General Terms of Delivery

Contracting parties in business, in particular with respect to our online shop, are exclusively natural or legal persons or an incorporated partnership that conduct legal transactions while carrying out their commercial or independent professional activity (merchant in the sense of § 14 BGB [German Civil Code]).

1. General Terms of Delivery

1.1. The following General Terms of Delivery apply exclusively for the legal relationship between MURRELEKTRONIK GmbH – herein after referred to as "Supplier" – and the Buyer in connection with the deliveries and/or performances of the Supplier (in the following: deliveries).
Conflicting or deviating conditions of the Buyer shall not apply and they are not binding for the Supplier, unless the Supplier has given written consent. Even if Supplier carries out orders although he was aware of such terms and conditions, this does not constitute acceptance of such deviating terms and conditions of the Buyer.
1.2. These General Terms of Delivery shall also apply on subsequent orders and for delivery of spare parts without requiring another express reference to it.
1.3. Subsidiary agreements and guarantees, as well as modifications and amendments of an agreement concluded in writing or by telex, shall be made in writing.
1.4. Should any provision in these General Terms of Delivery be invalid, this shall not affect the validity of all other provisions of this present contract. The parties undertake to replace such invalid clause by a valid clause which proves to be in economic terms as close as legally possible to the previous provision.

2. Offer and Order Confirmation

2.1. Offers are subject to change and shall only be mandatory if containing a period of acceptance. Orders shall require written confirmation from the Supplier for legal enforcement.
2.2. Drawings and other documentation pertaining to the offers shall be returned immediately upon request, if the order has not been conferred.
2.3. Offer and Order Confirmation in the Online Shop
With the presentation and advertisement of articles in the online shop of MURRELEKTRONIK GmbH, no binding offer is made regarding the sale of certain articles. When sending an order in the online shop by clicking the button "order now", the user/Buyer places a legally binding order. The Supplier will immediately confirm the receipt of the order placed in the online shop by email. This email does not yet represent a binding acceptance of the order, unless the acceptance is declared in addition to the receipt. A contract shall only be concluded, when the order is accepted by the Supplier, either by a declaration of acceptance or by delivering the ordered articles.

3. Scope of Deliveries and Services

3.1. The Supplier's written order confirmation is binding for the extent of the delivery, for purchases with the online shop in accordance with Section 2.3. In case there is no order confirmation, the Supplier's offer is applicable. Any and all oral agreements, side agreements or modifications with Supplier´s employees require written confirmation from the Supplier to be considered effective. The Supplier´s right to technically modify the article of sale is reserved, as long as such modifications do not affect its technical function.
3.2. The Supplier's descriptions of technical features and configurations in the catalog or the online shop are authoritative according to the current version of the order date for the technical and all other properties of the ordered and delivered goods. This shall not apply to special products aside from the regular delivery program, unless the technical specifications are accordingly specified in the order and confirmed in writing by the Supplier. Incidentally, specifications in brochures, online shop, catalogs or general technical documents shall only be binding if the Supplier has made reference to them in writing. If and insofar as an offer refers to weight, stated dimensions or similar specifications, (for example images and drawings, also in the online shop) they are not to be considered as one hundred percent precise within the framework of commercially accepted tolerances, unless explicitly declared as binding.
3.3. Provided software is part of the scope of services, the Buyer obtains a non-exclusive right to use the software on the basis of the manual. Provision of software is for use on the agreed hardware only. Using the software on more than one system is only permitted with written consent. The included software shall not be modified without the Supplier's written consent.
The stipulations listed under "Terms of use for internet page and internet downloads" are applicable regarding the software, documentation and other (product) information and are available to read or download on the Supplier's website for free.

4. Prices and Terms of Payment

4.1. Unless otherwise agreed the prices are stated in (€) Euros. They include ex works (EXW Incoterms 2010), excluding packing, transport, insurance, customs tax and unloading. Surcharges for raw materials, such as copper or alloy, are charged additionally. The amount for shipping costs, consisting of two components: packing charges and freight charges, are indicated in the price details of our online shop.
4.2. Value Added Tax (VAT) is not included in the prices; the legally prescribed rate on the date of invoicing shall be indicated separately in the invoice.
4.3. Discount deductions shall require special written agreement. Such agreements shall only become effective if the Buyer is not in arrears because of other deliveries.
4.4. The purchase price for deliveries and/or services ordered in the online shop is due according to the conditions stated in the online shop and shall be paid in accordance with the payment terms indicated there. The purchase price for deliveries and/or services not ordered in the online shop shall be due within 30 days from invoice date, unless stated differently in the order confirmation.
4.5. If the Buyer fails to observe the date of payment and is in delay without any further reminder, the Buyer shall pay 8 per cent above the basic interest rate of the European Central Bank (ECB) interest on arrears payments from the date of maturity according to § 247 BGB (German Civil Code). The right to compensation for further damages shall be reserved.
4.6. The Buyer shall be entitled to a lien or can set off only such claims which are undisputed or legally established.
4.7. The total outstanding claim becomes due if the Buyer does not pay their dues, becomes insolvent or a check or bill of exchange is not being honored or if the Supplier obtains information about an economic deterioration of the Buyer that may jeopardize the purchase price claim. If the total outstanding claim is not being paid, the Buyer loses the usage right regarding the object of delivery.
The Supplier is entitled either to cancel the contract or to take back the article of sale without renouncing his claim until full payment has been made. If the Buyer has caused the cancellation of the contract, Supplier is entitled to ask for compensation for the use of the article of sale as well as for any value depreciation and any lost profits. Any repossession of the article of sale comes at the expense of the Buyer.
4.8. If the Buyer`s lack of creditworthiness or another cause for a temporary or final jeopardy for the performance of duty of payment transpires after the conclusion of contract, the Supplier may suspend deliveries or other contractual performances, if simultaneously giving notice to the Buyer, and requiring payment in advance, bank guarantee or security deposit for providing an otherwise given adequate guarantee for further fulfillment of the contract.
4.9. In foreign business transactions, this right of suspension also applies in cases of currency fluctuations to the disadvantage of Supplier of at least 10 % with the relevant period being between the conclusion of the contract and first delivery; the parties commit to negotiate a solution.
4.10. The Buyer shall be entitled to retain payments for alleged defects only if the Supplier has acknowledged the defect as justified.

5. Deadlines of Deliveries or Services

5.1 The compliance to a deadline for Suppliers shall pre-suppose the prompt receipt of all documents provided by the Buyer, necessary authorizations and releases, especially of plans, as well as compliance to the agreed terms of payment and other commitments by the Buyer. If these requirements are not complied to within good time, the parties shall agree that such deadlines are extended in the corresponding extent. This does not apply, when the Supplier is responsible for the delay. The stated delivery times are subject to the condition that the Supplier's sub-suppliers deliver the basic products properly and in due time. If this is not the case, the Supplier reserves the right to change the delivery date. The delivery time will be extended by a reasonable period. If non-observance of the deadlines is caused by an act of God, for example mobilization, war, riot, natural catastrophes or similar events, for example strike or lockout, the delivery times will be extended by a reasonable period. Same applies, if such obstructions occur at sub-suppliers.
5.2. The deadline shall be considered as observed if the operative consignment has been forwarded for dispatch or picked up within the deadline. Provided the delivery is delayed for reasons caused by the Buyer, the parties agree that the notice of readiness for dispatch shall be considered sufficient.
Partial shipments shall be permissible as far as they are reasonable for the Buyer.
5.3. The Supplier shall be released from the obligation to deliver if they, on the one hand, have not been supplied by his pre-supplier in good time despite duly ordering or, on the other hand, if not supplied with the agreed quantities and qualities.
5.4. If the Buyer must substantiate the non-observance of the deadline, the Supplier shall be entitled to assert compensation for loss incurred by default for each full week by up to 0.5 % of the purchase price. The right to prove a higher damage, in particular higher storage costs, is reserved. The Supplier, however, is entitled to withdraw from the contract after a reasonable deadline or to otherwise dispose of the article of sale. Further claims of the Supplier because of default in acceptance remain unaffected.
5.5. If the Supplier must substantiate the non-observance of the deadline for more than one month, the Buyer shall be entitled to assert compensation for loss incurred by default for each full week, not to exceed 0.5 % of the respective value of goods, provided an actual loss has occurred to them. In any event, indemnity claims from the Buyer exceeding 5 % of the respective value of goods shall be excluded in all cases of delayed delivery.
5.5. The parties agree that the Buyer's right of rescission will remain unaffected after an ineffectual expiry of the grace period fixed by the Supplier. Such grace period shall be reasonable and last at least four weeks.

6. Passing of the Risk; Packaging

6.1. Provided the parties have not agreed otherwise, benefit and risk shall pass to the Buyer from the shipment of the goods ex works EXW according to 2010 Incoterms at the latest. Provided that Supplier has taken on the consignment of goods, manner and way of delivery is at his own discretion.
6.2. The time of acceptance or, if agreed accordingly, the setup time is applicable if the delivery includes installation or assembly. If acceptance is required, it is applicable for the passing of the risk. It has to be carried out immediately at the acceptance date, in the alternative after the Supplier reported readiness of acceptance. The Buyer shall not refuse acceptance in case of a minor defect.
6.3. Delivered objects have to be accepted – even in case of minor defects – by the Buyer, notwithstanding the rights according to § 9 (Period of Warranty).
6.4. Partial shipments are permitted.
6.5. In the event that the shipment of goods is delayed for reasons that need not be substantiated by the Supplier, the ex-works dispatch risk shall pass to the Buyer at the designated time.
6.6. All shipments will generally be made in the Supplier's standard packaging. The Supplier shall be entitled to choose special types of packaging deemed suitable at his own discretion. Any expenses incurred shall be borne by the Buyer.

7. Insurance

Delivery may be insured against breakage, transportation and fire damage at the request and cost of the Buyer. This shall also apply if the parties agree to freight paid delivery. Provided such insurance has been concluded, the Supplier shall be informed immediately of any transportation damage.

8. Warranty

8.1. If the products delivered by the Supplier prove to be defective because they are not of the agreed condition, or because they are not usable for the agreed or intended purpose and prove to be useless or substantially limited in their usefulness within 12 months after setup because of circumstances arisen before the passing of the risk, the Supplier shall either remedy the parts concerned, or deliver new parts at his own discretion. Asserting a warranty claim requires that the Buyer notify the Supplier of the defect immediately after receipt of the shipment in writing according to § 377 Code of German Commercial Law (HGB).
8.2. The Buyer shall grant the Supplier the required time and opportunity to correct or replace the defective product. In the event of denial, the Supplier shall be exempt from any liability for any defective goods delivered. The Buyer is only entitled to fix a defect themselves or through third parties and ask for reimbursement of reasonable and necessary expenses if there is an emergency due to imminent danger to the operational reliability or due to the prevention of disproportionately great damage. In such case, the Buyer has to inform the Supplier immediately.
8.3. If and insofar as a complaint proves justified and timely according Section 8.1., the Supplier bears the direct costs for repair or replacement. The costs of the replacement part will be borne by the Supplier, including domestic shipping or free-at-frontier, and including reasonable costs of removal and reassembly. If and insofar as reasonable under the circumstances, Buyer may also claim reimbursement for required provision of fitters and auxiliary personnel. Such costs are reimbursed to the extent that they are incurred domestically. All other costs are to be borne by the Buyer.
8.4. If there is only a minor defect, the Buyer may only claim a reduction of the purchase price. Otherwise, a reduction of the purchase price is excluded.
8.5.If the fix fails and the Buyer validly rescinds the contract, the Supplier takes back the article of sale in return for the purchase price, deducting a compensation for actual possible use.
8.6. The liability of the Supplier does not relate to natural wear and tear, nor to damage caused after the passing of benefits and risks by incorrect or negligent handling, by the use of the delivered objects or by the operation of installation arising from conditions that are not presumed in accordance with the agreement. Warranty claims shall not exist on damages caused by unsuitable or insufficient documentation, or calculations of the Buyer, or unsuitable or insufficient operating materials or mechanical, chemical, or electrochemical, electromagnetic or electrical influences that do not correspond to the intended use of the delivered object.
8.7. The Supplier shall not bear additional expenditure, particularly transportation, travel, labor and material costs, which arise from the fact that the article of sale has subsequently been taken to another place other than the Buyer's location or the original place of destination, unless such committal corresponds to its intended use and the Supplier informed the Buyer accordingly.
8.8. In any case the Buyer shall be committed to undertake any possible and reasonable measures to keep the efforts for the purpose of re-compliance as low as possible.
8.9. The Buyer shall be committed to return defective products to the Supplier or dispose according to the Supplier's choice, or to keep available for inspection and test.

9. Period of Warranty

The period of warranty shall be 12 months, unless compelled by law to be longer. Such period of time shall start from the date of passing of the risk. After discretion of Supplier, the defective product can be replaced after a warranty period within 12 months, latest 24 months, after passing of the risk provided that the defective product to exchange is not found heavily worn and the Buyer agrees to bear all transport costs to and from the plant.

10. Defects in Title

10.1. In the event that the use of the delivered article leads to a violation of individual intellectual and industrial property rights or copyrights within the country of the Buyer, the Supplier shall be committed to principally provide the Buyer with the possibility or the right of further application. Provided this cannot be realized under economically reasonable conditions, it is agreed that both the Buyer as well as the Supplier shall be entitled to withdraw from the agreement.
Moreover, the Supplier shall release the Buyer from undisputed or legally established claims from third party proprietors.
10.2. The obligations indicated in § 10.1. are only applicable, if
• The Buyer immediately informs the Supplier of the violations claimed,
• The Buyer supports the Supplier to a reasonable extent to defend the asserted claims
• The defect in title was not caused by an instruction given by the Buyer
• The violation of law was not caused because the Buyer changed the article of sale without being authorized or used it in a way other than in accordance with the contract.

11. Liability and Indemnity

In a case of an injury to life, limb or health or of an act of intent, Supplier is liable in accordance with the statutory law without limitation. The same applies to acts of gross negligence by the legal representatives and the executive staff and regarding liability under the German Product Liability Act (Produkthaftungsgesetz – ProdHaftG).
In the event of a breach of a so-called "cardinal obligation", which is a breach of contractual duties that are essential to the execution of the contract and on which the Buyer may reasonably rely, and in the event of defects which have either been fraudulently concealed or constitute a breach of a guarantee that such defect will not occur, the Supplier`s liability is limited to such damages insurable, foreseeable and typical for the contract. Supplier will assign any insurance claims to the Buyer regarding product liability or third-party liability, who will, in return, release the Supplier from any liability in the amount of such insurance cover.
Further claims of the Buyer for damages or reimbursement of expenses are excluded, in particular claims for consequential damages such as loss of production, loss of use, loss of profit.

12. Impossibility and Inability to Perform, Default of Delivery

12.1. Buyer is entitled to rescind the contract without prior notice, if the performance of the whole contract becomes impossible before passing of the risk. Buyer may also rescind the contract, if the execution of an order becomes partially impossible and if the Buyer has a legitimate interest to object to a partial delivery. Otherwise, the Buyer has to pay the contractual price reflecting the partial delivery. The same applies if the Supplier is unable to deliver. Any further liability is exclusively subject to Section 11.
If the Buyer is in default with accepting delivery when such situation of impossibility or inability of delivery arises, the Buyer`s payment obligation survives and continues in effect.
12.2. If the Supplier is late with the performance of the contract and the Buyer sets a reasonable deadline (unless such is not required under the law) and Supplier fails to meet this deadline, the Buyer may rescind the contract in accordance with the statutory law. Any further rights and claims for default are exclusively subject to Section 5 and 11.

13. Statute of Limitations

13.1. Warranty claims are statute-barred within 12 months from the date of passing of the risk, unless compelled by law to be longer.
This does not affect special legal provisions, for example for buildings (Sect. 438 para. 1 No. 2, Sect. 634 para.1 No. 2 of the German Civil Code (BGB)).
13.2. Regarding repair work or replacements, such claims are statute barred after 6 months, though not earlier than the original period according to the initial period of limitation.
13.3. Claims for damages of the Buyer are time-barred after 18 months from awareness of both the damage and responsibility.

14. Retention of Title (Extended Retention of Title)

14.1. The Supplier reserves his title for the purchased object until receiving all payments from the business relationship with the Buyer. A foreign Buyer is obliged to secure the retention of title to the best of his ability under local laws and to inform the Supplier about any required additional acts on Supplier`s behalf. In the event of contractual misconduct by the Buyer, particularly in the event of default of payment, the Supplier shall be entitled, after the appointment of an acceptable deadline, to take back the purchased object. The revocation of the purchased object shall not represent any withdrawal from the contract. Seizure of the purchased object by the Supplier shall always represent a withdrawal from the contract. After the revocation of the purchased object, the Supplier shall be entitled to equitable conversion and the proceeds shall be appropriated to the debts of the Buyer, including the deduction of reasonable expenses of equitable conversion.
14.2. The Buyer shall be committed to treat the purchased object carefully; in particular, he shall be committed to sufficiently insure their replacement value against fire, theft and damage caused by water at his own expense. In case maintenance and inspection work is necessary, the Buyer shall perform this in due time and at his own expense.
14.3. In the event of seizures or other interference by third parties, the Buyer shall immediately inform the Supplier in writing in order to enable the Supplier to institute legal proceedings pursuant to third party motion to vacate, claiming § 771 ZPO (German Code of Civil Procedure). Provided the third party is not in a position to reimburse the court fees and extra-judicial fees of a legal proceeding pursuant to § 771 ZPO, the Buyer shall be liable for the loss incurred by Supplier.
14.4. The Buyer shall be entitled to re-sell the purchased object in his ordinary course of business. However, with this action, he relinquishes all claims in the amount of the invoice, including VAT, that he receives from his purchaser or third parties by the re-sell, independent of whether the purchase object has been re-sold before or after processing. The claim assigned, in advance, by the Buyer to the Supplier shall also relate to the accepted balance and, in the event of insolvency of the purchaser, also the existing causative balance. The Buyer shall also be entitled to collect this claim even after the claim assignment. The ability of the Supplier to collect the claim by themselves shall remain unaffected. However, the Supplier shall be committed not to collect the claim as long as the Buyer complies with their liabilities from the proceeds collected, does not fall into arrears and, in particular, does not file an application for the institution of insolvency proceedings, or suspension of payments. In this case, the Supplier shall be entitled to request that the Buyer inform him of all the claims assigned to them and their debtors, provides all data necessary for the collection, delivers all documents pertaining thereto, and informs the debtor (third party) of the assignment of claim.
14.5. The processing or transformation of the purchased object by the Buyer shall always be undertaken on behalf of the Supplier. Provided that the purchased object will be processed with other objects not belonging to the Supplier, the Supplier shall gain common property of the new object in relation to the value of the purchased object (total sum of invoice, including VAT) to the other processed objects at the time of processing. The same shall apply for the processed object as for the purchased object delivered under reservation.
14.6. Provided that the purchased object will be mixed with other objects not belonging to the Supplier, the Supplier shall gain common property of the new object in relation to the value of the purchased object (total sum of invoice, including VAT) to the other processed objects at the time of mixing. If the mixing occurs in such a way that the object of the Buyer is deemed to be the main object, it is agreed that the Buyer transfers proportional common ownership. The Buyer shall secure the established exclusive ownership or common ownership for the Supplier. Incidentally, the same shall apply for the object established by the mixing as for the purchased object delivered under reservation.
14.7. To secure the claims, the Buyer shall also assign such claims to the Supplier which result to him by connection of the purchase object with a plot of land towards a third party. The settlements entered into in item 13.4 shall apply accordingly.
14.8. The Supplier shall be committed to release the securities due to the Buyer upon his request, inasmuch as the convertible value of his securities exceed the claims to be secured by more than 10 (ten) per cent; the choice of securities to be released shall be incumbent upon the Supplier.

15. Confidentiality, Industrial Property Rights

15.1. The Supplier reserves all property rights and copyrights and any other commercial property rights as well as his knowledge regarding all documents, drawings, plans, manuals, technical descriptions, costs estimates and other tangible, intangible or electronic information. Such documents shall not be copied, nor be used for any other than the contractual purposes, nor be made available to third parties (not even upon request), nor be published. The same applies to any manufacturing, research, and trade secrets of the Supplier the Buyer has access to or otherwise gains as knowledge.
15.2. The Buyer acknowledges all patent rights, copyright and other commercial property rights of the Supplier, also regarding any software provided, irrespective of whether such rights are governed by German or applicable foreign law. This protection also extends to any copies of any software provided. Sub-licensing to third parties is not permissible without written consent from the Supplier.
15.3. Any reproduction of any objects such as components or parts delivered by the Supplier is not permitted. Supplier will prosecute any violation. As far as permitted by law, not only claims for actual damages, but also punitive damages will be asserted.
15.4. So-called reverse engineering, i.e. the analysis of the structure and the function of the software provided by the Supplier is also not permitted. Section 15.3. shall apply accordingly.
15.5. These obligations only cease if and insofar as any such data can be shown and proven to have already been in the Buyer`s possession prior to Supplier`s transmission, or to which the Buyer was given access by a duly authorized third party independent from the present sales and delivery process, or where already made public, independent from the sales and delivery processes without the Buyer`s fault.

16. Social Responsibility and Code of Conduct

It is of the utmost importance for the Supplier that all business activities consider the social responsibility towards its employees and for the society. This applies for the Supplier themselves as well as for their customers, suppliers and business partners. It shall be the target of the Buyer and the Supplier to respect the policy of the UN Initiative Global Compact (Davos, 01/99).

17. Privacy

All data of the Buyer are principally treated confidentially. According to Sect. 33 German Federal Data Protection Act (BDSG), the Buyer is advised that the Supplier files the contract data in a machine-readable form solely in the scope of the purpose of contract.

18. Environment

During the performance of a contract, the Buyer and the Supplier shall use the required resources (in particular material, energy and water) effectively to minimize the environmental impact (in particular regarding waste, waste water, air and noise pollution). This also applies to the means for logistics and transport.

19. Place of Performance and Jurisdiction

19.1. The Supplier's headquarters is the place of performance for deliveries and for services.
19.2. All written communication to the Supplier, provided for in these General Terms of Delivery, shall be sent directly to the Supplier's headquarters in DE-71570 Oppenweiler, Germany.
19.3. For all disputes arising out of the contractual relationship between the parties, the place of jurisdiction is the court competent for DE-71570 Oppenweiler, Germany. The Supplier is also entitled to go to court at the Buyer's headquarters.

20. Applicable Law

German material law applies for legal relationships in connection with this agreement. **Date: January 2014 see www.murrelektronik.com.**