

General Terms and Conditions of Purchase of Murrelektronik GmbH

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General Terms and Conditions of Purchase

of Murrelektronik GmbH



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1. General - Scope

Our General Terms and Conditions of Purchase apply exclusively; we accept general terms and conditions of the supplier, which deviate from our General Terms and Conditions of Purchase, and conflicting general terms and conditions of the supplier only to the extent to which we did -in the individual case- expressly agree to them in writing. Taking delivery of goods or, respectively, acceptance of any performance of the supplier or making the payment for such goods or, respectively, performance of the supplier (hereinafter: Subject Matter of the Contract) does not constitute agreement to the deviating general terms and conditions of the supplier.

2. Conclusion of the Contract and Amendments to the Contract

- 2.1 Orders, deals and call-offs as well as any amendments and supplements thereto must be made in writing.
- 2.2 In order to be valid, verbal agreements of any kind -including subsequent amendments and supplements to our General Terms and Conditions of Purchase- require our written confirmation.
- 2.3 A facsimile or the data transmission by means of telecommunication also satisfy the written form requirement.
- 2.4 Cost estimates are binding and must not be remunerated unless something to the contrary has been expressly agreed.
- 2.5 In the event that the supplier does not accept the order within two weeks of the receipt of the order, we are entitled to cancel the order.
- 2.6 Call-offs within the scope of a framework purchasing agreement or of an order and call-off planning become binding, if the supplier does not object within two working days of the receipt.
- 2.7 The agreement with regard to quality, occupational safety, environmental protection and social responsibility, which applies to suppliers, the logistics handbook as well as the delivery and packaging regulations of Murrelektronik GmbH form part of the contract. We accept deviating or conflicting agreements of the supplier only to the extent to which we did -in the individual case- expressly agree to them in writing.

3. Delivery

- 3.1 The delivery time specified in the order is binding. Deviations from our deals and orders are permitted only after our prior written consent. In the event that the supplier makes any changes without our consent, we are entitled to rescind from the contract and to claim compensation for the damage resulting therefrom.

- 3.2 We retain the right of ownership and the copyright with respect to illustrations, drawings, calculations and other documents; access to them must not be provided to third parties without our express written consent. They must be utilised exclusively for the purpose of the production due to our order; after the execution of the order, they must be returned to us without a request. They must be kept confidential vis-à-vis third parties.
- 3.3 Agreed dates and time limits are binding. With regard to the observance of the delivery date or of the time for delivery, the receipt by us of the goods is relevant. In the event that delivery “to the factory free of charge” (DAP or DDP pursuant to Incoterms 2010) is not agreed, the supplier is obliged to provide the goods in due time taking into account the time for loading and shipping, which has to be coordinated with the forwarder.
- 3.4 In the event that the supplier did take on the task of the installation or of the assembly, then the supplier bears -subject to deviating agreements- all incidental expenses necessary, such as, for example, travel expenses, provision of the tool as well as per diem allowances.
- 3.5 In the event that agreed dates are not observed, the statutory provisions apply. In the event that the supplier foresees difficulties with regard to the production, to the supply with raw materials and semi-finished materials, to the observance of the delivery date or to similar circumstances, which might prevent the supplier from delivering in due time or from delivering the agreed quality, the supplier is obliged to notify our department, which placed the order, or the purchasing department immediately.
- 3.6 The acceptance without reservation of the late delivery or late performance does not constitute a waiver of the claims for compensation, which we are entitled to due to the late delivery or late performance; this applies until the complete payment of the money consideration owed by us with respect to the respective delivery or performance has been made.
- 3.7 As a general rule, part deliveries are not permitted unless we did expressly agree to them or unless it can reasonably be expected from us to accept these part deliveries.
- 3.8 Subject to other proof, the values determined by us in the course of the incoming goods inspection are relevant with regard to the number of pieces, weights and measurements.
- 3.9 We are entitled to utilise software, which is included in the product delivery, including its documentation, to the extent permitted by law (§§ 69a et seqq. German Copyright Act (*Urheberrechtsgesetz (UrhG)*)).
- 3.10 We are also entitled to utilise such software, including the documentation, with the agreed capability characteristics and to the extent necessary for a utilisation of the product in conformity with the contract. We are entitled to make a backup copy even without an express agreement.

4. Dispatch Note and Invoice

- 4.1 The specifications in our orders and call-offs apply. The invoice, in a single copy, must be addressed to the address printed respectively on our orders and call-offs stating the invoice number and other identifying information; the invoice must not be enclosed with the shipments.
- 4.2 The supplier is obliged to state our order number in an exact manner on all shipping documents and delivery notes; in the event that the supplier fails to do so, delays in the processing are unavoidable, which we are not liable for.

5. Terms of Payment

Provided that no special agreement has been made, invoices are paid either within 14 days -less a 3 % cash discount- or within 30 days -without any deduction- from the due date of the claim for the money consideration and the receipt of the invoice and the receipt of the goods or, respectively, the complete rendering of the performance. The payment is made subject to the invoice verification.

6. Pricing and Passing of the Risk

Provided that no special agreement has been made, the prices are understood to include delivered at place (DAP pursuant to Incoterms 2010) including packaging. The prices do not include VAT. The supplier bears the risk of accidental loss and accidental deterioration (*Sachgefahr*) until we or our authorised representative take/s delivery of the goods at the place, to which the goods are to be delivered as per order.

7. Claims based on Defects and Recourse

- 7.1 Taking delivery of goods and acceptance of any performance takes place subject to an inspection for freedom from defects, in particular also for correctness and completeness, to the extent to which and as soon as this inspection is appropriate in the ordinary course of business. We will give notice of defects immediately after their discovery. In this regard, the supplier waives the defence of a late notification of defects.
- 7.2 Except as otherwise provided below, the statutory provisions with regard to defects in quality and defects in title (*Sach- und Rechtsmaengel*) apply.
- 7.3 As a general rule, we are entitled to choose the type of subsequent performance (*Nacherfuellung*). The supplier is entitled to refuse to accept the type of subsequent performance chosen by us, if this type of subsequent performance is possible only at disproportionate expense.

- 7.4 In the event that the supplier does not start to remedy the defect immediately after our request for remedying the defect, we are entitled -in cases of urgency, in particular in order to ward off imminent danger or to prevent greater damage- to remedy the defect ourselves at the expense of the supplier or to have a third party remedy the defect at the expense of the supplier.
- 7.5 In case of defects in title, the supplier also indemnifies us against possibly existing claims of third parties, unless the supplier is not responsible for the defect in title.
- 7.6 Claims based on defects (*Maengelsprüche*) become statute-barred -except in cases of fraudulent non-disclosure of a defect- after 3 years, unless the thing has been utilised -in accordance with its usual utilisation- for a building, structure or construction (*Bauwerk*) and did cause the defectiveness of that building, structure or construction. Apart from that, longer statutory limitation periods remain unaffected by this. The limitation period commences at the time of the delivery of the Subject Matter of the Contract (passing of the risk).
- 7.7 In the event that the supplier fulfils its obligation to render subsequent performance by means of a replacement delivery, the limitation period for the goods delivered as replacement commences anew after their delivery, unless the supplier did render the subsequent performance with the express and correct proviso that the replacement delivery is made only on an *ex gratia* basis, in order to prevent any disputes or in the interest of the continued existence of the delivery relationship.
- 7.8 In the event that we incur costs due to the defective delivery of the Subject Matter of the Contract, in particular transport, travel, labour, installation, removal costs, costs of materials or costs of a receiving inspection, which exceeds the usual scope, then the supplier is obliged to bear these costs.
- 7.9 The supplier is responsible for ensuring that in connection with the supplier's delivery no rights of third parties are infringed in the country of the place of delivery. Provided that we notify the supplier of the fact that the item to be delivered is intended for other or further countries of destination, the liability for defects in title does also apply with regard to these countries.

8. Force Majeure

- 8.1 Force majeure, interruptions of operations caused through no fault of Murrelektronik, unrest, measures of public authorities and other unavoidable events release us for the duration of their existence from the obligation to take delivery of goods and accept any performance in due time. During such events as well as within two weeks after their end, we are entitled -without prejudice to our other rights- to rescind the contract, in whole or in part, provided that these events are not of an insignificant duration and that there is a substantial decline in our demand due to the necessity to obtain goods and/or performance from other suppliers because of these events.
- 8.2 The provisions in Section 8.1 apply also in case of industrial action.

9. Product Liability

- 9.1 In the event that we are held liable based on product liability, the supplier is obliged to indemnify us against such claims, if and to the extent to which the damage was caused by a fault in the Subject Matter of the Contract delivered by the supplier. In cases of liability that depends on the existence of fault, however, this does apply only if the supplier is at fault. Provided that the cause of damage falls within the sphere of responsibility of the supplier, the supplier must prove that the supplier is not at fault.
- 9.2 In the cases of Section 9.1, the supplier bears all costs and expenses, including any legal costs. Apart from that, the statutory provisions apply.
- 9.3 Prior to a recall campaign, which is the result, in whole or in part, of a defect in the Subject Matter of the Contract delivered by the supplier, we will notify the supplier, give the supplier the opportunity to participate and discuss an efficient implementation with the supplier, unless the notification or participation of the supplier is not possible due to special urgency. To the extent to which the recall campaign is the result of a defect in the Subject Matter of the Contract delivered by the supplier, the supplier bears the costs of the recall campaign.

10. Rights of Rescission and Termination

- 10.1 In addition to the statutory rights of rescission, we are entitled to rescind from the contract or to terminate the contract with immediate effect, if
- the supplier stopped to supply its customers,
 - a substantial deterioration of the financial circumstances of the supplier occurs or threatens to occur and if, as a result, the fulfilment of a delivery obligation vis-à-vis us is at risk,
 - the supplier is unable to meet the supplier's obligations to pay when due (*zahlungsunfaehig*) or if the supplier's existing liabilities exceed the assets of the supplier (*ueberschuldet*) or
 - the supplier suspends its payments.
- 10.2 We are also entitled to rescind or terminate the contract, if the supplier applies -with regard to the assets of the supplier- for the opening of insolvency proceedings or of comparable proceedings for the settlement of debts.
- 10.3 In the event that the supplier did perform only in part, we are entitled to rescind the entire contract only if we have no interest in the part performance.
- 10.4 In the event that we rescind or terminate the contract due to the aforementioned contractual rights of rescission or, respectively, termination, the supplier is obliged to compensate us for the damage resulting therefrom, unless the supplier is not responsible for the coming into existence of the rights of rescission or, respectively, termination.

10.5 Statutory rights and claims are not restricted by the provisions contained in this Section 10.

11. Carrying out of Tasks

Persons, who -as part of the performance of the contract- carry out tasks on the plant premises, are obliged to observe the provisions of the respective internal work regulations (*Betriebsordnung*). The liability for accidents, which these persons have on the plant premises, is excluded to the extent to which these accidents have not been caused by an intentional or grossly negligent breach of duties by our statutory representatives or vicarious agents.

12. Provision of Materials etc

Materials, parts, containers and special packaging provided by us remain our property. They must be utilised only in accordance with the intended purpose. The processing of materials and the assembly of parts are conducted on our behalf. It is understood that - in accordance with the proportion of the value of the materials, parts, containers and special packaging provided by us to the value of the product as a whole- we are co-owners of the products manufactured utilising our materials and parts, with -in this regard- these products being held in custody by the supplier on behalf of us.

13. Documents and Confidentiality, Intellectual Property Rights

- 13.1 All business or technical information made available by us must be kept confidential vis-à-vis third parties as long as and to the extent to which this information is not verifiably publicly known and as long as and to the extent to which this information is not verifiably publicly known this information must be made available in the own business of the supplier to such persons only, who necessarily have to be involved in the utilisation of this information for the purpose of the delivery to us and who are also obliged to maintain secrecy. This information remains our exclusive property. Without our prior written consent, such information must -except for the purpose of deliveries to us- not be reproduced and not be utilised for commercial purposes. At our request, all information originating from us and all items provided by us by way of gratuitous loan (*leihweise*) must be returned to us or be destroyed immediately and completely. We reserve all rights to such information (including copyrights and the right to file applications for industrial property rights, such as patents, utility models (*Gebrauchsmuster*), protection of topographies of semiconductor products etc.). To the extent to which this information has been made available to us by third parties, this reservation of rights does apply also for the benefit of these third parties.
- 13.2 Products, which are produced pursuant to documents prepared by us, such as drawings, models and the like, or pursuant to our confidential information or with our tools or with replicated tools, must neither be utilised by the supplier itself nor be offered or delivered to third parties by the supplier.

14. Export Controls and Customs

The supplier is obliged to notify us in the transaction-related documents of the supplier about any obligations to obtain authorisation with regard to (re-)exports of goods of the supplier pursuant to German and European export and customs regulations as well as pursuant to export and customs regulations of the country of origin of the goods of the supplier. For this purpose, the supplier is obliged to state at least the following information in its offers, acknowledgements of orders and invoices under the respective item of goods:

- the export list number pursuant to Annex AL (Annex Export List) to the German Foreign Trade and Payments Ordinance (*Aussenwirtschaftsverordnung*) or comparable list positions of applicable export lists, - for US goods the ECCN (Export Control Classification Number) pursuant to the US Export Administration Regulations (EAR),
- the origin -in terms of trade policy- of the goods of the supplier and of the components of the goods of the supplier, including technology and software,
- whether the goods have been transported through the USA, have been produced or stored in the USA, or have been produced using US technology,
- the statistical commodity code (HS Code) of the goods of the supplier, as well as
- a contact person in the business of the supplier for the purpose of answering any questions we might have.

At our request, the supplier is obliged to inform us in writing about all further foreign trade data with regard to the goods of the supplier and their components as well as to inform us immediately in writing (prior to the delivery of respective goods, which are affected by such changes) about any changes of the aforementioned data.

15. Code of Conduct

- 15.1 It is of paramount importance to Murrelektronik that entrepreneurial activities take into account the social responsibility vis-à-vis the own employees and the society in general. This applies both to Murrelektronik itself and also to its customers and suppliers. In this regard, the Code of Conduct of Murrelektronik applies. In addition, it must be the aim of Murrelektronik and of the supplier to observe the guidelines of the UN Initiative Global Compact (Davos, 1999-01).
- 15.2 The supplier ensures that all persons, who are entrusted with the performance of this contract, observe the statutory provisions with regard to data protection. In the event that it is necessary, pursuant to data protection law, to obligate these persons to maintain data confidentiality, this obligation must take place prior to them taking up their activities for the first time and Murrelektronik must be provided with proof of this obligation on request.

- 15.3 During the execution of a delivery contract, the supplier is obliged to utilise the necessary resources (in particular materials, energy and water) effectively and to minimise the environmental impact (in particular with regard to waste, waste water, air and noise pollution). This also applies to the extent of any logistics/transport activities.
- 15.4 On request, the supplier is obliged to provide that information to Murrelektronik immediately, which is necessary for Murrelektronik to carry out the evaluation of the resource efficiency of the supplier with regard to the total annual order volume with Murrelektronik (e.g. total energy expenditure; CO2 emissions; total water consumption; amount of process waste water; amount of waste; VOC emissions).
- 15.5 In the event that a supplier engages in unlawful conduct repeatedly and/or despite a respective notice and does not prove that the breach of the law has been cured as far as possible and that reasonable precautions to prevent breaches of the law in the future have been taken, we reserve the right to rescind existing contracts or to terminate existing contracts without notice.

16. Place of Performance

Place of performance is that place, to which the goods are to be delivered as per order or, respectively, at which the performance has to be rendered as per order.

17. Governing Law, Place of Jurisdiction

German law, excluding the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG), applies to this contract and all orders based thereon. Place of jurisdiction with regard to all disputes in connection with this contract is Stuttgart, Germany. Murrelektronik is entitled to bring an action also at the location of the supplier.

18. Severability, Requirement of Written Form

- 18.1 In the event that individual provisions of this contract are or become invalid or impracticable, this does not affect the validity of the other provisions of this contract. In this event, the contracting parties will replace the invalid or impracticable provision with a valid and practicable provision, which in terms of its economic and legal content comes as close as possible to the invalid or impracticable provision.
- 18.2 In order to be valid, amendments and/or supplements to this contract must be made in writing. This also applies to this requirement of written form.