

# General Conditions of Sale for the Products and Services of the Electrical Industry



The following conditions shall apply together with, and shall have priority over, the Clauses I. through XIV. of the „General Conditions for the Supply of Products and Services of the Electrical and Electronics Industry“:

## XV. To I. General Provisions

To the extent that software is provided to the Purchaser for which the Supplier has only derived rights to use (third party software) or so-called open source software, the conditions of use of the third party software or open source software shall apply with priority. The Supplier shall point out in the contract documents to third party software and/or open source software and pertaining conditions of use and Supplier shall make the conditions of use available if so requested. Purchaser shall indemnify and hold Supplier harmless from and against any claims, cost, expenses which Supplier might incur arising from the use of the open source software or of the other third party software.

## XVI. To II. Prices, Terms of Payment and Set-Off

1. Prices are EUR prices.
2. Value Added Tax at the legal rate valid as of the day of delivery (and in case of advance payments: as of the day of such payment) will be charged in addition. In cases where the Purchaser is not domiciled in Germany and the supplied items covered by this supply contract are to be exported out of the EU customs territory and the Purchaser is responsible for transport of the supplied items out of the EU customs territory according to the agreed terms and conditions of delivery (e.g. according to INCOTERMS 2010: "EXW", "FCA" or "FOB" named place in Germany or other EU country) then on a preliminary basis no VAT will be invoiced.

The Supplier shall be entitled to invoice retrospectively VAT at the applicable rate if the Supplier does not receive a legally valid proof for VAT relief of export of the supplied items out of the EU customs territory according to either of the two mentioned conditions set out below:

- in case the export declaration is lodged by the Supplier in electronic form to EU Customs, electronic proof of export from customs office of exit will be received by the Supplier within 60 days after handing-over of the supplied items at the named place, or
  - if electronic proof of export is not received by the Supplier within 60 days as well as in all other cases the Purchaser will obtain legally valid document as proof of export for VAT relief (e.g. commercial transport evidence from forwarder) and will hand over the document to the Supplier within 90 days after handing-over of the supplied items at the named place.
3. The prices are exclusive of customs and other import charges which shall be borne by Purchaser. If, in exceptional cases, Supplier has agreed to bear such costs at fixed rates, any increase of such charges - for example by changes of law - shall be borne by Purchaser.

Cost of packing shall be borne by Purchaser additionally. Special packing shall remain Supplier's property, shall be returned by Purchaser without undue delay and without cost to Supplier and Supplier shall be entitled to a rent for such packing calculated on the basis of cost price.

4. All payments shall be made net cash without any discount at Supplier's paying office and as follows:
  - 4.1 For supplies or services („Supplies“) of a total value of up to EUR 5.000,00 on readiness for dispatch and receipt of the invoice.
  - 4.2 For Supplies of a total value of above EUR 5.000,00 and with a delivery time of up to three months:  
1/3 of the value of the order when the order is placed,  
2/3 of the value of the order upon readiness for dispatch.
  - 4.3 For Supplies with a total value of above EUR 5.000,00 and with a delivery time of more than three months:  
30 % of the value of the order when the order is placed,  
30 % of the value of the order upon expiration of the first third of the delivery time envisaged,  
30 % of the value of the order upon expiration of the second third of the delivery time envisaged,  
10 % of the value of the order on the day it is ready for dispatch.
  - 4.4 For Supplies for which no provisional price can be fixed when ordering, the Supplier shall have the right - depending on the circumstances - to ask for an advance payment when the order is placed and for a down payment to the extent that costs for the Supplies have been incurred. Advance payments and down payments shall lie dormant.

- 4.5 The delivery time shall commence on the day advance payment is received by Supplier provided that all other applicable terms and conditions are fulfilled.

5. All payments shall be deemed to have been effected on the day on which the Supplier can freely dispose of the amount paid.
6. Should the due dates for payment be exceeded, the legal consequences of delay shall become effective without any notice being necessary. Without prejudice to any other or further rights or claims, interest on defaulted payment shall be charged at the rate (in per cent) being the sum of 8 plus the amount of the then actual base rate under § 247 BGB (German Civil Code).
7. If the Purchaser delays in making payment, the Supplier shall be entitled to demand the return of the goods and compensation of the damages for non-performance of the contract (see also Clause III. Retention of Title). In case of default, particularly suspension of payment, request for composition or moratorium, all debts in favour of Supplier shall fall due immediately.
8. The Supplier shall be entitled to set off all claims against Purchaser held by Supplier or any company in which the company ABB AG (Mannheim/Germany) directly or indirectly holds the majority of shares, against all claims held by Purchaser against Supplier or any of the companies described above. On Purchaser's request Supplier shall hand over to Purchaser a list of such companies.

The Purchaser may only set off claims against Supplier which are undisputed or which have been adjudicated by non-appealable judgement.

## XVII. To VI. Assembly and Erection

In case of Supplies which include assembly or erection the Supplier's general conditions for erection work shall apply with priority over these conditions.

## XVIII. To VIII. Defects as to Quality

Place for Supplier to supplement its performance ("*Nacherfüllung*") shall be Supplier's place of business.

## XIX. To X. Conditional Performance

In order to comply with national and international foreign trade regulations/laws, the parties will support each other and provide all necessary documentation and information, such as relating to the registration of items to be exported in export control lists or to the final destination and end use of the items. Neither party is obliged to perform its obligation under the contract in violation of any statutory or internal export control regulations. Supplier shall have the right at any time to withdraw from the contract, without incurring any liability for either party, if

- the Purchaser, despite request, does not provide either any or sufficient enough information about the final destination and the end use of the goods;
- Supplier obtains knowledge of an unintended end use after tendering or knowledge of any previously unknown person involved in the business and cannot perform the contract due to any export control or intra-group regulations;
- the items or services are intended for military end use, civil nuclear use or for use in connection with weapons of mass destruction or for missiles capable of delivering such weapons; substantive evidence shall be sufficient to prove this intent; or
- a possibly illegal or unlicensed export or an infringement of embargo rules cannot be fully ruled out.

## XX. To XIII. Venue and Applicable Law

The contractual and non-contractual legal relationship between the parties shall be governed by German substantive law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

## XXI. Responsibility of Supplier; Procurement and Properties of the Supplies; Assistance by Purchaser

Supplier expressly makes a reservation in case it will not receive the Supplies or part thereof from sub-supplier in time or not in accordance with the sub-supply contract (*Vorbehalt der Selbstbelieferung*). Supplier will inform Purchaser without undue delay of the non-availability of Supplies and in case of cancellation (*Rücktritt*) by Supplier will repay to Purchaser without undue delay any payment already received.

## - 2 - General Conditions of Sale for the Products and Services of the Electrical Industry

Events for which Supplier shall not be responsible shall include difficulties in the procurement of the deliveries (including raw materials) and services required for the Supplies.

The Supplier hereunder shall not give nor assume any special guarantee in view of the properties and/or the durability (*Beschaffenheits- oder Haltbarkeitsgarantie*) of the Supplies. The Supplier shall not be liable for any defect of the Supplies which Supplier procures in unchanged form from sub-suppliers.

Without prejudice to Purchaser's further obligations, in case of measures necessary to prevent any non-contractual liability (f.i. recall actions) the Purchaser shall provide the Supplier on its request with information where the goods are located, in particular of the addresses of the customers.

### **XXII. Applicability to Further Deliveries**

These conditions shall also apply to all further supplies or services which might be provided by Supplier, at Purchaser's request and cost, in connection with the Supplies under this contract.