



General Conditions of Purchase

of MSC Vertriebs GmbH, Industriestrasse 16, 76297 Stutensee

Version: August 2009

MICROCOMPUTERS · SYSTEMS · COMPONENTS · VERTRIEBS GMBH

§ 1 Scope of Application

(1) For all business transactions the present General Conditions of Purchase (AEB) shall apply exclusively to all contracts we conclude with a supplier - especially those concerning the purchase and production of goods, rights and other items (herein after referred to as: the delivery of goods) - as well as to already existing contractual obligations, unless otherwise explicitly agreed in writing. No other terms and conditions may be construed to be an integral part of the contract, even if we do not specifically contradict them. This shall also apply in the event that we, being aware of conflicting or differing terms and conditions, accept deliveries and services without reservation or reference to these conditions in individual correspondence.

(2) Even if not expressly referred to when similar contracts are concluded in the course of an ongoing business relationship, the same version of the General Conditions of Purchase as can be downloaded from www.msc-ge.com/aeb, shall apply when an order is placed with the supplier, unless otherwise expressly agreed in writing between the contractual partners. The latest printed version of the General Conditions of Purchase will be sent to the supplier free of charge on request.

(3) All agreements concluded between the supplier and us in connection with the delivery contracts are stipulated in writing in the delivery contracts, these General Conditions of Purchase and the quotes.

(4) We reserve the right to demand that the supplier conclude a quality assurance agreement. This quality assurance agreement will then become an integral part of these General Conditions of Purchase.

(5) These General Conditions of Purchase shall apply solely vis-à-vis business enterprises, legal persons as well special fund under public law in the sense of §310, para. 1 BGB [German Civil Code]. § 310 Abs. 1 BGB.

§ 2 Conclusion of Contract

(1) The content of our written orders alone shall apply. Orders placed verbally or verbal ancillary agreements will only become effective when we confirm them in writing. Delivery contracts (placement and acceptance), delivery call-offs as well as changes and addendums thereto require the written form. Orders, delivery call-offs etc. may also be communicated electronically.

(2) If the supplier is unable or does not want to accept our order, he is obliged to announce this instantaneously. Orders and related delivery call-offs become binding, unless contradicted by the supplier within five business days after receipt. However, we reserve the right to cancel orders, unless the supplier does not accept our order within a period of five business days after receipt.

(3) The supplier shall confirm orders to us in writing. Order confirmation must show prices, discounts, binding date of delivery as well as further order details. Deviations from the prices and discounts stipulated in the order shall only become an integral part of the contract if confirmed by us in writing.

(4) Drawings, plans and other documents forming part of the order, remain our property. We reserve all copyrights pertaining to these documents. If the supplier does not accept our orders within the period stipulated in Chapter 2, these documents have to be sent back to us instantaneously.

(5) We are entitled to demand changes to the design and execution of the delivery items, if they can be reasonably demanded of the supplier. In this case, the effects for both sides, especially regarding additional or reduced costs and the delivery dates, must be settled appropriately.

§ 3 Prices, Compensation, Payment, Set-off

(1) The price we stipulate in the order is binding and net, plus the statutory Value Added Tax. Deliveries are made free domicile, including cost of packing, unless otherwise agreed by the parties in writing.

(2) Invoices shall be sent to our business address. Invoices shall comply with the statutory requirements and include the information requested by us (item number, order number, quantity etc.) Invoices not presented in a proper form are regarded as not having been issued.

(3) Unless otherwise agreed, payments shall be due within 30 days after presentation of a proper invoice with a 3% discount or within 90 days net from the presentation of a proper invoice. In case of early delivery, payment has to be effected in accordance with the stipulated date of delivery.

(4) In case of defective and incomplete delivery, we are entitled to withhold payment proportionate to the value of the defect until the delivery has been properly fulfilled. On the other hand, payment (without reservation) does neither represent the acknowledgement of correct delivery, nor waiver of the supplier's liability for defects.

(5) We are fully entitled to all legal rights of set-off and retention. The supplier shall only be entitled to offset our claims against claims which are undisputed by us or legally binding. Apart from matters governed by § 354 a HGB (German Commercial Code), the supplier may only assign rights to a third party with our prior written consent, which may not be denied unreasonably. The supplier shall only have a right of retention or the plea of non-performance within the respective contractual relationship.

§ 4 Time of Performance, Delays

(1) All dates and periods of delivery mentioned in the order or otherwise agreed shall be binding. The arrival of the goods at our premises is decisive for meeting the delivery date or delivery period. Unless delivery "ex works" has been stipulated, the supplier has to supply the goods in time making allowance for the usual time for loading and dispatch.

(2) The supplier shall inform us immediately of any imminent or actual non-compliance with a stipulated delivery date/period, the reasons for the delay and its estimated duration. This does not affect the actual delay in delivery.

(3) In case of a delay in delivery, we are entitled to claim 0.5% of the order value per full week of delay as a contract penalty, however not more than 5%. The right to more extensive legal claims is reserved.

§ 5 Packing, Dispatch, Partial Deliveries, Passing of Risks

(1) Delivery and dispatch are made free domicile to our business address or to a place of delivery specified by us at the supplier's risk. The supplier shall bear the cost for packing, freight and insurance. All our deliveries shall be packed expertly and as is customary in the industry by the supplier so that the packing is guaranteed to protect the delivery items until they reach the delivery address. If in individual cases delivery ex works was stipulated, the supplier shall select the most favourable terms of shipment for us and guarantee the right declaration (in reference to the value of the goods). In these cases the supplier is liable for damage which occurs in the course of transportation.

(2) The goods must be accompanied by a delivery note containing the exact description of the scope of supply according to type and quantity etc. as well as the exact order data. If the supplier fails to do so, delays in processing are inevitable for which we assume no liability.

(3) Partial deliveries will only be accepted by express agreement. In case of partial deliveries, the remaining quantity shall be listed.

(4) Passing of risks shall take place at the delivery address stipulated by us.

§ 6 Material Defects and Defects of Title, Obligation of Inspection and Notification of Defects, Claims for Defects

(1) Unless otherwise expressly agreed, the supplier shall guarantee that all deliveries conform to the stipulated specifications, the relevant legal stipulations of the place of delivery and, if known to the supplier, the place where the goods are to be used, as long as this can be reasonably expected of the supplier. Furthermore, the rules and regulations of public authorities, the employers' liability insurance associations and trade associations must be complied with. If in individual cases it is necessary to deviate from these provisions, the supplier requires the explicit written consent from the buyer. If the supplier has reservations against the method of execution preferred by us, the supplier must inform us of this fact immediately.

(2) The supplier shall guarantee that the goods are delivered free from third party rights and that no third party rights are violated by the delivery. The vendor shall release us from potential third party claims on our first request.

(3) In the scope of validity of § 377 HGB (German Commercial Code) (commercial sale, if both parties are commercial businesses) the obligation to inspect and notify of defects is modified as follows:

- We will notify the supplier of defects of the delivered goods as soon as they have been discovered in the proper course of business, within 10 business days after receipt of delivery. We will notify the supplier of defects not recognizable in the course of such an investigation within a period of 10 business days after their discovery. In order to meet the deadline, timely notification of defects to the supplier shall suffice.

- The inspection and testing of incoming goods entails only the examination of the goods with regard to visible deviations in terms of identity and the number of units as well as obvious transport damage.

For this reason the supplier shall refrain from objecting to delayed notice of defects and unreserved acceptance. This does not prejudice our right to perform a more extensive inspection and test on incoming goods.

(4) In case a contract purely for work and services, § 377 HGB shall not apply, neither directly nor by analogy. Likewise we do not assume any obligation for inspection and notification of defects in connection with other contracts not covered by §377 HGB.

(5) We are unconditionally entitled to the statutory warranty rights.

(6) As an add-on to the legal warranty rights, in the case of a non-fulfilment of a contract for work and services we also have the right to demand rectification of a defect or delivery of goods free from defects at our discretion. Furthermore, if a sales contract exists in urgent cases or as part of our duty to avert, minimise or mitigate loss, we are entitled to act at our own discretion after consulting our supplier under the condition of § 637 BGB (analogous).

(7) Claims for defects are limited to 36 months from the transfer of risk, unless some other explicit divergent written agreement has been made or a longer statutory limitation period has been scheduled. 634 a para. 3-5 BGB if a contract for work and services exists, and/or § 438 para.3-5 BGB a sales contract exists, and § 479 para.2 and 3 BGB shall not be prejudiced.

(8) Our written notification of defects inhibits expiration of the warranty period. The warranty period only continues after two months, after successful rectification or if the supplier has rejected the warranty in writing. In the case of a substitute delivery, the warranty period starts afresh from the time of delivery of the substitute goods.



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§ 7 Product Liability, Indemnity, Third Party Insurance Coverage

(1) In the case of third-party claims for damages against us because of a product defect for which the supplier is responsible, the supplier has to indemnify us on our first request from all third-party claims including the necessary costs of rejection of these claims, inasmuch as the cause is to be found in the supplier's domain and organisational area.

(2) If we have to proceed with a product callback because a case of damage in terms of para. 1 occurs, the supplier shall be obliged to reimburse us for all costs incurred due to or in connection with the callback campaign. If possible and reasonable from a time perspective, we will inform the supplier about content and scope of the callback and give him the opportunity to comment on it. This is without prejudice to any more extensive statutory claims on our part.

(3) The supplier shall be obliged to take out and maintain product liability insurance with adequate coverage amounting to a minimum of 5 million euros for the goods for each case of physical injury or material damage. This is without prejudice to any more extensive statutory claims that we may have; a limitation of liability is not associated with this provision.

§ 8 Other Duties of the Supplier

(1) The supplier shall guarantee that he is in a position to supply us with the delivery items or parts thereof on reasonable terms for a period of 10 years after termination of the supply relationship.

(2) The supplier shall make sure that he is aware of all data and circumstances that are relevant for fulfilling his contractual duties and that he is also familiar with our intended use of his deliveries well in advance. He shall guarantee that his deliveries include all services necessary for a specified, secure and cost-effective application, that they are fit for the intended use and conform to the state of the art in science and technology.

(3) The supplier shall keep us informed about all official approvals and notification requirements necessary for the import and use of the delivery items.

(4) The supplier shall constantly monitor the quality of his deliveries and services. He is obliged to observe our quality assurance agreement for suppliers in the latest version. For this reason he shall set up and maintain a quality assurance system in compliance with ISO 9001:2000 or QS 9000 or another standard by agreement with us. Modifications to the delivery item require our prior written consent. The supplier shall document in writing, when, how and by whom the delivery of the defect-free delivery to us was ensured. These documents shall be stored at least 12 years and handed out to us on demand. Upstream suppliers shall be obliged correspondingly.

(5) This does not prejudice further duties of the supplier.

§ 9 Provision of extra Supplies

(1) Samples, models, tools, drawings and other documents surrendered to the supplier by us and/or bought by the supplier for us out of our funds shall be and/or remain our property. If they remain in the possession of the supplier a bailment (§ 930 BGB) shall hereby be agreed.

(2) Provided components or parts shall remain our property. These parts must only be used in connection with the order. The supplier processes components and assembles parts for us. If our materials and components are joined, mixed or processed with other objects which do not belong to us, we thereby become co-owner of the new item proportionate to the value of the provided materials and components in relation to the other processed items at the time of connection, mixing or processing. If our item is the main item, it is agreed that the supplier transfers co-ownership to us pro-rata. The supplier holds our sole or joint property in safe custody free of charge.

§ 10 Non-disclosure

(1) Insofar as the supplier becomes aware of any information in the course of the order process, especially of technical details, he shall commit himself to non-disclosure of these details.

(2) The conveyed knowledge and information shall only be used in connection with actual orders and therefore only conveyed to employees involved in the order process and equally obliged to non-disclosure. Third parties shall only be given information with our prior written consent. In this case any such third party must sign a corresponding non-disclosure agreement.

(3) The supplier shall commit himself to surrender all confidential documents, no matter whether these documents were handed out at the beginning of the cooperation or created as a consequence of processing our order. This obligation shall particularly apply after termination of the cooperation. In this case the supplier shall guarantee to surrender all confidential documents and not to keep any copies.

(4) A right of retention concerning confidential documents, irrespective of any legal reason, shall hereby be explicitly excluded.

§ 11 Written Form Clause

All changes and amendments to the contract require the written form in order to be effective. The contractual partners comply with this requirement by transmitting documents in text form, particularly by fax or e-mail, unless other requirements exist for individual declarations. The written form requirement set forth in this clause must be in writing.

§ 12 Applicable Law

The law of the Federal Republic of Germany shall apply, and the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

§ 13 Place of Performance, Legal Venue

(1) The place of performance for all obligations under this contract is our registered office at the time of the conclusion of the contract, unless otherwise expressly agreed in writing.

(2) The legal venue for all disputes arising from and in connection with this contract shall be Karlsruhe, insofar as the customer is a businessperson, a public law entity or a special fund under public law, or equal thereto, or if his main place of business or subsidiary is outside Germany. We are also entitled to take legal action at the customer's main place of business as well as any other valid place of jurisdiction.

§ 14 Salvatorian Clause

Should one of the provisions of these General Conditions of Purchase be or become invalid, or should these General Conditions of Purchase be incomplete, the validity of the other provisions is not prejudiced. The contractual partners shall substitute the invalid provision by a legally effective provision which comes closest to the meaning and purpose of the one which has become invalid. The same applies to loopholes in the contract.