

General Terms and Conditions of Sale of Manolya Electronics GmbH & Co. KG

1. Scope

11 These General Terms and Conditions (hereinafter referred to as "Terms and Conditions") apply to all contracts between Manolya Electronics GmbH & Co. KG (hereinafter referred to as "we") and the Customer regarding the purchase of our goods by the Customer.

12 These Terms and Conditions only apply when the Customer is a merchant, a corporate body governed by public law or a separate fund governed by public law.

13 General terms and conditions of the Customer that differ, conflict or supplement, do not form part of this Contract, unless we have expressly agreed to their inclusion in text form.

14 Unless otherwise agreed, these General Terms and Conditions in the version valid at the time the respective contract is concluded or, at the least, in the last version communicated in text form, also apply as a general agreement for similar future contracts, without the need for any further separate reference.

1.5. Provisions in these Terms and Conditions that correspond or refer to the legal situation are only meant for clarification purposes. The statutory provisions apply even without a corresponding provision being provided in these Terms and Conditions, unless excluded, amended or supplemented as a part of these Terms and Conditions.

2. Contract Conclusion

2.1 Offering in our catalogues, technical documentation, product descriptions and other documents or on our website at www.manolya.de are always non-binding.

2.2 On placing their order, the Customer submits a binding contractual offer. We are entitled to accept the Customer's offer within a period of ten working days, starting from the day on which we receive the order. The Customer is no longer bound by their contractual offer after this period has expired.

2.3 We accept the Customer's offer by sending an order or shipping confirmation in text form or by delivering the ordered goods to the Customer. A binding contract is concluded on our acceptance of the Customer's offer.

3. Prices

3.1 Unless otherwise stated in individual cases, all prices apply in Euros and "ex works" (EXW, incoterms 2010) plus VAT.

3.2 If the Customer requests the dispatch of the goods, they bears the cost of the transport ex works, including any packaging costs, customs duties, taxes and other public dues, as well as transport insurance, provided that they are taken out at the request of the Customer.

3.3 The Customer also confirms that they will act as the purchaser of the object to be collected and transport the object of the delivery on behalf of their company or commission a forwarding agent/parcel service to transport/ship the object of the delivery on behalf of their company. The Customer further assures that they will only transfer the power to dispose of the goods to be collected to third parties following the aforementioned delivery. Subsequent deliveries by procuring the power to dispose of the goods to third parties will follow these collections without exception.

3.4 Manolya is entitled to change terms of payment granted unilaterally under consideration of the principles of Sec. 315 German Civil Code (BGB), if the customer's creditworthiness deteriorates or they are in payment default, especially if the credit insurer that insures Manolya's claims against the Customer detects such a deterioration, changes their insurance terms for this reason or refuses further insurance of the claims against this Customer.

4. Disclaimer concerning the availability of supplies and raw materials

4.1 If, due to untimely delivery by our suppliers, we are unable to comply with a bindingly agreed delivery deadline, we shall inform the Customer immediately of our failure to comply with this and notify them of the expected new delivery deadline.

4.2 In the event of our repeated failure to meet the delivery deadline owing to non-delivery by our own suppliers, we are entitled to withdraw from the contract either in whole or in part. Any consideration already paid will be refunded to the Customer immediately.

4.3 Section 4.2 above of these Terms and Conditions only applies if we have concluded a congruent hedging transaction and neither we nor our suppliers are at fault for the lack of availability of supplies and raw materials, or if no procurement obligation exists on our part for other reasons in individual cases.

5. Delivery Terms

5.1 The agreed delivery deadlines at the time of contract shall apply. In the absence of an agreed delivery deadline, the delivery period shall be approximately 4 weeks starting from the date of contract conclusion. In the case of advance payment, the delivery period shall be approximately 4 weeks starting from the receipt of the advance payment by us.

5.2 The occurrence of a delay in delivery by ourselves always requires a prior reminder from the customer.

6. Risk Transfer

6.1 Delivery takes place "ex works" (EXW; incoterms 2010). The transfer of risk takes place when the goods are handed over at the place of performance.

6.2 Unless otherwise agreed with the Customer, a sale by delivery to a place other than the place of performance entitles us to determine the type of shipment, i.e. the transport company, shipping route and packaging, taking the legitimate interests of the Customer into account.

7. Delay in acceptance by the customer

7.1 If the delivery is delayed for reasons for which the Customer is responsible, and, in particular, owing to the Customer's delay in accepting the delivery or a breach of a duty by the Customer, the Customer shall pay us 20% of the agreed purchase price as lump-sum compensation for the damage caused by the delay as well as the additional expenses incurred. This does not apply if the Customer can prove that little or no damage occurred.

7.2 Further claims remain unaffected by this, especially if we prove greater damage. Lump-sum compensation paid by the Customer will to be taken into account when asserting any claims for further damage.

8. Warranty

8.1 The following provisions apply to the Customer's obligations to inspect and provide notice of defects:

8.1.1 The Customer is to inspect the goods for completeness and intactness on delivery in the presence of the carrier making the delivery. In particular, the goods are to be weighed hereby and the serial numbers compared. The latter is only to take place, however, if delivery of goods with specific serial numbers has been made an integral part of the contract. The Customer is to note damage and shortages on the freight documents and have them acknowledged by the carrier making the delivery. At the request of the Customer, we shall coordinate the delivery times in advance as far as possible to ensure the timely delivery, acceptance and inspection of the goods by the Customer. Subsequent complaints concerning damage or shortages without the acknowledgement of the carrier will not be accepted, unless the Customer can provide evidence that it was impossible or unreasonable to ascertain the shortages or damage addressed on delivery in the presence of the carrier.

8.1.2 The obligation of the Customer to inspect and notify us of defects in accordance with Sec. 377 GCC (HGB) remains unaffected if we take over delivery of the goods to the Customer's contract partner on behalf of the Customer (drop shipping).

8.1.3 In all other cases, hidden defects that were not already notified in accordance with Sec. 8.1.1 shall be deemed to have been notified immediately if notification is given no later than seven days after the defect is discovered. In the case of drop shipping, within the scope of the obligation to inspect and notify in accordance with Sec. 377 GCC (HGB), notifications of defects are to be considered timely if notification is made within seven days of the goods being delivered to the end consumer. Timely dispatch of the notification of defects suffices to meet the deadline.

8.1.4 Notification of defects must always be provided in text form.

8.1.5 Our liability for the undisclosed defect is excluded if the customer fails to meet their obligations to inspect and notify or does not meet them on time.

8.2 Warranty claims owing to material and legal defects in the goods delivered will first be asserted out of court by the Customer against the manufacturer and processed through the respective manufacturer's service centres. The Customer shall only assert his claims against Manolya if the manufacturer demonstrably refuses regulation of the claim. The personal liability of Manolya remains unaffected by this.

8.3 The Customer is obliged to provide proof of the hidden defect. We can request proof of the hidden defect.

8.4 In the event of a defect, we are entitled to choose between subsequent performance by way of rectification (elimination of the defect) or replacement (delivery of a defect-free item).

8.5 Subsequent performance does not include removal or re-installation of the purchased object if we have not undertaken to install it in the sales contract.

8.6 The customer is obliged to reimburse the costs that arise from an unjustified claim to eliminate defects, unless they were unable not identify the lack of defects.

9. Text form requirement

Legally relevant declarations made to us by the customer require the text form to be effective. This applies to setting deadlines, reminders and cancellation notifications in particular.

10. Liability

10.1 Claims for damages by the Customer are excluded.

10.2 Excluded from Section 10.1 of these Terms and Conditions are claims for damages by the Customer arising from the loss of life, limb, health, or from the breach of essential contractual obligations (cardinal obligations), as well as liability for other damages based on an intentional or grossly negligent breach of duty by us or our representatives and vicarious agents. Essential contractual obligations are those whose fulfilment is necessary to achieve the objective of the contract.

10.3 In the event of a breach of essential contractual obligations, we shall only be liable for the foreseeable damages typical for the contract if the breach was caused by simple negligence, unless the customer's claims for damages result from loss of life, limb or health.

10.4 The provisions of the German Product Liability Act remain unaffected by this.

10.5 The aforementioned provisions in Sections 10.1 to 10.4 of these Terms and Conditions also apply to our legal representatives and vicarious agents if claims are made directly against them.

11. Prolonged retention of title

11.1 The goods delivered (reserved goods) remain our property until all our claims against the purchaser to which we are entitled are met both now and in the future including all current account balance claims. If the Purchaser is in breach of contract - in particular if they are in arrears with payment of a payment claim - we are entitled to take back the reserved goods after we have set a reasonable deadline for making payment. The Purchaser is to bear the transport costs for the return of the reserved goods. Our taking back the reserved goods represents a withdraw from the contract on our part. If we seize the reserved goods, it also represents a withdrawal from the contract. We are entitled to sell on reserved goods which we have taken back. The proceeds of this will be offset against the amounts the Purchaser owes us after we have deducted a reasonable amount for the cost of the sale.

11.2 The Purchaser is obliged to handle the reserved goods with care. They are obliged to adequately insure them at replacement value against fire, water and theft at their own expense. If maintenance and inspection work is required, the Purchaser is obliged carry this out in good time at their own expense.

11.3 The Purchaser is permitted to use the reserved goods and resell them in the ordinary course of business as long as they are not in default of payment. However, they are not permitted not pledge the reserved goods or transfer them as security. As a precaution, the Purchaser assigns to us here and now in full their payment claims against their customers from a resale of the reserved goods, as well as those of their claims against their customers or third parties for the reserved goods that arise for another legal reason (in particular, claims from tort and for insurance coverage), including all current account balance claims. We accept this assignment.

11.4 The Purchaser is permitted to collect those claims assigned to us on their own account on our behalf as long as we do not revoke this authorisation. This does not affect our right to collect these claims ourselves; however, we will not assert the claims ourselves and will not revoke the direct debit authorisation as long as the Purchaser properly fulfils their payment obligations.

11.5 However, if the Purchaser is in breach of contract - especially if they are in arrears with the payment of a payment claim - we can request that the Purchaser notify us of the claims assigned and the respective debtors, notify the respective debtors of this assignment, transfer all the related documents to us and provide us with all the information we need to assert the claims.

11.6 Any processing or conversion of the reserved goods by the Purchaser is always performed on our behalf. If the reserved goods are processed with other objects that do not belong to us, we acquire co-ownership of the new object in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other processed objects at the time of processing. In all other respects, the same applies to the new object that results from processing as to the reserved goods.

11.7 If the reserved goods are inseparably combined or mixed with other objects that do not belong to us, we acquire co-ownership of the new object in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other combined or mixed objects at the time of combination or mixing. If the goods subject to retention of title are to be viewed as the main object, we and the Purchaser agree here and now that the Purchaser transfers co-ownership of this object to us on a pro-rata basis. We accept this transfer. The Purchaser shall safeguard the resulting sole or co-ownership of an object on our behalf.

11.8 In the event that third parties seize the reserved goods or intervene in any other way, the Purchaser shall notify them of our ownership and inform us immediately in writing so that we can assert our ownership rights. If the third party is not in a position to do so, the Purchaser shall be liable for reimbursing any judicial or extra-judicial costs that we incur in this connection.

11.9 If the Purchaser requests, we are obliged to release the sureties which we are entitled to insofar as their realisable value exceeds the value of our outstanding claims against the Purchaser by more than 10%. However, we may select the sureties to be released.

12. Limitation

12.1 The warranty period amounts to 12 months starting with the transfer of risk.

12.2 The limitation period in accordance with Section 12.1 of these Terms and Conditions also applies to contractual and non-contractual claims for damages by the Customer based on a defect. This does not apply if the statutory limitation period results in an earlier limitation period in individual cases.

12.3 Sec 12.2 does not apply to claims for damages made by the Customer subject to Sec. 10.2 and 10.4 of these Terms and Conditions.

13. Offsetting, retention

13.1 The Customer is only entitled to offset if their counterclaim is legally established or undisputed.

13.2 The Customer can only exercise a right of retention if their claim has been legally established or is undisputed and is based on the same contractual relationship.

13.3 The foregoing Sec. 13.1 and 13.2 of these Terms and Conditions do not apply to warranty claims by the Customer.

14. Applicable law and jurisdiction

14.1 Place of performance is the place of risk transfer.

14.2 The law of the Federal Republic of Germany applies under exclusion of the UN Convention on Contracts for the International Sale of Goods and German international private law.

14.3 Exclusive place of jurisdiction for all legal disputes that arise directly or indirectly from the contractual relationship is Berlin, Germany. However, we are also entitled to bring legal action at the place of performance for the delivery obligation or in the customer's general jurisdiction.

14.4 Priority statutory provisions, in particular, exclusive places of jurisdiction, remain unaffected by this.