

GENERAL CONDITIONS

FOR THE SUPPLY OF ELECTRONIC PASSIVE COMPONENTS

Model form recommended by the European Passive Components Industry Association (EPCIA), Brussels

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I. GENERAL CONDITIONS

1. The scope of the supply of goods or services (hereinafter called "Supplies") shall be defined by the written declarations of the supplier (hereinafter called "Supplier") and the purchaser (hereinafter called "Purchaser") of the goods and services. General Conditions of the Purchaser shall not apply.
2. The Supplier reserves all rights, right, title and interest in the property and copyright of all cost estimates, drawings and other documents or any type of material regardless of its form (hereinafter called "Documents") supplied to the Purchaser. Such Documents may not be made available to third parties without the prior consent of the Supplier. They shall be immediately returned to the Supplier, if so requested by the Supplier, if he is not awarded the contract. The Purchaser shall exploit any information derived from the Documents provided by the Supplier only for the purpose of using the Supplies.

II. PRICES AND TERMS OF PAYMENT

1. Unless otherwise agreed, prices shall be prices ex Supplier's works and shall exclude packing and the sales tax payable under the applicable law.
2. Unless otherwise agreed payments shall be made free Supplier's paying office or Bank account, 14 days from the date of invoice without any deductions.
3. If the Purchaser is in delay with payments the Supplier shall automatically be entitled to interests from the day on which payment was due. Unless otherwise agreed the rate of interest will be 10 % per year..
4. In case of late payment the Supplier may, after having notified the Purchaser of the late payment, suspend his performance of the contract until he receives payment.
5. The Purchaser may set off only those claims that are undisputed or against which no legal recourse is possible.
6. Request of the Purchaser that all or part of Supplies finally destined to him shall be delivered and invoiced to a third party (Distributor or Subcontractor) shall in no case relieve the Purchaser from his obligation to render his payments to the Supplier in case of failure from such third party to comply with the payment terms and conditions.

III. RETENTION OF TITLE

1. The items of Supplies (Secured Goods) shall remain the property of the Supplier until each and every claim against the Purchaser, to which the Supplier is entitled under this business relationship, has been duly satisfied. If the value of all security rights of the supplier exceeds the value of all secured claims by more than 20%, the Supplier shall release a corresponding part of the security rights at the Purchaser's request.
2. For the duration of the retention of title the Purchaser is prohibited from giving the items of Supplies in pledge or as security, and resale shall be permissible only to resellers in the ordinary course of business and only on the condition that the reseller receives payment from his customer or retains title so that the property is transferred to the customer only after fulfilment of his obligation to pay. The Purchaser undertakes to notify the resellers in writing of the security rights relating to the Secured Goods under this paragraph III, as well as to demand the resellers to notify their customers of the same.
3. In case of seizure or other acts or interventions by third parties, the Supplier shall be immediately informed thereof in writing by the Purchaser. Moreover the Purchaser in this case will take all necessary steps required to protect the Supplier's rights relating to the Secured Goods.

4. In case of fundamental non-performance of contractual obligations by the Purchaser, especially a delay in payment, the Supplier shall be entitled to take back the goods following a demand for payment. The Purchaser shall be obliged to return the purchased goods in the same packing conditions as received. The taking back, the assertion of the retention of title or the seizure of the Secured Goods by the Supplier does not mean termination of the contract except if expressly stated by the Supplier.

IV. TIME FOR DELIVERY AND DELAY

1. Observance of the agreed time for delivery is conditional upon the timely receipt of all documents, orders, necessary permits and releases, especially of plans to be provided by the Purchaser. Unless these conditions are fulfilled on time, the time for delivery will be extended accordingly.
2. If non-observance of the time for delivery is due to "force majeure" such as mobilization, war, riot or similar events, e.g. strike or lockout, such time shall be extended accordingly.
3. If the Supplier is responsible for a delay in delivery, the Purchaser who can establish credibly that he suffered a loss from such delay may claim, within 3 months from the event, agreed compensation of 0.5 % of the price of those Supplies which, because of the delay, could not be put to the intended use for every completed week of delay after the first two weeks of the delay, but in no case shall the aggregate of such compensation exceed a total of 5 % of the price of those Supplies which, because of the delay, could not be put to the intended use.
4. If dispatch or delivery is delayed, at Purchaser's request or due to circumstances for which the Purchaser is responsible, by more than ten working days after notice was given of the readiness for dispatch, the Purchaser may be charged storage costs for each month commenced thereafter of 0.5% of the price of the Supplies delayed, but in no case shall the aggregate storage charge exceed a total of 5 % . The Supplier may claim proven higher storage costs in excess of these percentages.
5. At the Supplier's request the Purchaser shall declare within a reasonable period of time whether the Purchaser cancels the contract due to the delayed Supplies or insists on the Supplies to be carried out.

V. DELIVERY, TRANSFER OF RISK

1. Unless otherwise agreed, delivery shall be made ex works (EXW) according to the INCOTERMS in force at the time of formation of the contract.
2. If, in the case of delivery ex works, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk shall pass to the Purchaser no later than when the goods have been handed over to or picked up by the first carrier. 3. Partial shipments shall be permitted unless otherwise agreed.

VI. TAKING DELIVERY

1. Minor defects in the Supplies shall not grant to the Purchaser the right to reject the Supplies.
2. Partial deliveries shall be accepted by the Purchaser and taken into account when evaluating effects of Clause IV.3.

VII. WARRANTY

For defects in design, material and workmanship of Supplies the Supplier shall be liable as follows:

1. The Supplier shall, at his option and expense, repair, replace or newly provide those individual parts of Supplies whose usefulness is impaired more than insignificantly within 12 months from the day of transfer of risk owing to circumstances that existed before the transfer of risk.
 2. Claims based on defects are subject to a limitation period of 12 months from the day of transfer of risk. This provision shall not apply in case a longer limitation period is mandatory at law, such as in case of injury of life, body or health, wilful misconduct or gross negligence of Supplier or fraudulent concealment of the defect by Supplier. The legal provisions regarding suspension and recommencement of limitation periods remain unaffected.
 3. Notice in writing of defect, leading to warranty claims, shall be given to the Supplier without undue delay after discovery of the defect. Otherwise the defects shall be deemed to be accepted by the Purchaser as conforming to the contract.
 4. In case of notification of a defect Purchaser's payments may be withheld in reasonable proportion to the price of the involved parts and to the noticed defect.
 5. The Supplier shall be given adequate time and opportunity to remedy the defect. If he is refused this, the Supplier shall have no liability for the defect.
 6. If an adequate extension granted to the Supplier expires without the defect being remedied, The Purchaser shall have the right to demand a reduction of the purchase price or the cancellation of the contract and compensation for damages. The possible compensation for damages is subject to provisions of Clause IX.
 7. There shall be no claims based on defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment or inappropriate use of the Supplies. Claims based on defects attributable to modifications or repair work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
 8. Except as provided above, any other claims of the Purchaser against the Supplier and the Supplier's agent based on defects, or any such claims exceeding the claims provided for in this clause VII, shall be excluded. However clause X (Further liability) shall remain unaffected.
3. Claims of the Purchaser shall also be excluded if the infringement of Property Rights was caused by specific demands of the Purchaser, by use of the Supplies not foreseeable from the Supplier or by the Supplies being altered from the Purchaser or being used together with products not provided by the Supplier.
 4. Claims based on an infringement of Property Rights shall be time-barred upon expiration of the limitation period pursuant to clause VII No. 2.
 5. Further claims against the Supplier based on infringement of Property Rights shall be excluded. However Clause X (Further Liability) shall remain unaffected.

IX. IMPOSSIBILITY OF PERFORMANCE; CONTRACT ADAPTATION

1. If it is impossible to perform the contractual obligations, for reasons for which the Supplier is responsible, the Purchaser shall be entitled to claim damages for direct loss or damages but the Purchaser's claim for damages shall be limited to maximum the price of that part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply where in case of mandatory liability based on wilful misconduct, gross negligence or injury to life, body or health. No change in the burden of proof to the detriment of the Purchaser is involved. Purchaser's right to terminate the contract shall remain unaffected.
2. When unforeseeable events as described in Clause IV.2 substantially change the economic importance of the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted accordingly with due regard to the principle of good faith. Where this is not economically reasonable, the Supplier shall have the right to terminate the contract. If the Supplier wants to make use of this right of termination, he shall notify the Purchaser in writing without undue delay after becoming aware of the significance of the event. This shall apply even where at first an extension of the delivery time has been agreed with the Purchaser.

X. FURTHER LIABILITY

1. Except as expressly provided herein, any claims for damages and reimbursement of expenses the Purchaser may have (hereinafter "Claims for Damages") shall be excluded regardless of whether they are based on positive breach of contractual obligations, violation of obligations in contract negotiations, breach of warranty, tort or any other legal theory. This exclusion shall not apply in case of mandatory liability e.g. under the product liability law, in cases of wilful misconduct, gross negligence, injury of life, body or health or non performance of essential contractual obligations. However liability for damages arising from the non-performance of essential contractual obligations shall be limited to the foreseeable damage, which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. This limitation does not imply a change in the burden of proof to the detriment of the Purchaser.
2. To the extent, that the Purchaser has a Claim for Damages not excluded according to this clause X, it shall be time-barred upon expiration of the limitation period pursuant to clause VII No. 2.

XI. DISPUTES AND APPLICABLE LAW

1. If the Purchaser is a businessperson, sole venue for all disputes arising directly or indirectly out of the contract shall be the city where the Supplier has its headquarters. However, the Supplier may also bring an action at the Purchaser's place of business.
2. The contract shall be governed by the substantive law of the country where the Supplier has his headquarters, under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XII. VALIDITY OF THE CONTRACT

Even in case of legal invalidity of individual items, the remaining parts of the contract shall remain binding .

VIII. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT

1. If a third party, because of an infringement of an industrial property right or copyright (hereinafter called "Property Rights") by Supplies provided by the Supplier and used in conformity with the contract, asserts legitimate claims against the Purchaser, the Supplier shall be liable to the Purchaser as follows:
 - a. At his own option and expense the Supplier shall either obtain a right to use the Supplies, modify the Supplies so as not to infringe the Property Rights or deliver replacements for the Supplies. If this is not possible to the Supplier on reasonable terms, the Purchaser may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.
 - b. Supplier's aforesaid obligations shall exist only on condition that (i) the Purchaser immediately notifies the Supplier in writing of the claims asserted by the third party, that (ii) the Purchaser does not acknowledge an infringement and (iii) that all countermeasures and settlement negotiations are reserved to the Supplier. If the Purchaser stops using the Supplies to reduce the damage or for other important reasons, he shall be obliged to make it clear to the third party that the suspended use does not mean acknowledgement of the infringement of Property Rights.
2. Claims of the Purchaser shall be excluded if he is responsible for the infringement of Property Rights.