

Lüberg-Elektronik GmbH + Co. Rothfischer KG

General Terms and Conditions of Purchase

Version as of November 2005

§ 1

General and Scope

1. Our Terms and Conditions of Purchase apply exclusively; we do not recognize Supplier's Terms and Conditions contrary to or deviating from our Terms and Conditions unless we have given written approval to their application. Our general purchasing terms and conditions apply also if we accept supplier's delivery without any reservations even if we are aware of conflicting or deviating supplier's terms and conditions.
2. Our Terms and Conditions of Purchase apply exclusively vis-à-vis Companies.
3. All agreements made between us and the Supplier for the purpose of performance of this contract shall be recorded in writing in this Agreement.
4. Our Terms and Conditions of Purchase apply to all future transactions with the Supplier even if not again expressly incorporated.

§ 2

Tender and Tender Documentation

1. The Supplier shall adhere strictly to the invitation to quote in the tender in respect of quantity and quality; variations shall be expressly indicated. Tenders and any samples provided shall be free of charge. Tender prices shall be stated carriage paid, packaged, duty paid and insured. They shall also include assembly and installation, operating briefing, instruction manuals and circuit diagrams.
2. The Supplier undertakes to accept our order within 14 days unless other binding delivery dates are agreed in the individual case. Our information regarding quantity, grade, delivery date and other conditions are binding on the Supplier. Price increases occurring following acceptance of a tender are for us invalid.
3. We reserve title to illustrations, drawings and other supporting documentation; they may not be made accessible to third parties without our express permission. They shall be used exclusively for manufacture on the basis of our order. Confidentiality shall be maintained in respect of them vis-à-vis third parties; in that regard the provision contained in § 9 Paragraph 4 applies.

§ 3

Price and Terms and Conditions of Payment

1. The price shown in the order is binding. In the absence of any written agreement to the contrary the price includes carriage paid delivery including packaging.
2. The statutory rate of VAT is included in the price; it must be shown separately.
3. We can only process invoices if the latter - in accordance with the instructions in our orders - indicate the order number shown therein. For all consequences resulting from failure to adhere to this obligation the Supplier shall be responsible unless he can demonstrate that he is not responsible for the circumstances.
4. We shall pay, in the absence of agreement to the contrary, the purchase price within 30 days calculated from delivery date and receipt of invoice with 3% rebate or within 60 days from date of receipt of invoice.
5. We are entitled to rights of offset and retention to the degree provided by statute.

§ 4

Delivery Period

1. The delivery time indicated in the order is binding.
2. The Supplier undertakes to inform us immediately in writing if circumstances intervene or become known to him the outcome of which is that the conditioned delivery time cannot be observed.
3. In the event of delivery arrears we are entitled to require lump-sum arrears damages of 2.0% of the value of the goods per completed week; we may however claim a maximum lump sum of 10%. In this event the Supplier has the right to demonstrate to us that no loss or a significantly lesser loss has been incurred. Further statutory or contractual claims (in particular damages for breach of obligation) remain reserved.

§ 5

Transfer of Risk, Documentation and Shipment

1. Goods shall be delivered carriage paid to our Weiden factory or to any reception location notified by us in the absence of express stipulation to the contrary. Transportation risk and insurance of the consignment are at the cost of the Supplier. Should deliveries be at the administrative office at 20 Marienstrasse, Nürnberg we are entitled to deduct the transportation costs from the Nürnberg administration office to the manufacturing site in Weiden from the invoiced sum as follows:

per package up to 5 kg:	EUR 15.50
per package over 5 kg:	EUR 50.00
per pallet:	EUR 295.00

plus a lump-sum processing charge of EUR 20.00

In the case of urgent deliveries we are additionally entitled to deduct the costs of employing a courier service from the invoiced amount.

2. The Supplier undertakes to accurately indicate our order number on all consignment paperwork and delivery notes; should he fail to do so delays in processing are not our responsibility.

§ 6

Inspection for Defect and Guarantee

1. Any defect notification obligation on our part such as defined in § 377 HGB¹ is excluded. We undertake to carry out a minimum inspection on the basis of the delivery note and to check for transport damage.
2. The Supplier undertakes to carry out a final goods check and shall conclude a quality assurance agreement with us.
3. We are entitled to all statutory defect liability rights to their fullest extent. We are in particular entitled in the event of defect to require defect rectification or supply of a fault-free item at our discretion; the costs necessary thereto shall be borne in full by the Supplier. In addition we are entitled to file statutory damage compensation claims unabridged and without restriction.
4. Statutory defect liability and statutes of limitation terms apply without restriction.

§ 7

Product Liability Indemnification and Liability Insurance Protection

1. If the Supplier is responsible for any product damage he undertakes to indemnify us from third party claims on first demand as the cause lies in his area of authority and organisation and he is himself liable in the external relationship.
2. In the context of his liability for instances of damages the Supplier further undertakes to refund any expenses resulting from or in connection with any recall action if the claim does not arise from §§ 830 and 840 BGB² in conjunction with §§ 426 and 254 BGB.
3. If we are otherwise claimed against as consequence of a defect in the item supplied by the Supplier we are fully entitled to a recourse claim against the Supplier under the terms of § 478 BGB; any exception thereto only exists if we have been conceded equal value compensation in respect of the recourse claim.
4. The Supplier undertakes to maintain product liability insurance cover of EUR 5 million per instance of personal injury/material damage - lump sum; if we are entitled to further damages claims these shall remain unaffected.

¹ German Commercial Code

² German Civil Code

§ 8
Industrial Property Rights

1. The Supplier shall vouch that no third party rights within the Federal republic of Germany are infringed in connection with his supply of goods.
2. Should we therefore be claimed against by any third party the supplier undertakes to indemnify us from the said claims on first demand; we are not entitled to reach any agreements with the third party, in particular not to conclude any settlement without the consent of the Supplier.
3. The Supplier's indemnification obligation relates to all expenditure necessarily accruing to us as a result of or in connection with the said third party claim.

§ 9
Reservation of Title, Provision, Tooling and Confidentiality

1. If we provide parts to the Supplier we reserve title thereto. Processing or modification by the Supplier is undertaken on our behalf. If our reserved title goods are processed with other items not belonging to us, we acquire joint title to the new item in the ratio of the value of our item (purchase price plus VAT) to the other items processed at the point of processing.
2. Should the item provided by us be inseparably amalgamated with other items not belonging to us we shall acquire joint title to the new item in the ratio of the value of our item (purchase price plus VAT) to the other items processed at the point of amalgamation. Should amalgamation be in such a manner that the Supplier's item is regarded as the main item it is hereby agreed that the Supplier shall transfer joint title to us pro rata; the Supplier shall maintain sole title or joint title in safekeeping on our behalf.
3. We reserve our title to tools; the supplier undertakes to use the tools exclusively for manufacture of the goods ordered by us. The Supplier undertakes to insure tools belonging to us at new value at his own cost against fire and water damage and theft. Simultaneously the Supplier hereby assigns to us all damages claims arising from the said insurance and we hereby accept assignment accordingly. The Supplier undertakes to carry out any necessary servicing and inspection work on our tools including all servicing and maintenance work at his own expense and in a timely manner. Any instances of malfunction shall be notified to us immediately; should he culpably fail to do so any damages claims remain unaffected.
4. The Supplier undertakes to maintain strict confidentiality in respect of all received illustrations, drawing, calculations and other supporting documentation and information. They may only be disclosed to third parties with our express permission. This duty of confidentiality also applies following expiry of this Agreement; it expires when and if manufacturing know-how contained in the illustrations, drawing, calculations and other supporting documentation is generally in the public domain.
5. If the security rights due to us under Paragraph 1 and/or Paragraph 2 exceed the purchase price of all our as yet unpaid-for reserve goods by more than 20% at the Supplier's request we undertake to release the security rights as we chose.

§ 10 Spare Parts

In the case of technical supplies the Supplier undertakes to supply spare parts for the normal working life at normal market prices and conditions. The minimum supply period for spare parts shall be 5 years.

§ 11 Packaging

Packaging must meet our specifications in addition to general environmental protection conditions and health and safety provisions. Should the Supplier deviate from this all resultant damages shall be at his own expense. The Supplier undertakes to take back packaging at our request. Cost of return shipment of packaging shall be charged to the Supplier.

§ 12 Successive and Partial Deliveries

We are not obliged to accept partial deliveries deviating from the order.

Should any individual delivery in a series of successive deliveries display considerable defects which cannot be remedied by the Supplier in the short term or if any such defects lead to an especially high risk on our part or if in the case of the individual delivery any significant delay occurs on the part of the Supplier we are entitled to withdraw from the contract either wholly or in part and to demand damages for non-performance.

§ 13 Place of Performance, Legal Venue and Jurisdiction

1. Place of performance for our obligations (in particular our payment) is Nürnberg.
2. Legal venue for all legal action is Nürnberg; we are also entitled to file an action at the resident place of business of the Supplier.
3. Legal relations between the parties are subject to German law. Application of UN sales law (CISG) is expressly excluded.