

**Richardson Electronics GmbH, Division Canvys™, Donaueschingen**  
**Standard Terms of Delivery & Payment**

Revised: November 2008

**1. General, Scope of Application**

- 1.1 Unless otherwise agreed in writing in any specific case, solely the following Standard Terms of Delivery & Payment (Standard Terms) apply to all present and future goods and services supplied by Canvys™, Donaueschingen (referred to hereinafter as “deliveries”). We shall only be bound by diverging terms laid down by our customer insofar as we consent to them in writing.
- 1.2 Our Standard Terms only apply vis-à-vis entrepreneurs, public corporations and government agencies managing public assets.
- 1.3 The products we market are meant to remain inside the European Union. The customer is responsible for obtaining its own information on export regulations. The re-exporting of goods is subject to laws on foreign trade in force in Germany or the country of origin.

**2. Quotation, Acceptance**

- 2.1 Our quotations are without obligation. A contract comes into being through a written confirmation of the order or by delivery. Supplements and amendments to an agreement must be confirmed by us in writing in order to become effective.
- 2.2 The particulars we provide on conclusion of the contract, such as e.g. pictures, drawings, performance data, and weights and measures, are only approximate values unless expressly termed binding. To a reasonable extent, such particulars are subject to technical alteration, errors and misprints.
- 2.3 We shall retain title and copyright to all the documents and data relating to our quotation, such as e.g. drawings, plans, catalogues, estimates, calculations and samples. Without our permission these documents and data may not be made accessible to third parties neither in the original nor in any other form, and they must be returned to us on request.
- 2.4 The product names and logos used in our printed materials are brands or registered trade marks belonging to the respective manufacturer.
- 2.5 The contract is concluded subject to our receiving correct and punctual deliveries from our own suppliers. This only applies in the event that we have concluded an identical contract to cover the transaction and non-delivery is beyond our control.
- 2.6 The minimum volume for orders is EUR 200 plus statutory turnover tax. We reserve the right to charge the customer EUR 40 plus statutory turnover tax by way of a surcharge for small quantities, if an order falls short of the minimum value of EUR 200.
- 2.7 If a customer places a wrong order and we agree to take back the goods, we reserve the right to charge a lump sum of EUR 75 plus statutory turnover tax for checking and han-

ding. A credit note shall not be issued to the customer until the device has been sent back to us in the original packaging and we have had an opportunity to check it.

### **3. Prices, Payment**

- 3.1 Our prices are net prices from the relevant warehouse, excluding turnover tax, freight costs, packaging and insurance.
- 3.2 If delivery periods exceed 2 months, we are entitled to increase or reduce the agreed prices accordingly, in the event that subsequent to conclusion of the contract any substantial currency fluctuations or major changes occur affecting freight charges, wage costs, or the cost of materials, energy or raw materials, provided such changes are beyond our control. Any one price increase shall not exceed 10%.
- 3.3 As a matter of principle, our invoices are issued and payable in Euros (EUR or €); we reserve the right to also issue invoices in US Dollars. Our invoices are issued after we have rendered our due performance. Payments must be made in full and free of charges to our paying agent within 14 days of the date of invoice. The customer shall default in payment on expiry of this deadline. Payments shall only be deemed effected to the extent that we may freely dispose over them in our bank account.
- 3.4 We expressly reserve the right to handle any order solely in return for advance payment or cash on delivery, at our option. If after concluding the contract we gain knowledge of any change in our customer's credit rating, or if our terms of payment are not complied with, then we shall be entitled to demand provision of security or concurrent cash payment for performance. If the customer is unable to provide security within a reasonable period, we may withdraw from that part of the delivery contract which has not yet been performed. Such period may be dispensed with if the customer is obviously unable to provide security, for instance if a petition has been filed for the institution of insolvency proceedings against the customer's assets.
- 3.5 We only accept acceptances by prior agreement. Remittances, cheques or bills of exchange will only be accepted on account of performance. All bank charges must be paid by the customer and fall due immediately.
- 3.6 In the event of default in payment, we shall charge interest as from the due date at a rate of 8 percentage points above the base rate, or at least 10%.
- 3.7 The customer shall only be entitled to setoff or to exercise right of retention to the extent that its counterclaim are legally binding or acknowledged by us.

### **4. Delivery, Delivery Period, Force Majeure**

- 4.1 The delivery date or period (both referred to hereinafter as "delivery period") shall only be binding if expressly so termed.

- 4.2 The delivery period commences when we send our confirmation of the order, but not before all the details regarding the discharge of the order and all the technical issues have been clarified, and not before all the documents, permits and releases having to be obtained by the customer have been provided, and not before we have received any advance or provision of security that has been agreed.
- 4.3 We effect deliveries EXW our delivery warehouse (Incoterms 2000). The delivery period shall be deemed met if the goods are ready for dispatch by the end of the period.
- 4.4 Any change requests by the customer shall extend the delivery period until we and/or the manufacturer have checked their viability, and by the time needed for the new specifications to be implemented in production. If a change request means interrupting an ongoing production process, then other orders may be brought forward or completed first. We and/or the manufacturer are under no obligation to keep production capacity available during the delay.
- 4.5 In the event of late delivery, our liability shall be limited in cases of slight negligence to 0.5% of the net invoiced amount of the delayed goods for every full week of delay and a maximum of 5% of this amount. Claims to compensation in lieu of performance pursuant to Item 9 below shall remain unaffected.
- 4.6 If dispatch is delayed as a result of circumstances beyond our control, and if the goods are put into storage at our works, then we shall charge at least 0.5% per month of the invoiced amount for the goods put into storage.
- 4.7 Unforeseen and unavoidable incidents beyond our control (e.g. *force majeure*, strikes or lockouts, operational breakdowns, difficulties in obtaining materials or energy supplies, transport delays, shortages of labour, energy or raw materials, government measures, or difficulties obtaining permits, in particular import or export licenses) shall extend the delivery period by the duration of the hindrance and its impact. This also applies if any such circumstances occur affecting our own suppliers or during a delay already prevailing.
- 4.8 If the hindrance is not only of a temporary nature, then both contractual partners shall be entitled to withdraw from the contract. Compensation claims are excluded in the cases specified in Item 4.7.
- 4.9 Partial deliveries and partial services are admissible to a reasonable extent. They may be invoiced immediately.
- 4.10 Dispatch shall be done at our own discretion – but without any guarantee for the cheapest form of shipment – from our respective warehouse.

## **5. Passing of Risk, Acceptance of Delivery**

- 5.1 The risk of the goods' accidental destruction or accidental deterioration shall pass to the customer in accordance with EXW our delivery warehouse (Incoterms 2000), even if we

have assumed other services as well, e.g. consignment costs, or delivery and assembly by our own transport staff.

## **6. Packaging**

6.1 We shall determine the type of packaging at our own conscientious discretion.

## **7. Reservation of Title**

7.1 We reserve title to the goods delivered until all payments from the business relationship with the customer have been received and all and any cheques and bills of exchange accepted in the business relationship with the customer have been irrevocably credited to our account. If a current account has been set up, then our reservation of title shall extend to the acknowledged balance.

7.2 The customer is under obligation to treat the reserved goods carefully and to keep them in good repair; in particular, the customer is under obligation at its own expense to adequately insure them at replacement value against loss and damage. The insurance policy and proof that the premiums have been paid must be submitted to us on request. The customer here and now assigns to us any claims based on the insurance contract. As soon as title passes to the customer, this assignment shall lapse.

7.3 Any handling or processing of the reserved goods by the customer shall be done on our behalf at all times, without obliging us in any way. If they are mixed or combined with other goods, we shall acquire co-ownership in the new goods to the extent of the invoiced value of the reserved goods in proportion to the other materials.

7.4 The customer is entitled to re-sell the reserved goods in the ordinary course of business, but it here and now assigns to us in advance the entire receivables accruing to it on re-selling or continuing to use the goods.

7.5 The customer is entitled to collect the receivables assigned to us, provided it performs its payment obligations to us.

7.6 If the customer ceases honouring its payment obligations, we may revoke authority to process the goods and demand that the customer disclose to us the assigned receivables and the respective debtors, provide all the particulars required for collecting the receivables, hand over the relevant documents, and notify its debtors about this assignment. If we take back reserved goods, this shall not be deemed withdrawal from the contract. If we declare withdrawal, then we shall be entitled to realize the goods on the open market.

7.7 We must be notified without delay about any third-party interference with our reserved goods. Any costs incurred for warding off interference shall be assumed by the customer insofar as they cannot be recovered from the third party.

7.8 If the value of the collateral exceeds our receivables by more than 10%, then to this extent we shall release items of collateral of our own choosing at the customer's request.

## **8. Liability for Defective Deliveries**

- 8.1 Defects must be reported to us in writing without delay, and at the latest within 8 days of receipt of the goods, or in the case of hidden defects at the latest within 3 days of their discovery. If these deadlines are exceeded, then for these defects all claims and rights based on liability for defects shall lapse.
- 8.2 We shall assume responsibility for defective goods first of all by making a subsequent repair or substitute delivery, at our option. If a substitute delivery likewise has defects, or if subsequent repairs fail or are refused or delayed without just cause, then after a reasonable period of grace has expired to no avail the customer may demand a reduction in the price or – in the case of not insubstantial defects – the withdrawal from the contract, and demand compensation in lieu of performance in accordance with Item 9. A period of grace of less than 21 days after receipt of the returned goods shall be deemed unreasonably short. If we do subsequent repairs, we shall be entitled to make three attempts at improvement before the customer may claim that subsequent repairs have failed. On principle, delivery of an article free of defects (substitute delivery) shall only be done in return for simultaneous surrender of the defective article.
- 8.3 Any costs incurred for supplementary-performance, in particular travel and transport costs, shall not be at our expense if the goods have been taken to some place other than the contractual delivery location. Whenever items are sent back to us, the customer must choose the cheapest form of transport.
- 8.4 If the customer asserts its claims to substitute delivery or withdrawal from the contract, and if it has already put the defective article to use, then we shall be entitled to claim compensation equivalent to the value of the benefits accruing to the customer.
- 8.5 Infringements of third-party rights shall only be deemed a defect if the protective rights apply in Germany.
- 8.6 Claims for defects do not exist in the following cases:
- natural wear and tear, and any damage, errors, reduced output or changes in the condition or function of our products that are due to external factors (e.g. blows, knocks, vibrations, water, fire), or due to improper storage, handling, assembly or any other improper use, or due to extreme climatic conditions, or to particular reception or operating conditions at the location where the item is used;
  - defects due to constructional errors or material defects, insofar as the customer has prescribed the construction or the material;
  - burn-in on the LCD panel caused by permanent display and spots forming on the LCD panel.

- 8.7 With each delivery of new goods, the customer receives an RMA form and separate "Information on Claims". The customer should send defective goods in the original packaging to the service address specified, along with the filled-in RMA form. If it emerges on checking the returned goods that the defect described by the customer cannot be remedied within the framework of our responsibility for defects, then we shall submit a quotation for repair costs, whereby as a rule we can offer flat-rate charges depending on the size of the device. For certain product groups expressly specified in our quotation, a 48-hour local service is provided throughout the period during which we assume responsibility for defects, in the context of which service the device will be collected from the customer's premises at our expense. If the defect specified on the RMA form cannot be found, or if there is no defect (in particular in cases covered by Item 8.6), we reserve the right to charge the inspection costs to the customer, applying our flat-rate charges for inspection depending on the size of the device.
- 8.8 The agreed quality characteristics of the goods shall exclusively be the binding product specifications provided by us or by the manufacturer. Public statements, sales talk or advertising by the manufacturer on the other hand shall not constitute contractual specifications of the goods' quality.
- 8.9 We do not give the customer any guarantees. Manufacturers' guarantees remain unaffected.
- 8.10 The period of limitation is 12 months as from the date of passing of risk, unless we are liable for physical injury, or breach our duties due to intent or gross negligence, or conceal a defect with fraudulent intent, or unless we have assumed an additional extra guarantee or some longer period of limitation is laid down by law.
- 8.11 If the period of limitation commences anew on our rendering supplementary-performance, the period of limitation shall be 12 months as from the date on which the substitute delivery or the repaired item is received. If a substitute delivery is made, the renewed period of limitation shall apply with regard to all and any defects in the new item; if repairs are done, it shall only apply to defects that have been reported but not remedied, and to any new defects caused during repairs.

## **9. General Liability**

- 9.1 Claims for damages of whatsoever nature are excluded if we, our statutory representatives or vicarious agents are responsible for the damage due to slight negligence. This exclusion of liability does not apply in cases of bodily harm, or if we have assumed a contractual guarantee, or if we have breached an important contractual obligation in a way that endangers the fulfillment of the contract. At the same time however, our liability is limited to the scope of the guarantee or – in the event of a negligent breach of an impor-

tant contractual obligation – to foreseeable and customary damages. Claims based on product liability law remain unaffected.

- 9.2 Claims for damages become statute-barred one year after the customer gained knowledge of the damage and our liability for compensation, or should have gained such knowledge without gross negligence. Claims under product liability law, claims based on bodily harm and claims arising from liability for defects remain unaffected.
- 9.3 A customer who is at the same time our distribution partner undertakes to advertise the goods in an appropriate manner only. Our distribution partner is aware that advertising characteristics inaccurately may lead to claims based on liability for defects, and it undertakes to release and discharge us from the consequences of any such advertising and to compensate us for any losses sustained by us due to a violation of this obligation.

#### **10. Choice of Law, Place of Performance, Venue, Customer Data**

- 10.1 German law shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods from 11th April 1980 (CISG).
- 10.2 Place of performance for deliveries made in the context of our business relationship shall be the location of our registered place of business.
- 10.3 **Venue for all and any disputes arising in connection with our business relationship shall be at the location of our registered place of business.** However, we shall also be entitled to bring action before courts of law having jurisdiction at the customer's registered place of business.
- 10.4 Within the scope of statutory regulations, we are entitled to store and process customer data received during our business relationship.