

General Terms and Conditions of Sale for NET New Electronic Technology GmbH (Hereinafter referred to as the Seller)

For use in transactions with:

1. All persons engaged in commercial or freelance business activities at the time of conclusion of the contract (entrepreneurs).
2. Legal persons governed by public law or a special fund under public law.

I. General information

1. All deliveries and services are subject to these Terms and Conditions. Any deviating Terms and Conditions on the part of the Buyer shall not become part of the contract as a result of an order acceptance, unless their validity is expressly agreed to by the Seller. This also applies if the Seller continues to make deliveries without reservation although he is aware of conflicting or differing Terms and Conditions of the Buyer. Silence shall not be regarded as consent to differing Terms and Conditions. Within the framework of an existing business relationship, these Terms and Conditions shall also apply for the conclusion of future contracts without the necessity for an express declaration to this effect.
2. Agreements between the parties that have been made in writing are conclusive. Oral agreements must be confirmed in writing to become effective.

II. Conclusion of the contract

1. Offers made by the Seller are non-binding unless otherwise indicated in the order confirmation. If the Buyer's order is an binding offer, the Seller may accept this offer within a period of three weeks or make the delivery within this period.
2. Drawings, illustrations, weights and measurements or other performance data as well as technical or mechanical specifications are only binding if expressly confirmed in writing.
3. The Seller shall reserve ownership rights and copyrights to samples, cost estimates, illustrations and other documents and information, also those in electronic form. This shall also apply for written documents that are marked confidential. Express written confirmation is required before the customer may pass such documents on to third parties.

III. Prices and Terms of payment

1. Prices shall apply to the scope of delivery and performance as stated in the order confirmation. Additional or special services shall be charged separately. Prices are ex factory from our works in 86923 Finning, Germany, excluding packaging. If no other agreements have been made, a lump sum of 10 € shall be charged for packaging of individual dispatches; freight shall be charged at actual cost. Prices do not include statutory VAT.
2. If delivery or partial delivery in compliance with the contractual agreement is made later than four months after the contract has been concluded and if the delivery item has increased in cost since the contract was concluded – in particular as a result of price increases on the part of the upstream suppliers, exchange rate fluctuations or increased customs and import duties –, the Seller is entitled to increase the price of those items awaiting delivery or partial delivery to a reasonable extent. The Buyer is entitled to withdraw from the contract within a period of two weeks after receiving notification of the price change if the price increase amounts to more than 5% of the cost of the total delivery.
3. Unless otherwise agreed, invoices issued by the Seller are due net (without deduction) immediately upon delivery and must be settled within 30 days of the due date at the latest. Cash discount deductions require a separate written agreement.
4. The Buyer is only entitled to withhold payment or offset counterclaims to the extent that such counterclaims are undisputed or have been legally established.
5. Payment shall only be deemed effected when credited unconditionally to the company's bank account. This also applies for payment by check or by bill of exchange. Bills of exchange are only accepted by special agreement. All related bank and discount charges shall be borne by the customer.
6. Should the Seller be aware of any circumstances that may cause him to doubt the solvency or creditworthiness of the Buyer, the former is entitled to demand advance payment or provision of a security as well as immediate payment of all outstanding invoices.

IV. Delivery

1. All stated delivery periods and delivery dates are approximate periods and dates, unless a binding delivery date has been expressly stipulated.
2. Observance of the delivery periods and delivery dates by the Seller is conditional upon all commercial and technical issues having been clarified between the contracting parties and the customer having fulfilled all obligations incumbent upon him, such as the procurement of necessary official certificates or approvals, or the arrangement of a down payment. If this is not the case, the delivery date shall be extended accordingly. This shall not apply if the Seller is responsible for the delay.
3. Observance of the delivery date is conditional upon the correct and timely delivery by sub-suppliers. Should any delays become apparent, the Seller shall inform the Buyer of this as soon as possible.
4. The Seller shall also not be held responsible for the inability to deliver or for delivery delays, insofar as these are a result of force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. breakdowns, difficulty in procuring material or energy, transport delays, strikes, legitimate lockouts, lack of manpower, energy and raw materials, difficulties in obtaining necessary official approvals, official measures), provided that such events are beyond the Seller's control. Insofar as such events considerably hinder the delivery or service, or make such impossible, and the hindrance is not merely of a temporary nature, both parties are entitled to withdraw from the contract. In the case of hindrances of a temporary nature, the delivery or service periods or dates are extended or postponed by the duration of the hindrance plus an appropriate start-up period. Should this result in a delivery delay of more than three months, and if it is demonstrably no longer reasonable to expect the Buyer to accept the delivery or service due to this delay, the Buyer may withdraw from the contract by immediately submitting a written declaration to the Seller regarding the unfulfilled contractual provision. In the event of any delivery delay, the Seller must inform the Buyer of the revised delivery date as soon as possible. Compensation claims on the part of the Buyer are excluded.
5. The delivery date shall be deemed observed if the delivery item has already left the Seller's works or has been reported ready for dispatch by the time the delivery date has expired. If the item is subject to an acceptance procedure, the date of acceptance – or alternatively the notification of readiness for acceptance – is decisive, unless acceptance has been refused for good reason.
6. If the Buyer is responsible for a delay in the dispatch or acceptance of the delivery item, he shall be charged with all and any expenses caused by the delay, beginning one week after readiness for dispatch or acceptance has been reported.
7. If the Buyer defaults in accepting delivery or culpably infringes his obligation to cooperate, and this results in the impossibility or inability of the Seller to perform, and if the customer is solely or predominantly responsible for these circumstances, the Buyer shall remain obligated to counter-performance.
8. If the Seller defaults in delivery or performance and should this result in a disadvantage for the Buyer, the latter is entitled to demand a lump sum compensation. This shall amount to 0.5% for each full week of delay; however, it shall not exceed 5% of the value of the part of the entire delivery that can be neither used on time nor according to contract. If, after expiry of the due date, the Buyer sets the Seller a reasonable time limit for performance – taking into consideration the legal exceptions – and the latter does not comply with this time limit, the Buyer is entitled to withdraw from the contract within the scope of statutory regulations. He is obligated to declare, at the Seller's request and within a reasonable period of time, if he wishes to enforce his right of withdrawal. Further claims arising from default in delivery are exclusively regulated under Section VIII, 2, of these Terms and Conditions. These Terms and Conditions are otherwise conclusive.
9. The Seller is entitled to provide partial deliveries and services provided that these are not considered unreasonable for the Buyer.

V. Transfer of risk, Acceptance

1. Risk is transferred to the Buyer as soon as the delivery item has been handed over to the carrier or has left the Seller's factory premises for dispatch; this also applies if partial deliveries are made or if the Seller has also assumed additional obligations such as payment of transport costs or delivery and installation. If the item is subject to an acceptance procedure, this is decisive for the transference of risk. Acceptance must take place promptly at the time of delivery, or alternatively after receiving the Seller's notification of readiness for acceptance. The Buyer is not entitled to refuse acceptance in the event of a minor defect.
2. If dispatch or acceptance is delayed or not carried out due to circumstances that are beyond the Seller's control, risk is transferred to the Buyer as soon as notification has been made of readiness to dispatch or readiness for acceptance. The Seller is obligated to take out the insurance requested by the Buyer at the Buyer's own cost.

VI. Retention of Title

1. The Retention of Title agreed hereinafter serves to safeguard all of the Seller's current and future claims against the Buyer arising from the existing business relationship between both parties, including any outstanding balance claims from a current account agreement, also from other contractual relationships, insofar as comparable products are concerned.
2. The goods delivered by the Seller to the Buyer shall remain the property of the Seller until all secured claims have been paid in full. The goods, as well as any substitute goods which also are subject to Retention of Title in accordance with this clause, shall hereinafter be referred to as reserved goods.

3. The Buyer shall keep the reserved goods for the Seller free of charge and is obligated to insure these at his own cost and at replacement value against fire, water damage and theft. The Seller is entitled to request proof of insurance.
4. The Buyer has the right to process and sell the reserved goods during the normal course of business until such time as an enforcement event occurs. It is not permitted to pledge goods or transfer them by way of security.
5. Should the Buyer process the reserved goods, it is hereby agreed that such processing shall be carried out on behalf of and for the account of the Seller as manufacturer, and that the Seller shall directly obtain ownership or – should the processing be carried out using materials from several owners, or should the value of the processed goods be higher than the value of the reserved goods – co-ownership (partial ownership) of the newly produced goods, proportionally in relation to the value of the reserved goods compared with the value of the newly produced goods. Should the Seller not obtain such ownership, the Buyer shall hereby transfer his future ownership, or – in the aforementioned relation – co-ownership, of the newly produced goods to the Seller by way of security. Should the reserved goods be combined with other goods to form a uniform object, or should it be inseparably compounded, and is one of the other goods to be regarded as the main object, the Buyer, insofar as he is the owner of the main object, shall hereby proportionally transfer co-ownership of the uniform object to the Seller in the relation stipulated in Clause 1. The Buyer shall release the Seller from all obligations that may arise in connection with the assignment of ownership to the Seller.
6. Should the reserved goods be re-sold, the Buyer shall at this stage transfer to the Seller by way of security the claim against the purchaser arising from this – in case of the Seller's co-ownership of the reserved goods, proportionally in accordance with the co-ownership share. The same shall apply for other claims which may replace the reserved goods or may otherwise arise in connection with the reserved goods, such as insurance claims or tort claims in the event of loss or destruction. The Seller revocably authorizes the Buyer to collect in his own name and for the Seller's account the claims assigned to the Seller. The Seller may only revoke this collection authorization in the case of an enforcement event.
7. Should third parties take hold of the reserved goods, in particular by means of seizure, the Buyer shall immediately inform them of the Seller's ownership, and shall inform the Seller thereof, enabling him to enforce his property rights. Insofar as the third party is unable to reimburse the Seller for the judicial and extra-judicial costs arising in connection with this, the Buyer shall be liable to the Seller in this respect.
8. Upon request, the Seller shall release at his discretion the reserved goods and any substitute goods or claims if their value exceeds the amount of the secured claims by more than 50%.
9. Should the Seller withdraw from the contract due to a violation of the contract – in particular, default in payment – by the Buyer (enforcement event), the Seller is entitled to demand the return of the reserved goods or to realize substitute security.
10. As regards export transactions, should Retention of Title not have the same effect in the Buyer's country as under German law, the Seller shall retain full ownership of the goods until all of the Seller's claims against the Buyer have been paid in full, insofar as this is possible in accordance with the law governing the location of the purchase item. If, in accordance with the laws governing the Buyer's country or the laws governing the country in which the purchase item is located, Retention of Title as hereby agreed does not have the same effect as under German law, or if this is not enforceable, the type of security that conforms as closely as possible to the German Retention of Title in its security function, either in accordance with the laws governing the Buyer's country or the laws governing the location of the purchase item, shall be agreed upon.

VII. Warranty

The Seller shall be liable for all material defects and defects of title regarding the delivery, but excluding further claims – subject to the provisions of Section VIII – as follows:

1. All parts found to be defective as a result of circumstances prior to the transfer of risk are to be repaired or replaced by non-defective parts free of charge at the Seller's discretion. Should such defects be discovered, the Seller shall immediately be informed of this in writing, at the latest however within a week after receipt of delivery. The Buyer is obligated to closely inspect the delivered item for defects prior to installation and operation, and to notify the Seller immediately upon discovery of any such defects. In the case of defects that become apparent at a later stage, the Buyer shall bear the burden of proving that parts delivered by the Seller are defective, and that these defects existed at the time the risk was transferred, in the absence of prima facie evidence.
2. In consultation with the Seller, the Buyer must grant the Seller an appropriate amount of time and opportunity to carry out all repairs and replacement deliveries deemed necessary by the Seller. The Seller is entitled to request that the defective part be returned at his own expense in its original, or otherwise appropriate, packaging for repair, and subsequently to be sent back to the Buyer. If the Buyer demands that the part be repaired on site, and if this does not require an unreasonable amount of effort on the part of the Seller, the repair shall be carried out at the place of delivery. The Buyer shall bear any additional expenses for work and travel arising from this. The Buyer shall only then be entitled to repair a defect or have it repaired by third parties, and to demand reimbursement for the necessary work, in urgent cases where general safety is endangered or excessive damage can be prevented, whereby the Seller is to be notified immediately. In such cases, the Seller shall not be held responsible for any defects or damage caused by repair work carried out by third parties or by the Buyer. The Buyer is not entitled to redebit the purchase price whilst repairs are being carried out.
3. If the part cannot be repaired and the defect is insignificant, the Buyer's warranty claim is limited merely to an entitlement to a proportionate reduction of the contractually stipulated purchase price. Otherwise the Buyer shall reserve the right to withdraw from the contract in accordance with legal regulations after the suitable period granted for rectification of the defect has expired.
4. No liability shall be accepted in the following cases in particular: if the Seller's operating and maintenance instructions are not observed, if alterations are made to the products, if parts are exchanged or consumables used that do not conform to the original specifications, and as a result of incorrect installation or operation, improper maintenance, natural wear and tear, and the presence of chemical, electrochemical or electrical influences, insofar as these are beyond the Seller's control.
5. In the event of infringement of patent rights and trademark rights, the Buyer shall be liable for goods manufactured according to drawings, samples or other information provided by the Buyer; the Buyer shall release the Seller from any claims in this respect. Should the Seller for his part violate third party patent rights with a product manufactured by himself, the Buyer's claims shall hereby be limited to a release from third party claims and the free delivery of an alternative replacement product of the same value.
6. The warranty regulations in combination with the regulations under Section VIII are conclusive.

VIII. Regulations regarding liability of the Seller

1. If the Buyer is unable to use the delivered item in the manner stipulated in the contract, and if the Seller is responsible for this as a result of having neglected or incorrectly implemented suggestions and advice provided either prior to or subsequent to conclusion of the contract, or as the result of having violated other secondary contractual obligations – in particular, instructions regarding the operation and maintenance of the delivered item –, the regulations of Sections VII, 1, 2 and VIII, 2, excluding any further claims asserted by the Buyer, are conclusive.
2. Regardless of the legal grounds, the Seller shall only be liable for damage not caused to the delivered item itself in cases of intent, of gross negligence on the part of the owner/institution or executive, in cases of culpable physical injury and hazard to life and health, in case of defects that have been fraudulently concealed by the Seller, within the scope of a warranty promise and in the case of defects in the delivered item, insofar as liability is assumed for personal injury or material damage with regard to privately used items in accordance with the Product Liability Act. In the case of culpable violation of important contractual obligations, the Seller shall also be liable for gross negligence on the part of non-executive employees and for slight negligence, in the latter case limited to damage which is contractually typical and could reasonably have been foreseen. Any further claims are excluded. This shall also apply to possible claims against the Seller's employees, freelancers, representatives, assistants and vicarious agents.

IX. Data protection and confidential documents

1. The Seller is authorized to save all of the data provided by the Buyer that is relevant for implementation of the contract.
2. Information, drawings, samples and other details provided by the Buyer are only then to be treated by the Seller as confidential if this has been expressly agreed.

X. Limitation period

Any claims asserted by the Buyer, regardless of the legal grounds, shall be subject to a limitation period of 12 months. The legal deadlines for claims for damages in accordance with Section VIII shall apply. Pecuniary claims on the part of the Seller shall be subject to a limitation period of three years.

XI. Applicable law, Court of jurisdiction, Place of fulfilment, Severability clause

1. The law of the Federal Republic of Germany governing legal relationships between domestic parties shall exclusively apply for all legal relationships between the Seller and the Buyer. UN purchasing law is not applicable.
2. Court of jurisdiction shall be the court responsible for the area in which the Seller's registered office is located. The Seller shall however be entitled to file suit against the Buyer at the latter's head office. Place of fulfillment for all contractual claims shall be the Seller's place of business.
3. Should any provisions of these Terms and Conditions or other contractual agreements be or become ineffective or invalid, this shall not affect the validity of the remaining provisions. An ineffective or invalid provision shall be replaced by a provision that comes closest to the economic purpose intended by both parties. This shall also apply in the event of a legal loophole.