

General Conditions of Delivery and Payment
Richardson Electronics GmbH, Division Canvys, Donaueschingen
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1. Generally / Scope of application

- 1.1 The following General Conditions of Delivery and Payment apply exclusively to all present and future deliveries and services of Canvys, Donaueschingen (hereinafter referred to simply as deliveries) to the customers as stated in sub-section 1.2, unless agreed otherwise in writing in an individual case. The terms of business of the customer shall not become part of a contract, including if we do not expressly reject them.
- 1.2 Our General Conditions of Delivery and Payment only apply to businesses within the meaning of s. 14 BGB [*German Civil Code*], legal entities under public law and special assets under public law.
- 1.3 The products sold by us are intended to remain within the European Union. It is for the customer himself to obtain information concerning export regulations. Re-export is subject to the foreign trade and payments provisions of the Federal Republic of Germany or the country of origin.

2. Quotation / Acceptance

- 2.1 Our quotations are non-binding. The customer is bound by his order for the duration of 14 days from receipt at our premises, unless otherwise stated in the order. Contracts only come into force on our written confirmation of order or on delivery.
- 2.2 Verbal ancillary arrangements or promises made by our employees which are in addition to the content of the written contract or which alter these General Conditions of Delivery and Payment to our disadvantage, require our written confirmation for their effectiveness.
- 2.3 The specifications used by us on conclusion of contract, such as for example, illustrations, drawings, weights, dimensions and power, are only approximate values unless they a) are expressly designated as being binding, or b) are fundamental.
- 2.4 Normal, minor, technically unavoidable variations in quality, colour, dimensions or weight are not faults, in the absence of agreements to the contrary.
- 2.5 We reserve the right to make technical modifications and accept no liability for misconceptions and printing errors, to the extent acceptable for the customer.
- 2.6 Ownership and copyright in all documentation accompanying our quotation, as for example, drawings, plans, catalogues, cost estimates, calculations and samples, are retained by us. This documentation may not be made accessible to third parties without our approval, neither in original nor in another form and is to be returned to us on request.

- 2.7 The product names and logos used in our printed material are brands or registered trademarks of the particular manufacturer.
- 2.8 Contracts are concluded subject to the reservation that we obtain correct deliveries in good time from our own suppliers. This applies only in the case where we enter into an identical covering transaction and we are not responsible for the non-delivery.
- 2.9 The minimum value of an order is EUR 200.00 plus statutory value-added tax. We reserve the right to charge the customer an extra EUR 40.00 plus statutory value-added tax for a small-volume purchase if the minimum value of an order is less than EUR 200.00.
- 2.10 We reserve the right to charge an all-inclusive sum of EUR 75.00 plus statutory value-added tax for examination and processing, if the customer shall have made a mistake with his order and we are prepared to take the goods back. The credit shall only be granted to the customer after the device is returned to us in the original packaging and examined by us.

3. Prices and payment

- 3.1 Our prices are Ex-Works distribution centre (Incoterms 2010®), excluding value-added tax, carriage, packaging and insurance.
- 3.2 We may appropriately increase or reduce the agreed prices for delivery periods in excess of 2 months to the extent that substantial currency fluctuations or substantial changes in the costs of wages, materials, energy or raw materials or freight costs shall occur after conclusion of contract for which we shall not be responsible. An increase in price shall not exceed 10 %.
- 3.3 Our invoices are in principle issued and payable in euros (EUR or €); we reserve the right to invoice in US dollars. Our invoices are issued after completion of the services incumbent upon us. Payments are to be made to our payment office within 14 days from invoice date in the full amount, free of deductions. The customer shall be in default on expiry of this period. Payments shall only be deemed to have been made if they are freely available to us at our bank.
- 3.4 We expressly reserve the right at our discretion to fulfil an order only on payment in advance or by way of cash on delivery. We may demand the deposit of security or cash payment simultaneously on delivery, in the event of changes in the creditworthiness of the customer which shall become known to us after conclusion of contract, or if the payment conditions shall not be observed. We may cancel the unfulfilled part of the supply contract if the customer shall not be able to provide security within a reasonable period. The period may be dispensed with if the customer shall not appear to be in a position to provide security, for example, if insolvency proceedings shall have been instituted against the assets of the customer.

- 3.5 We accept bills of acceptance only on prior agreement. Money orders, cheques or bills of exchange are only accepted as conditional payment. The customer shall bear bank charges. They are immediately due for payment.
- 3.6 We charge interest on arrears of payment from the due date in the amount of 8 percentage points above base lending rate, but at least 10 %.
- 3.7 The customer shall only be entitled to set-off and enforcement of a right of retention to the extent that his claims shall be judicially determined or accepted by us.

4. Delivery, delivery period, force majeure

- 4.1 The delivery date or the delivery period (both called "delivery period" in the following) is only binding if it is expressly designated as such.
- 4.2 The delivery period commences on dispatch of the confirmation of order, but not however before clarification of all details of processing the order and technical questions, as well as delivery of documentation, approvals and the releases to be provided by the customer as well as not before receipt of an agreed payment on account or security for payment.
- 4.3 We supply Ex-Works distribution centre (Incoterms 2010®), The delivery period is observed when the goods are made ready for dispatch by the end of the delivery period.
- 4.4 Special requests made by the customer increase the delivery period until we and / or the manufacturers have tested their feasibility and by the period which is necessary to implement the new production schedules. Other orders may receive priority and be completed if current production is interrupted as a result of the special requests. We and / or the manufacturers are not under a duty to keep production capacities free during the period of delay.
- 4.5 Our liability in the case of slight negligence in the event of delay in delivery shall be limited to 0.5% per complete week of the delay, but with a maximum of 5% of the net invoice amount of the consignment affected by the delay. A claim to damages instead of performance pursuant to sub-section 9 hereto shall not be thereby affected.
- 4.6 We shall charge monthly at least 0.5% of the invoice amount of the stored consignment for storage at our premises, if dispatch shall be delayed on account of circumstances for which we shall not be responsible.
- 4.7 Events which are unforeseeable, unavoidable and for which we are not responsible (e.g. *force majeure*, strikes, or lock-outs, breakdowns, difficulties with supplies of materials or energy, transport delays, labour energy or raw material shortages, measures taken by official bodies as well as difficulties in obtaining licences, more particularly import or export licences), shall extend the delivery period by the duration of the interruption and its effects. This shall also apply if such circumstances shall occur with our sub-suppliers or during an existing delay.

- 4.8 Both contracting parties may cancel the contract if this hindrance shall not be of a temporary nature. Claims for damages for cases specified in sub-section 4.7 above are excluded.
- 4.9 Deliveries of goods and services in instalments are permissible to a reasonable extent. They may be charged for immediately.
- 4.10 Forwarding from our corresponding warehouse is carried out at our discretion, but without liability for not selecting the most reasonably priced transport.

5. Passing of risk

The risk of accidental loss or accidental deterioration of the goods passes to the customer in accordance with Ex-Works distribution centre (Incoterms 2010®), including if we shall have undertaken other items, e.g. costs of transportation or delivery and installation by our own transport personnel.

6. Packaging

We determine the type of packaging, according to the best of our judgement.

7. Reservation of ownership

- 7.1 We reserve ownership in the goods delivered until receipt of all payments and irrevocable credit entry for cheques and bills of exchange accepted, arising from the business relationship with the customer. The reservation of ownership extends to the accepted balance if a current account relationship shall exist.
- 7.2 The customer is under a duty to treat the goods subject to the reservation with care and keep them in good order. More particularly, he is under a duty to insure them adequately at his own expense at replacement value against loss and damage. The insurance policy as well as proof of payment of premiums shall be produced to us on request. Here and now he assigns to us claims arising under the insurance contract. The assignment shall lapse on ownership passing to the customer.
- 7.3 Adaptation and application of the goods subject to the reservation of ownership by the customer shall always be carried out on our behalf, without us incurring any liability. In the event of mingling or connecting with other goods, we acquire joint ownership in the new goods in the proportion that the invoice value of the goods subject to the reservation bears to that of the other materials.
- 7.4 The customer may re-sell the goods subject to the reservation of ownership in the normal course of business; he does however here and now assign to us in advance all debts to the full amount which arise from the re-sale or re-use.

- 7.5 The customer may collect the assigned debts provided that he fulfils his duties of payment from the proceeds received.
- 7.6 We may revoke authorisation for the subsequent manufacturing operation if the customer shall cease to fulfil his duties of payment, and demand that the customer notifies us of the assigned debts and their debtors, provides all necessary details for collection, delivers the associated documentation, and gives notice of the assignment to the debtors. Cancellation of contract shall not take place if goods subject to a reservation of ownership are taken back. We may make a sale by private treaty if we do cancel the contract.
- 7.7 Seizure of the goods subject to a reservation of ownership by third parties shall be notified to us without delay. The customer bears the costs arising from defence to a seizure unless they may be recovered from the third party.
- 7.8 If the value of securities shall exceed our claims by more than 10%, we shall at the request of the customer and at our discretion insofar release our security.

8. Liability for defects in the delivery

- 8.1 Patent defects of quality are to be notified to us in writing without delay, but at the latest within 8 days following receipt of the goods, and latent defects 8 days from discovery at the latest. All claims and rights arising from liability for these faults lapse if these periods are exceeded.
- 8.2 We initially fulfil our guaranty in the event of justified complaint, at our discretion, by subsequent improvement or a replacement delivery. The customer may demand a reduction in the payment due, or (in the event of material defect) cancellation of the contract, following unavailing expiry of a reasonable period of notice, if the subsequent performance shall be of no effect. The customer shall in addition have the right to demand compensation instead of the performance, according to the terms of sub-section 9 hereafter, if the subsequent performance shall be of no effect. A period of notice shorter than 21 days from receipt of the returned goods will be deemed to be unreasonably short. In the event of subsequent improvement, we may make up to three attempts before the customer may invoke failure of the subsequent improvement. Delivery of an item free of defects (replacement delivery) shall in principle take place simultaneously with return of the defective item.
- 8.3 The costs arising for subsequent performance, more particularly transportation costs, shall not be borne by us if the goods shall have been taken to a location other than the contractual place of delivery. The customer shall select the most reasonably priced form of transport for every consignment returned to us.

- 8.4 We may claim indemnification for the use made by the customer if the customer shall assert claims to replacement delivery or cancellation of contract and the defective item shall have already been put into use.
- 8.5 Breach of rights of third parties shall only constitute a defect if such industrial property rights exist in the Federal Republic of Germany.
- 8.6 Claims arising from a defect shall not subsist for:
- normal wear and tear as well as damage, breakdowns, insufficient operation and changes in the condition or operating method of our products which are traceable to external influence (e.g. impact, shock, vibration, water, fire), improper storage, treatment or installation, or other improper use, exceptional climatic conditions, particular reception conditions or operating conditions at the place of use;
 - defects due to faults in design and materials to the extent that the customer shall have specified the design or the material;
 - burn-in on the LCD panel which has been caused by long-term display as well as for specking on the LCD panel.
- 8.7 The customer receives an "Instructions in case of damage" form with every new delivery of goods. The customer should enter the defective goods at the Internet platform "TekLink" (<http://www.canvys.de/support/teklink/>) and send them in the original packaging to the service address stated. We shall submit a quotation for repair costs, whereby in the normal case we can offer an all-inclusive charge depending on the size of the device, if it should appear after examination of the returned goods that the defect described by the customer is not repairable within the scope of guaranty claims. A 48-hour on-site service within the guaranty period exists for certain product groups expressly designated in our quotation, within the scope of which, the device will be collected from the customer's premises at our expense. We reserve the right to charge the customer for the costs of testing if the defect notified by the "TekLink" entry cannot be established or no defect is present, more particularly in the cases in sub-section 8.6 above, whereby we shall be guided by the all-inclusive examination charge formulated by us, depending on the size of the device.
- 8.8 The binding product specification stated by us or the manufacturer is deemed in principle to be agreed as the quality of the goods. Public statements, praise or advertising by the manufacturer do not represent any contractual quality description of the goods.
- 8.9 The customer does not receive any company guaranties from us. Guaranties from manufacturers are not hereby affected.
- 8.10 Claims for defects are excluded for used items with the exception of claims for damages and claims for compensation for expenses. We accept liability according to the conditions of sub-paragraphs 8.11 and 9 for claims for damages and claims for compensation for expenses.

- 8.11 The period of limitation for claims for defects amounts to 12 months from the passing of risk, unless we are liable for personal injury, wilful or grossly negligent breach of our duties, malicious concealment of the defect, or if we shall have accepted a wider guaranty or a longer statutory period is mandatory.
- 8.12 The period of limitation amounts to 12 months from receipt of a replacement delivery or the subsequently improved goods, if the limitation period re-commences by reason of subsequent performance. The re-commencement of limitation applies, in a replacement delivery, to all defects in the new item, on a subsequent improvement, only to the faults complained about and not eliminated, and with the subsequent improvement, to newly arising defects.

9. General liability

- 9.1 Claims against us for damages of any kind are excluded, if we, our legal representatives or agents shall have caused the losses through simple negligence.
- This exclusion of liability does not apply to personal injury, on acceptance of a contractual guaranty or on breach of a material contractual duty. Material contractual duties are those where only the performance of such enables proper completion of the contract itself and on the observance of which the customer may and does normally rely, and the breach of which endangers achievement of the purpose of the contract.
- Our liability on acceptance of a guaranty is limited to the scope of the guaranty and on simple negligent breach of material duties, limited to damages which are foreseeable and typical for the type of contract.
- Claims based on product liability law remain unaffected.
- 9.2 Claims for damages lapse one year after the customer acquires, or in the absence of gross negligence should have acquired, knowledge of the damage and the obligation to pay compensation. Claims under the product liability law for personal injury and on account of defects remain hereby unaffected.
- 9.3 The customer is under a duty to advertise the goods only in a reasonable manner if he is also a sales associate. The sales associate is aware that advertising relating to false characteristics may lead to claims for damages for defects. He undertakes to indemnify us for and against the consequences of such advertising and to compensate us for damages arising for us as a result of breach of this duty.

10. Choice of law, place of performance, place of jurisdiction, customer data

- 10.1 The law of the Federal Republic of Germany applies. The provisions of the UN Treaty concerning contracts for international sale of goods dated the 11th April 1980 does not apply.
- 10.2 The place of performance of all services arising from our business relationships is the location of our registered office.
- 10.3 **The place of jurisdiction for all disputes arising from the business relationship is that for the location of our registered office, provided that the customer is a registered businessman.** We may however also institute proceedings at the location of the head office of the customer.
- 10.4 We may store and process customer data which we receive in connection with the business relationship, within the limits of statutory provisions.