

# General Terms and Conditions of Manolya GmbH & Co KG

## 1. Scope of application

- 1.1 The present Terms and Conditions (hereinafter referred to as the "Conditions") shall apply to all contracts between Manolya Electronics GmbH & Co. KG (hereinafter referred to as "we") and the customer in connection with the purchase of our goods by the customer.
- 1.2 The present Conditions shall apply only if the customer is an entrepreneur, a legal entity under public law or a public-sector trust asset.
- 1.3 Differing, conflicting or additional terms and conditions of the customer are not part of the agreement unless we have expressly agreed to their inclusion in writing.
- 1.4 Unless otherwise agreed, the present Conditions in the version valid at the time of conclusion of each contract, in any case in the last version notified in writing, shall also apply as a framework agreement for similar future contracts without separate notification to this effect being required in each case.

## 2. Conclusion of contract

- 2.1 Our offers in catalogues, technical specifications, product descriptions or other documents as well as on our website operated under the domain [www.manolya.de](http://www.manolya.de) remain non-binding at all times.
- 2.2 By placing an order, the customer makes a binding contract offer. We are entitled to accept the customer's offer within a period of ten working days starting from receipt of order. After this period, the customer is no longer bound by his contract offer.
- 2.3 We accept the customer's offer by sending a written confirmation of order or shipment or by delivering the ordered goods to the customer. With our acceptance, a binding contract is concluded.

## 3. Prices

- 3.1 Unless otherwise specified in individual cases, all prices are in euros and "ex works" (EXW, Incoterms 2010) plus VAT.
- 3.2 If the customer requests that the goods be shipped, the customer shall bear transport costs ex works, including any packaging costs, duties, taxes and other public charges as well as the cost of transport insurance to the extent that such insurance is taken out at the customer's request.
- 3.3 In addition, the customer confirms that he will act as buyer of any goods to be collected and that he will transport the supplied goods himself on behalf of his company or ask in the name of his company to have transport or shipment effected by freight or parcel service. The customer further assures that he will refrain from transferring power of disposal of the goods to be collected to third parties until after delivery. Any subsequent deliveries by transfer of the power of disposal to third parties, without exception, shall follow these collections.

## 4. Reservation of self-supply

- 4.1 If as a result of late delivery by our own suppliers we are unable to deliver within a contractually promised deadline, we will immediately inform the customer of our inability to meet the delivery deadline and notify him of the expected new delivery time.
- 4.2 If we are again unable to comply with the delivery period due to non-delivery by our own suppliers, we shall be entitled to withdraw from the contract in full or in part. The customer will be refunded immediately for any payments already made.
- 4.3 The above Clause 4.2 of the present Conditions shall apply only if we have concluded a congruent hedge transaction and neither we nor our suppliers are at fault for the non-delivery or if for any other reasons in individual cases there was no procurement obligation on our part.

## 5. Delivery terms

- 5.1 Delivery deadlines shall apply as agreed upon conclusion of contract. If no delivery deadline has been agreed, the delivery period shall be 30 days starting from conclusion of contract; in the case of advance payment, 30 days starting from the date we receive the advance payment.
- 5.2 To be valid, default in delivery on our part shall always require prior reminder by the customer.

## 6. Transfer of risk

- 6.1 Delivery is "ex works" (EXW). The transfer of risk takes place upon delivery of the goods at the place of performance.
- 6.2 Unless otherwise agreed with the customer, we are entitled in the event of a shipped purchase to determine the type of shipment, i.e. the transport company, the dispatch route and the packaging, taking into account the legitimate interests of the customer.

## 7. Customer's delay of acceptance

- 7.1 If delivery is delayed for reasons for which the customer bears responsibility, in particular because of default of acceptance by the customer or failure to cooperate on his part, the customer shall pay us a lump-sum compensation of 20% of the agreed purchase price for the damage caused by the delay as well as for any necessary additional expenses. This shall not apply if the customer can prove to us that less or no damage has been caused.
- 7.2 Further claims remain unaffected, in particular if we provide evidence of higher damage. Any lump-sum compensation paid by the customer will be credited against the assertion of further damages.

## 8. Warranty

- 8.1 The following provisions shall apply to the inspection and complaint obligations of the customer:
- 8.1.1 A defect shall be deemed notified without delay if notification occurs within a period of seven working days after discovery of the defect in compliance with the inspection obligation, and in the case of hidden defects within seven days of discovery of the defect. The timeliness of the notification shall be judged on the basis of the date of its dispatch.
- 8.1.2 All complaints must be made in writing.
- 8.1.3 Our liability for unreported defects shall be excluded if the customer fails to meet his obligations in respect of inspection of the goods and complaints.
- 8.2 If defects are found, we are entitled to choose between subsequent performance by way of improvement (removal of the defect) or replacement (delivery of defect-free goods).
- 8.3 Subsequent performance entails neither the removal nor the reinstallation of the object of purchase unless we had committed ourselves in the purchase agreement to install the purchased goods.
- 8.4 Costs resulting from an unjustified request for removal of a defect must be reimbursed by the customer, unless he could not have been expected to see that there was no defect.

## 9. Written form requirement

Any legally relevant declarations of the customer to us must be made in writing in order to be valid. This applies particularly to deadlines, reminders and notices of cancellation.

## 10. Liability

- 10.1 Customer claims for damages are excluded.
- 10.2 Excepted from Clause 10.1 of the present Conditions are claims for damages of the customer resulting from injury to life, limb, health or from the violation of material contractual obligations (cardinal obligations) as well as liability for other damages resulting from intentional or grossly negligent breach of duty by ourselves, our legal representatives or our agents. Material contractual obligations are obligations which must be performed for the objective of the contract to be achieved.
- 10.3 Unless the customer's claims for damages result from injury to life, limb or health, our liability in the event of violation of a material contractual obligation shall apply only to typical, foreseeable damage that has been caused through simple negligence.
- 10.4 The provisions of the Product Liability Act remain unaffected.
- 10.5 The above provisions of Clauses 10.1 to 10.4 of the present Conditions also apply to our legal representatives and agents if claims are asserted directly against them.

## 11. Extended reservation of title

- 11.1 The delivered goods (goods held under reservation) remain our property until all claims that we may have vis-à-vis the buyer, now or in the future, specifically including all current accounts receivables, have been met. Insofar as the buyer acts in breach of contract – especially by being in default in respect of payment of a claim – we shall be entitled to take back the reserved goods after we have stipulated a reasonable period for performance. Return transport costs shall be borne by the buyer. If we take back the reserved goods, this shall constitute a withdrawal from the contract. Impounding the goods shall also constitute withdrawal from contract. We may dispose of any reserved goods taken back by us. The proceeds of such sale will be credited against amounts due by the buyer after we have deducted a reasonable amount for the cost of the realization.
- 11.2 The buyer must treat goods held under reservation with care. He must, at his own expense, insure them at replacement value against theft or damage by fire or water. If maintenance or inspection work is required, the buyer must have such work carried out at his own expense.
- 11.3 Provided he is not in default of payment, the buyer may use the goods held under reservation and sell them in the ordinary course of his business. However, he may not pledge or assign reserved goods as a security. By way of security, the buyer hereby and now assigns to us the totality of his payment claims vis-à-vis his customers arising from the resale of the reserved goods as well as his claims vis-à-vis his customers or third parties with regard to the reserved goods arising from any other legal ground (in particular claims in tort or claims for insurance benefits), including all current accounts receivables. We accept this assignment.
- 11.4 The buyer is entitled, on our behalf, to collect the claims assigned to us on his own account and in his own name as long as we do not revoke this authorization. Our right to collect such claims ourselves shall not be affected by the present clause; however, we shall refrain from asserting the claims or revoking the authorization to collect as long as the buyer meets his payment obligations.
- 11.5 If, however, the buyer acts in breach of contract – especially if he defaults on the payment of a claim – we shall be entitled to demand from the buyer that he informs us of the assigned claims and the respective debtors, that he informs the debtors of the assignment and that he hands over all necessary documents to us and provides us with all the information we may need to assert the claims.
- 11.6 Any processing or transformation by the buyer of the goods held under reservation is always carried out on our behalf. If the reserved goods are processed with other items that do not belong to us, we shall thus acquire joint ownership of the new product in proportion of the value of the reserved goods (final invoice amount including VAT) to the other processed items at the time of processing. In other respects, the same shall apply to the new product created by the processing as for the goods held under reservation.

11.7 If the reserved goods are inseparably combined or mixed with other items that do not belong to us, we shall acquire ownership of the new product in proportion of the value of the goods (final invoice amount including VAT) to the other combined or mixed items at the time of combination or mixing. If the reserved goods are combined or mixed in such a manner that the buyer's item is to be regarded as the main item, the buyer and we are already in agreement that the buyer shall transfer proportional joint ownership of this product to us. We accept this transfer. The buyer shall safeguard for us the resulting sole ownership or co-ownership of the item.

11.8 If the goods are impounded by a third party or in the event of any other interventions of third parties, the buyer must point out our ownership and notify us immediately in writing so that we can enforce our ownership rights. If the third party is unable to reimburse the judicial or extrajudicial costs incurred by us in this context, the buyer shall be liable for such costs.

11.9 Upon buyer's request, we are obliged to release the securities due to us insofar as their realizable value exceeds the value of our outstanding claims vis-à-vis the purchaser by more than 10%. We may thereby select the securities to be released.

## 12. Statute of limitations

- 12.1 The warranty period is 12 months beginning with the transfer of risk.
- 12.2 The limitation period pursuant to Clause 12.1 of the present Conditions shall also apply to contractual and non-contractual claims of the customer for damages based on a defect. This shall not apply if the statute of limitations in individual cases prescribes a shorter period of limitation.
- 12.3 Clause 12.2 shall not apply to damage claims by the customer within the meaning of Clauses 10.2 and 10.4 of the present Conditions.

## 13. Set-off, right of retention

- 13.1 The customer may set off only if his counterclaim has been legally established or is undisputed.
- 13.2 The customer may exercise a right of retention only if his claim has been legally established or is undisputed and is based on the same contract.
- 13.3 The above Clauses 13.1 and 13.2 of the present Conditions shall not apply to warranty claims of the customer.

## 14. Applicable law and jurisdiction

- 14.1 Place of performance is the place of transfer of risk.
- 14.2 The law of the Federal Republic of Germany shall apply under exclusion of the UN Convention on Contracts for the International Sale of Goods and of German international private law.
- 14.3 Exclusive jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Berlin. We are however entitled to bring an action at the place of the delivery obligation or at the customer's general place of jurisdiction.
- 14.4 Any statutory provisions having precedence, especially regarding exclusive jurisdiction, remain unaffected.