes with prior written consent.

The Purchaser shall reserve the ownership rights and copyrights to all illustrations, plans, drawings, calculations and other documents. Such documents shall be used solely for performance of the contractual service and shall be returned to the Purchaser after the completion of the contract. The documents shall be kept secret from third parties even after the contract has ended. The confidentiality obligation shall cease to apply if and to the extent that the general public becomes aware of the know-how contained in the documents.

The aforementioned provision shall apply accordingly for substances and materials such as finished and semi-finished products, and for tools, templates, samples and other items provided by the Purchaser to the Supplier for production. Such items - as long as they are not being processed - shall be stored

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separately at the Supplier's expense and insured to a reasonable extent against destruction and loss.

The processing, mixing or combining (further processing) by the Supplier of any items provided shall be done on behalf of the Purchaser. The same shall apply where the delivered goods are subsequently processed by the Purchaser, with the result that the Purchaser is deemed to be the manufacturer and obtains ownership of the product in accordance with the statutory provisions upon the subsequent processing of the goods at the latest.

In the event that the Purchaser, by way of exception, accepts an offer from the Supplier for transfer of ownership, which is subject to the payment of the purchase price, the Supplier's reservation of title shall expire upon payment of the purchase price for the delivered goods at the latest. The Purchaser shall remain authorized to resell the goods in the normal course of business, even before payment of the purchase price, by assigning the receivables from the resale in advance (alternative applicability of the simple reservation of title that is prolonged for the purpose of resale). All other forms of reservation of title shall be thereby excluded, in particular reservation of title that is extended, assigned or prolonged for the purpose of processing.

VI. Delivery, delivery dates and periods, transfer of risk

A delivery note stating date (issue and dispatch), contents of the delivery (article number and quantity) and the Purchaser's order identifier must be included in the delivery. In this respect, the Purchaser shall not be held responsible for any missing information or resulting delays.

The delivery time (delivery date or period) specified in the order is binding. Premature deliveries are not permitted. If the delivery time is not specified in the order and has not been otherwise agreed, it shall be 2 weeks from the conclusion of the contract.

The Supplier shall be obligated to inform the Purchaser immediately in writing if any circumstances arise or become apparent which indicate that the delivery time cannot be adhered to. If the latest possible delivery date can be determined on the basis of the contract, the Supplier shall be in default at the end of this day, without the necessity for a reminder from the Purchaser.

In the case of a delivery delay, the Purchaser shall be entitled, without restriction, to the statutory claims, including the right to withdraw from the contract and the right to receive compensation instead of the supply/service, following the fruitless expiry of an appropriate deadline. The Supplier is not entitled to make partial deliveries.

Until such time as the deliverable is handed over to the Purchaser or to the recipient designated by the Purchaser, the Supplier shall bear the risk of deterioration and accidental loss, even in the case of a sale involving the carriage of goods.

VII. Delivery delay

The Supplier shall be obligated to compensate the Purchaser for any damages caused by delay.

In the case of delivery delays, the Purchaser shall be entitled - after issuing a prior written warning to the Supplier - to charge a contractual penalty of 1% for every week of delay or part thereof, however no more than 5% of the respective net order value. The contractual penalty shall be set off against the damages caused by delay owed to the Purchaser by the Supplier; the Purchaser is also entitled to claim fulfillment and further statutory compensation.

VIII. Quality and documentation

In respect of the delivered goods, the Supplier shall comply with generally acknowledged technical standards, safety regulations, agreed technical details and specifications, latest government and statutory provisions, environmental standards, and occupational health and safety and accident prevention regulations. Alterations may only be made to the deliverable with the prior written consent of the Purchaser. For the initial-sample inspection, the currently valid version of the VDA (German Automotive Industry Association) publication "Securing the quality of deliveries - supplier selection/production process - and product release/quality performance in series" should be consulted. Irrespective of this, the Supplier is obliged to continually inspect the quality of the deliverables. The Parties shall inform each other of any options for improving quality.

If the type and scope of tests as well as the test equipment and methods have not been firmly agreed between the Supplier and the Purchaser, the latter is prepared, at the request of the Supplier, and within the limits of its knowledge, experience and possibilities, to discuss the tests with the Supplier in order to determine the desired standard of testing technology. The Purchaser shall also provide the Supplier with information on the relevant safety regulations upon request. In addition, in its quality reports for all products, the Supplier must record when, how and by whom the defect-free production of the deliverables was ensured. The supporting documents must be kept for 15 years and submitted to the Purchaser if required. The Supplier shall be entitled to shorten the retention period for the supporting documents if it can exclude any risk to life and health in the use of the products. To the extent legally possible, the Supplier shall impose similar obligations on its upstream suppliers. As a guide, the currently valid VDA publication "Furnishing proof - Guidelines for documenting and archiving quality requirements" should be consulted.

The Supplier also gives its consent for quality capability inspections to be carried out by the Purchaser and/or its customers. If the Purchaser requests such an inspection, the Supplier shall, within a reasonable period of time (usually one month), notify the Purchaser of its readiness for inspection at least one week in advance and arrange a binding inspection date with the Purchaser. The Supplier shall bear any and all self-incurred material and personnel costs. If the item is not ready for inspection on this date, all costs shall be borne by the Supplier insofar as the latter is responsible for the delay. If any defects require further or repeat inspection, the Supplier shall bear all costs incurred. The cost of the material certificates for the primary materials shall be borne solely by the Supplier. Material and inspection certificates are part of the delivery and must be available at the time of delivery. The inspection shall not affect the contractual obligations on the part of the Supplier to ensure that the deliverables are free of defects.

Where public authorities, who are responsible for the end products, request access to the production process and test documentation of the Purchaser for the purpose of verifying certain requirements, the Supplier shall, at the Purchaser's request, declare its willingness to grant the Purchaser the same rights within its premises and provide all reasonable assistance.

Without the prior written consent of the Purchaser, the Supplier shall not be entitled to have third parties (e.g. sub-contractors) perform the service owed by it.

IX. Liability for defects

In the event that defective goods are delivered, if the relevant statutory regulations and the following list of requirements are met, and unless otherwise agreed, the Purchaser may claim the following:

1. Prior to the start of production (processing or installation), the Purchaser shall first give the Supplier the opportunity to sort out the defective goods and to remedy the defect or provide subsequent delivery or replacement, unless this is unreasonable

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for the Purchaser. If the Supplier is unable to do so or fails to do so immediately, the Purchaser may withdraw from the contract without setting a further deadline and return the goods to the Supplier at the latter's risk. In urgent cases, the Purchaser may remedy the defects itself or have this done by a third party after consulting the Supplier. Any costs incurred in this case shall be borne by the Supplier. If the same goods are repeatedly delivered in a defective condition, the Purchaser shall, having received the goods in the same defective condition yet again after issuing a written warning, be entitled to withdraw from the contract, including in respect of the goods not yet delivered.

2. If the defect is only discovered after start of production despite compliance with the obligation under Section IV. (Notification of defects), the Purchaser may,

- pursuant to Section 439 (1), (3) and (4) BGB [German Civil Code], demand subsequent performance and compensation for transport, dismantling and installation costs (labor costs, material costs where agreed) that are necessary for providing subsequent performance or

- reduce the purchase price.

In the case of a culpable breach of duty extending beyond the delivery of defective goods (for example, in the case of an obligation to inform, advise or inspect), the Purchaser may demand compensation for the resulting consequential damage as well as the consequential damage for which the Purchaser is legally required to compensate its own customers. Consequential damage is the damage to legally protected interests other than the goods themselves sustained by the Purchaser through the supply of defective goods.

The Purchaser shall immediately provide the Supplier with the items to be replaced upon request and at the latter's expense.

By way of derogation from Section 438 (1) no. 3 BGB, the general period of limitation for claims for defects shall be 3 years from the transfer of risk. Where an acceptance procedure has been agreed, the limitation period shall commence upon acceptance of the goods.

In the event of defective deliveries, claims asserted by the Purchaser under the German Product Liability Act and on grounds of tort and negotiorum gestio (business management without authority) under Section X. below shall remain unaffected.

X. Liability

If the Supplier is responsible for product damage, it shall indemnify the Purchaser against third-party claims to the extent that the cause lay within the Supplier's sphere of control and organization and the Supplier is personally liable in relation to third parties.

Under its obligation to indemnify, the Supplier shall reimburse all and any expenses pursuant to Sections 683 and 670 BGB or damages incurred by or arising from or in connection with third-party claims, including any product recalls initiated by the Purchaser. The Purchaser shall, to the extent possible and reasonable, inform the Supplier of the content and scope of any product recalls and allow the Supplier the opportunity to comment. Further statutory claims shall remain unaffected.

The Supplier shall be obligated to take out and maintain product liability insurance with minimum lump-sum coverage of at least 5 million euros at its own expense. The Supplier shall present a copy of the insurance policy at any time upon request.

XI. Intellectual property rights, country of origin

The Supplier shall be liable for claims that arise - when using the deliverables as stipulated in the contract - from a breach of industrial property (IP) rights and applications for IP rights, of which at least one out of the family of IP rights was published

either in the Supplier's home country, by the European Patent Office or in the Federal Republic of Germany, France, Great Britain, Austria or the US, or constitutes a breach of IP rights in one of the other countries in which the Supplier manufactures the products or has them manufactured by third parties.

The Supplier shall indemnify the Purchaser and its customers against all claims arising from the use of such IP rights. Whether or not the Supplier is at fault is hereby irrelevant.

This shall not apply insofar as the Supplier has manufactured the deliverables on the basis of drawings, models or other equivalent descriptions or specifications provided by the Purchaser and does not know or, in respect of the manufactured products, is not required to know that intellectual property rights have been breached as a result.

The Parties shall be obligated to inform each other immediately of any risks of infringement and alleged cases of infringement of which they become aware and to give each other the opportunity to take concerted action against any such claims.

At the request of the Purchaser, the Supplier shall inform the Purchaser about the use of any published or unpublished IP rights and applications for IP rights, which are owned by it or licensed to it, pertaining to the deliverable.

The Supplier hereby confirms and shall, upon request, provide proof to the Purchaser of the country of origin of the customs-relevant parts of the deliverable.

XII. Production equipment and confidential information

Production equipment and confidential information of the Purchaser, such as models, matrixes, patterns, samples, drawings, sketches tools and other production instruments as well as confidential information and construction details made available to the Supplier by the Purchaser or paid for by the latter, may be used for deliveries to third parties or otherwise made accessible to third parties only with prior written consent (see also Section V.).

Tools, appliances and models provided to the Supplier by the Purchaser, or manufactured for the purposes of the contract and charged separately by the Supplier, shall remain or become the property of the Purchaser. These must be marked by the Supplier as third-party property, stored safely, protected from damage of any kind whatsoever and used only for the purposes of the contract. Each Party shall pay half of the costs of maintaining and repairing these items, unless agreed otherwise. However, insofar as these costs are attributable to defects in such items manufactured by the Supplier or to improper use by the Supplier, its employees or other vicarious agents, such costs shall be borne solely by the Supplier. The Supplier shall notify the Purchaser immediately of any damage - significant or insignificant - to said items. If requested, the Supplier shall be obligated to hand over these items to the Purchaser in good condition when they are no longer required for the purpose of fulfilling the contracts.

Other information and documentation above and beyond this shall remain the property of the Purchaser. At the Purchaser's request, this shall be handed over together with all copies and duplications thereof. If no order is placed, the Supplier shall immediately hand over to the Purchaser all provided documents without being requested to do so.

XIII. Spare parts

The Supplier shall be obligated to hold spare parts available for the products supplied to the Purchaser for a period of at least 10 years after delivery.

If the Supplier intends to stop production of spare parts for the products supplied to the Purchaser, the Supplier shall inform the Purchaser immediately upon making the decision to do so. Subject

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to paragraph 1, this decision must be made at least 12 months before production is stopped.

XIV. Import and export regulations, customs

For goods and services supplied from an EU country outside Germany, the Supplier's EU VAT ID number must be indicated. Imported goods shall be delivered duty paid. In accordance with Regulation (EC) No. 1207/2001, the Supplier shall be obligated, at its own expense, to present any required declarations and information, to arrange inspections by the customs authority and to provide any necessary official confirmations.

The Supplier shall be obligated to inform the Purchaser of any permit requirements for (re-)exports in accordance with German, European and US export and customs provisions, and export and customs provisions of the country of origin of the goods and services.

XV. General provisions

If one of the Parties ceases payment, or if an application for insolvency proceedings on its assets or out-of-court composition proceedings has been filed, the other Party shall be entitled to withdraw from the part of the contract not yet performed.

Should a provision of these terms and conditions and any further agreements reached be or become ineffective, this shall not affect the validity of the remaining provisions of the contract. The Parties shall be obligated to replace the ineffective provision with a regulation that comes as close as possible to the economic intent of the ineffective provision.

Unless agreed otherwise, the law of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall not apply.

Place of performance for delivery is the Purchaser's works. In all other matters, place of performance is Landsberg am Lech.

Place of jurisdiction is the location of the Purchaser's registered office.

As at October 2019