

# General Terms and Conditions of Sale and Delivery

Translation of the "AGB" of Memphis Electronic GmbH, in case of doubt the German version shall prevail

11 February 2022

## 1. General information

- 1.1 These General Terms and Conditions of Sale and Delivery ("**GTC**") shall apply to all deliveries and sales by Memphis Electronic GmbH ("**Seller**") of goods and services of Seller to Buyer.
- 1.2 The Seller shall not recognize any supplementary or conflicting terms and conditions of the Buyer or any terms and conditions of the Buyer that deviate from these General Terms and Conditions of Sale and Delivery, unless the Seller has expressly agreed to their applicability. This shall also apply if the Seller unconditionally dispatches deliveries in the knowledge that the Buyer's terms and conditions conflict with or deviate from these General Terms and Conditions of Sale and Delivery. The GTC shall also apply to all future contracts with the contractual partner.
- 1.3 All agreements as well as any subsequent, supplementary or deviating additional agreements between the Seller and the Buyer must be in writing to be effective. This shall also apply to the cancellation of this written form requirement.
- 1.4 These GTC apply to businesses (Unternehmer) within the meaning of § 14 of the German Civil Code (**BGB**).

## 2. Offers, conclusion of contract

- 2.1 Offers of the Seller are always subject to change and non-binding. If an order is to be regarded as an offer pursuant to § 145 BGB, the Seller may accept it within two weeks. A contract is concluded with the written order confirmation or execution of the delivery by the Seller.
- 2.2 Orders, conclusion of contracts and delivery schedules as well as any amendments or supplements thereto must be made in writing; verbal agreements with employees shall only be binding upon written confirmation by the Seller.

- 2.3 Advertising brochures and catalogues are not binding.
- 2.4 The Seller shall be entitled to continuously develop the products; deviations of the delivered product compared to the ordered product shall be permissible as far as they are reasonable for the Buyer. This applies in particular to product succession types.
- 2.5 Insofar as these GTC or the contract refer to a written form requirement, text form within the meaning of § 126b BGB (German Civil Code), e.g. e-mail, shall be sufficient to comply with the written form requirement.

### **3. Prices, terms of payment, costs**

- 3.1 Unless otherwise agreed in writing, the prices shall be exclusive of statutory VAT, delivery and transport costs, customs duties, packaging costs and other fees and charges and the Buyer shall bear these additional costs. If the Seller undertakes the shipment, the conditions agreed in the order shall apply in each case on the basis of INCOTERMS 2020.
- 3.2 All claims of the Seller are due for payment immediately and without deduction. The Seller reserves the right to carry out deliveries in individual cases against cash on delivery or advance payment. The Seller is entitled to assign his claims against the Buyer to a third party.
- 3.3 If the Buyer is in default of payment, the Seller shall be entitled, without prejudice to any further claims, to claim default interest in the amount of annually (8) percentage points above the base interest rate. In the event of default in payment, the Seller shall also be entitled to a lump sum for damages caused by default in the amount of EUR 40.00. The Seller reserves the right to prove higher damages.
- 3.4 The Seller shall be entitled to set off payments of the Customer first against the Customer's oldest debt. If costs and interest have already been incurred, the Seller shall be entitled to set off the payment first against the costs, then against the interest and finally against the principal claim.
- 3.5 The Seller may suspend delivery to the Buyer at any time, even after order confirmation, or make it dependent on the provision of a bank guarantee as soon as there are doubts about the Buyer's ability to pay. To secure all claims

against the Buyer, the Seller may at any time request a bank guarantee from a major European bank or other security measures.

- 3.6 All claims of the Seller against the Buyer arising from the business relationship shall become due immediately as soon as the Buyer is in default with a not only minor amount, an application for insolvency is filed against its assets or if it submits a declaration in lieu of an oath pursuant to § 807 ZPO (German Code of Civil Procedure).
- 3.7 The cases mentioned in section 3.6 of these GTC entitle the Seller to make outstanding deliveries dependent on advance payments or securities. If this is not provided even after expiry of a reasonable grace period, the Seller may withdraw from the contract.
- 3.8 The Buyer shall bear all fees, costs and expenses incurred in connection with any legally successful legal action against him outside Germany.

#### **4. Delivery, transfer of risk**

- 4.1 Deliveries and transfer of risk shall be made in accordance with INCOTERMS 2020.
- 4.2 The delivery dates stated by the Seller are non-binding. All performance obligations of the Seller are in particular subject to the timely and correct self-delivery. The Seller reserves the right to make partial deliveries to a reasonable extent.
- 4.3 The promise of a binding delivery date requires a separate written agreement.

#### **5. Retention of title**

- 5.1 Until the Seller's claims for payment against the Buyer arising from the business relationship have been satisfied in full, the Seller shall retain title to the goods delivered ("**Retained Goods**"). In the event of payment by check or bill of exchange, the retention of title shall not expire until any liability for the Seller under the check or bill of exchange has expired. In the case of a current account, the retained title to the goods shall serve as security for the balance claim of the Seller.

- 5.2 The Buyer may only resell the Retained Goods in the ordinary course of business. The Buyer shall not be entitled to dispose of the Retained Goods in any other way, in particular by pledging them or assigning them as security.
- 5.3 The Buyer shall have the right to further process Retained Goods. This further processing shall be carried out free of charge and exclusively for the Seller as manufacturer within the meaning of § 950 BGB (German Civil Code), without obligating the Seller. The processed goods shall also be deemed to be Retained Goods.
- 5.4 In the event of processing, combination or mixing with goods which are not the property of the Seller, the Seller shall acquire co-ownership of the new items. The extent of this co-ownership shall be determined by the ratio of the invoice value of the Retained Goods to the invoice value of the other goods. If the Seller's ownership expires as a result of combining or mixing, the Buyer shall transfer to the Seller the ownership rights to the new item to which he is entitled to an extent corresponding to the invoice value of the Retained Goods and shall hold them in safe custody for the Seller free of charge. The co-ownership rights shall be deemed Retained Goods.
- 5.5 The Buyer hereby assigns to the Seller the claim arising from a resale of the Retained Goods. If the Retained Goods are sold by the Buyer together with other goods not delivered by the Seller, the assignment of the claim from the resale shall only apply to the amount of the resale value of the Retained Goods. In the event of resale of goods in which the Seller has co-ownership rights, the assignment of the claim shall apply in the amount of the resale value of these co-ownership rights.
- 5.6 The Buyer is authorized to collect the claims assigned to the Seller from the resale of the Retained Goods.
- 5.7 The Seller's authorization vis-à-vis the Buyer to sell the Retained Goods and to collect the receivables shall expire in case of non-compliance with the terms of payment, in case of unauthorized dispositions and in case insolvency proceedings are filed against the Buyer. In this case the Seller is entitled to take possession of the Retained Goods immediately.
- 5.8 In the event that the Seller takes back the Retained Goods, it shall be entitled to sell them on the open market or have them auctioned. The Seller reserves the right to further claims for damages, in particular loss of profit.

- 5.9 The Seller undertakes to release the excess securities to which it is entitled at the Buyer's request insofar as the realizable value of the securities exceeds the claims to be secured by more than 20% in total.
- 5.10 The Buyer shall insure the Retained Goods at its own expense against damage by fire, breakage, water and theft.
- 5.11 The Buyer shall immediately notify the Seller of any seizure of the Retained Goods or other interventions by third parties.

## **6. Set-off and right of retention**

- 6.1 The Buyer may set off only those claims which are undisputed or have been finally determined by a court of law. Counterclaims of the Buyer arising from the same contractual relationship shall be excluded from this offsetting prohibition.
- 6.2 The Buyer shall only have a right of retention due to its own counterclaims if these are based on the same contractual relationship as the Seller's payment claims.

## **7. Warranty, notice of defects**

- 7.1 The delivered goods shall be inspected carefully immediately after delivery to the Buyer or to the third party designated by the Buyer. They shall be deemed to have been approved if the Seller has not received a written notice of defects with regard to obvious defects or other defects which were recognizable during an immediate, careful inspection immediately after delivery of the goods. This does not apply if the defect was not recognizable during an inspection. If a defect becomes apparent at a later date, the Buyer must report this immediately after discovery, otherwise the goods with the defect shall be deemed to have been approved. Something else applies if the Seller has fraudulently concealed the defect.
- 7.2 In the event that the notice of defect has been given in due time and is well-founded, the Buyer's claim shall be limited to supplementary performance, whereby the Seller may, at its option, deliver defect-free goods as a replacement or remedy the defect. The Buyer expressly reserves the right to

reduce the purchase price or to withdraw from the contract at his discretion in the event of failure of the subsequent performance. Excluded from any warranty are wearing parts, as well as damage resulting from natural wear and tear, improper installation, use or operation, or repair work or maintenance activities or modifications not expressly authorized by the Seller.

- 7.3 Claims for defects shall become time-barred 12 months after the transfer of risk of the goods delivered by the Seller to the Buyer. The statutory limitation period shall apply to claims for damages based on an intentional or grossly negligent breach of duty by the Seller. Insofar as the law otherwise prescribes longer periods, these periods shall apply. The Seller's consent must be obtained prior to any return of the goods.
- 7.4 The Buyer shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labour, and material, to the extent that expenses are increased because the goods delivered by the Seller have subsequently been brought to another location than the originally delivered location, unless such transfer is in accordance with their intended use.
- 7.5 Any claim for reimbursement of expenses pursuant to § 439 para. 3 sentence 1 BGB is excluded.
- 7.6 Warranty claims are not assignable and can only be asserted by the Buyer.
- 7.7 The Buyer's right of recourse against the Seller shall only exist insofar as (i) the Buyer has not entered into any agreements with its customer exceeding the statutory mandatory claims for defects, (ii) the cause of the damage falls within the Seller's area of responsibility and insofar this cause of damage is attributable to the Seller and (iii) the Buyer has kept the goods in a saleable condition. Furthermore, Clauses 7.1 to 7.6 of these GTC shall apply mutatis mutandis to the scope of the Buyer's right of recourse against the Seller.

## **8. Liability, claims for damages**

- 8.1 The Seller's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and unlawful acts, shall be

limited in accordance with this Clause 8, insofar as fault is relevant in each case.

- 8.2 The Seller shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, unless this involves a breach of material contractual obligations. Material contractual obligations are the obligation to deliver the delivery item free of material defects in due time as well as advisory, protective and custodial obligations which are intended to enable the Buyer to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the Buyer's personnel or to protect the Buyer's property from significant damage.
- 8.3 Insofar as the Seller is liable on the merits for damages pursuant to Section 8.2, this liability shall be limited to damages which the Seller foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which the Seller should have foreseen by exercising due care. Indirect damage and consequential damage resulting from defects in the delivery item shall only be compensable insofar as such damage is typically to be expected when the delivery item is used as intended.
- 8.4 Insofar as the Seller provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by the Seller, this shall be done free of charge and to the exclusion of any liability.
- 8.5 Liability claims against the Seller shall become time-barred after twelve (12) months.
- 8.6 The Seller's liability for damages caused by delay shall be limited to 10% of the net price for the deliveries and services affected by the delay. In addition, the liability shall be limited to the amount of the damage typically occurring and foreseeable at the time of conclusion of the contract.
- 8.7 The limitations shall not apply to the Seller's liability for intentional conduct, for guaranteed characteristics, a guarantee, for injury to life, limb or health or under the Product Liability Act or any other mandatory liability of the Seller under the law. In the event of mandatory liability for reimbursement of necessary expenses, liability shall be limited to the value of the defective goods concerned.

## **9. Force Majeure**

- 9.1 The contracting parties shall not be liable in cases of force majeure. Force majeure shall be all circumstances independent of the will and influence of the contracting parties which occur after conclusion of the contract and which prevent the contracting parties in whole or in part from fulfilling their obligations, in particular mobilization, blockades, war and other military conflicts, terrorist attacks, riots, environmental disasters, fire damage, breakdown of plant and machinery, interruption of operations due to shortage of raw materials or energy, labour disputes, strikes, lockouts, riots, governmental or official measures, traffic disruptions, confiscation, embargo, disruptions due to a pandemic and other unforeseeable, unavoidable and serious events.
- 9.2 Insofar as the Seller is prevented from fulfilling contractual obligations due to force majeure, this shall not be deemed a breach of duty. In this case, any deadlines set shall be extended in accordance with the duration of the impediment.
- 9.3 In cases of force majeure, the contracting parties shall be obliged to provide the other contracting party with the necessary information without delay and to adjust their obligations to the changed circumstances in good faith or to keep the effects for the other contracting party as low as reasonably possible. If the Seller is prevented from delivering for more than two months due to force majeure, both contracting parties shall be entitled to withdraw from the contract with regard to the quantity affected by the disruption in delivery, to the exclusion of any mutual claims for damages.

## **10. Export regulations, compliance**

- 10.1 Goods offered for sale by Seller may be subject to legal restrictions regarding their export, import or re-import ("**Export Regulations**"). The Buyer undertakes to comply with the Export Regulations applicable to it from time to time, to apply



for the relevant permits, if necessary, and to provide evidence thereof to the Seller upon request. The Buyer shall indemnify the Seller against all claims in the event of a violation of the Export Regulations.

- 10.2 The Buyer represents and warrants that it is familiar with and will comply unconditionally with any anti-corruption regulations applicable to it, such as the U.S. Foreign Corrupt Practices Act (FCPA), the UK Bribery Act, and any other EU or national regulations.
- 10.3 To the extent applicable, Buyer shall be solely responsible for compliance with the (i) Waste Electrical and Electronic Equipment Directive (WEEE Directive, 2012/19/EU); (ii) Packaging Materials Directive (94/62/EC); and (iii) Battery Directive (2006/66/EC), as amended from time to time and as may be implemented in state law.

## **11. Documents, confidentiality**

- 11.1 The Seller reserves all property rights, copyrights and other industrial property rights to all illustrations, plans, drawings, calculations, samples, specifications on types, dimensions and standards, execution instructions, product descriptions and other documents ("**Documents**") made available to the Buyer. Seller's Documents are to be used exclusively for the preparation of a quotation and/or for the acceptance and use of an order.
- 11.2 Documents provided to the Buyer in connection with the Seller's offer as well as information in brochures shall only become binding upon express written agreement.
- 11.3 The Buyer is obliged to keep confidential all documents, materials, information and knowledge provided to him for the preparation of an offer or the processing of an order - in particular about the type and design of products manufactured by the Seller and the goods to be delivered as well as their respective price, about internal processes at the Seller and about the Seller's other business and trade secrets - whether in tangible, intangible or digital form ("**Know-how**"), even if these have not been expressly designated as secret or confidential, and to use them exclusively for the purpose of preparing the offer or processing the order. The obligation to maintain confidentiality shall also include the fact of the respective order and shall continue to apply for an unlimited period of time even

after the order has been executed. The obligation to maintain confidentiality shall also apply to the Buyer's employees.

- 11.4 At the Seller's request, all Know-how originating from the Seller (including copies or recordings made, if applicable) and items provided on loan shall be returned immediately and in full or irretrievably destroyed upon request. Excluded from this - apart from Know-how with regard to which there is a statutory obligation to retain records - is Know-how whose destruction or return is not technically possible, e.g. because it was stored in a backup file on the basis of an automated electronic backup system for securing electronic data.

## **12. Data protection**

The contracting parties undertake to process personal data received from the other contracting party and/or its affiliates in accordance with the applicable laws on the processing of personal data. This also includes compliance with the applicable requirements for any transfer of the personal data to recipients (such as service providers) within and outside the European Union for accounting, financing and/or contract management purposes.

## **13. Use of products**

- 13.1 The Buyer shall comply with the technical product specifications or requirements of the Seller. The products are not approved for use in safety-critical applications, life-support systems, human implants, nuclear power plants or other applications where danger to life, personal injury or serious damage to property is to be expected in the event of a malfunction.
- 13.2 If Buyer uses or sells the Products for use in such systems or applications, or fails to comply with Seller's product specifications and requirements, Buyer acknowledges and agrees that it bears the full risk and liability of such use, sale and the consequences of such failure to comply.
- 13.3 The Buyer shall indemnify the Seller against all claims resulting from (i) the Seller's compliance with the design, specifications or other instructions of the Buyer; (ii) modifications of the Product by third parties; (iii) the use of the Product in combination with or in disregard of this clause. Buyer's design,

specifications or other instructions; (ii) modifications of the Product by third parties; (iii) use of the Product in combination with other products or in disregard of this clause; (iv) the use of Products in a manner not authorized as set forth above; or (v) the use of Products and related technologies in connection with chemical, biological or nuclear weapons, missile systems (including ballistic missile systems, launch vehicles and reconnaissance missiles), unmanned aerial vehicles capable of delivering such weapons or for the development of any weapons of mass destruction, to defend, indemnify and hold harmless against claims of third parties.

#### **14. Final provisions**

- 14.1 These GTC and the entire legal relationship between the parties shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG). The place of performance and jurisdiction shall be the Seller's place of business, unless otherwise stated in the order confirmation or the contract.
- 14.2 Should individual provisions of this contract be invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, the validity of the rest of the contract shall remain unaffected. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effects come as close as possible to the economic objective pursued by the contracting parties with the invalid or unenforceable provision. The above provisions shall apply mutatis mutandis in the event that the contract proves to be incomplete.
- 14.3 These General Terms and Conditions of Sale and Delivery are made available for retrieval in German and English. In the event of any contradictions, the German version shall prevail.