

TERMS AND CONDITIONS OF SALE (T&C's)

AVNET AG

1. GENERAL

- (a) These T&C's shall apply to any individual sale or provision of service by **Avnet AG, Seestraße 122, 8810 Horgen, Switzerland** (Seller).
- (b) This T&C's supersede all agreements with the Customer, unless otherwise expressly agreed to in writing between the Seller and the Customer. Customer T&C's are not applicable.
- (c) These T&C's shall supersede all earlier T&C's of the Seller.
- (d) If any of these terms and conditions is unenforceable it shall not affect the validity or enforceability of the remainder of that term and condition or these T&C's as a whole.
- (e) All changes to these T&C's have to be agreed in writing. The same applies to this clause (e).

2. QUOTES AND ORDERS

- (a) Any quote made by the Seller shall be non-binding and deemed to be an invitation to tender. Contracts are exclusively binding in accordance with these conditions. Orders are binding for the Customer.
- (b) Contracts shall be deemed to be entered into between the Seller and the Customer either when the Seller sends a written order confirmation, or when the Seller sends the goods or performs the services ordered. Errors in Seller's order confirmation or recognizable defects of delivered goods or services have to be notified in writing to Seller and such notice received by the Seller within three days. After this three-day period, the goods, the service and the information mentioned on the order confirmation shall be considered to be accepted.
- (c) All orders are subject to credit approval by the Seller, which may, in its sole discretion at any time, change the Customer's credit and payment terms. If the Seller believes that the Customer's ability to make payments may be impaired, the Seller may suspend delivery, until the Customer has provided a bank guarantee under clause 8.
- (d) The Customer agrees to send to the Seller a written order of any oral orders duly marked with any confirmation reference provided to properly identify the Customer and the goods ordered, otherwise the Seller reserves the right not to process the order.
- (e) In case the Seller processes an order (also without written order) that has not been confirmed by the Customer, the order is nevertheless binding upon the Customer on receipt of the order confirmation or with the delivery of goods and cannot be cancelled.

3. CUSTOMER'S OBLIGATION

- (a) The Customer is responsible for providing Seller with accurate information prior to and during the existence of the contract (including but not limited to shipping address, bank account numbers, the company name, financials) for specifying in its order any specific requirements with regard to merchantability of the goods or services or their suitability or fitness for any particular purpose.
- (b) The Customer shall take all measures for the safeguarding of all data.
- (c) The Customer shall provide the Seller with its financial data as reasonably requested by the Seller for credit checks.
- (d) The Customer assumes full responsibility with regard to the necessary licenses for the use of the goods or services and shall comply with all license terms provided by the manufacturer of the goods.
- (e) The Customer has to comply with all home country, E.U., U.S.A. and Swiss import and export laws and regulations.
- (f) The Customer shall conform with the specifications of the manufacturer for the goods and the ones of the Seller for its services.

4. PRODUCT AND SERVICE DESCRIPTION

- (a) Upon delivery to Customer the goods purchased hereunder shall conform with the applicable manufacturer's specifications for such goods and any value-added work performed by the Seller on such goods shall conform to the Customer's specifications relating to such work, to the extent they have been clearly communicated as required under article 3(a) and accepted by the Seller.

- (b) Unless specified otherwise, goods sold by the Seller are not designed, intended or authorised for use in life support, life sustaining, nuclear, military or other applications in which the failure of such goods could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If the Customer uses or sells the goods for use in any such applications: (i) the Customer acknowledges that such use or sale is at the Customer's sole risk; (ii) the Customer agrees that Seller and the manufacturer of the goods are not liable, in whole or in part, for any claim or damage arising from such use; and (iii) the Customer agrees to indemnify, defend and hold the Seller and the manufacturer of the goods harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale. Liability under product liability regulations remains reserved.
- (c) The Seller shall not be responsible for adapting or modifying any goods to conform to statutory requirements not current at the time of the acceptance or order.
- (d) The Customer is aware that product specifications may change over the course of time and shall inform itself about the future specifications and availability of any goods and services. Seller cannot guarantee the ongoing supply of goods of a certain specification in the future.
- (e) All product descriptions, adverts and any other public information regarding goods supplied are not binding unless specifically agreed in the order confirmation.
- (f) When the Seller provides own services to the Customer all services need to be specified in detail and confirmed by the Seller. Unless specified otherwise, when Seller provides services the Customer is always the manufacturer of the goods and Seller acts on behalf of and on the instruction of the Customer only. No services provided by the Seller include the application for certain certificates or registrations (for example but not limited to UE, WEEE), labelling or branding.

5. DELIVERY

- (a) The Customer acknowledges that delivery dates provided by the Seller are estimates or indications only, and non-binding, unless specified binding in writing. Delivery is always conditional upon the Seller receiving timely and complete delivery of the goods from the Seller's suppliers.
- (b) Delivery of the goods to the carrier shall constitute delivery to the Customer, and all risk shall thereupon pass to the Customer.
- (c) The Seller shall be entitled to make partial deliveries or deliveries by instalments. These T&C's shall apply to each such delivery.
- (d) The Customer shall inspect all delivered goods on delivery and inform the Seller about all damages, faults, wrong- and short-deliveries in writing without delay but latest within one week as of delivery after which the goods deem to be irrevocably accepted unless it was a hidden defect or fault or wrong delivery that could not be detected on a due inspection. In case the Customer detects a hidden defect or fault later on the Customer shall notify the Seller immediately upon detection. In case the Seller delivers goods upon request of the Customer to a third party the Customer is responsible that the third party is acting accordingly.
- (e) Title to the goods will only pass upon receipt of full payment of the goods by the Seller, both the principal amount as any interests and indemnities that may be due. The Customer shall store any such goods in an area away from other goods of the Customer and shall clearly mark them as being property of the Seller.
- (f) The Customer shall be entitled to sell the goods to third parties within the normal course of the business as well before the transfer of property. The Customer assigns all his rights resulting from a transfer vis-à-vis this third party buyer to the Seller. The Seller accepts the assignment. The Seller grants the Customer the revocable right to invoice the third party and receive the payments of the third party on behalf of the Seller unless the Customer fails to pay the Seller in time or the Seller believes that the Customer's ability to make payments may be impaired. This notwithstanding, the Customer will be obliged to pay all amounts due to the Seller under the contract.
- (g) The Customer shall ensure that his contracts with customers protect the Seller's rights in accordance with this Clause 5.

6. PRICE

- (a) Unless otherwise stated any prices quoted by the Seller are:
 - (i) exclusive of value added tax and any other taxes;
 - (ii) exclusive of carriage, customs, packing and insurance;
 - (iii) exclusive of any release certificates, (for example, CE certificates if Seller performs Integration services);and the Seller shall have the right to charge extra in respect of the above items.
- (b) Prices shall be as quoted by the Seller and shall be applicable for the period specified in the Seller's quote. If no period is specified, prices shall not be increased by the Seller for thirty (30) days. Notwithstanding the forgoing, prices shall be subject to increase in the event of an increase in the Seller's costs, including but not limited to currency, deliveries by third parties, other circumstances beyond the Seller's reasonable control or any breach by the Customer leading to higher costs for the Seller. The Seller will notify the new prices to the Customer in writing and invite the Customer to accept such prices. If the Customer doesn't agree with the new prices within a reasonable timeframe, Seller is allowed to terminate the agreement and cancel pending orders.
- (c) Seller can reasonably increase prices and charge higher prices also for the goods that have been already invoiced if the Customer does not order the quantities that formed the basis for the price quotation.

7. CONDITIONS OF PAYMENT

- (a) An invoice is payable without offset or deduction upon receipt and shall be paid within 30 days from date of invoice by means of bank wire unless the Seller has set other payment terms. Payment by means of check or bill of exchange will only be accepted if agreed to in writing by the Seller. The Customer has to pay all the expenses related to the payment.
- (b) The Seller reserves the right to suspend deliveries or to perform the contract only against a partial or complete payment, if payment is not received on time or not paid, or if there are indications that the financial situation of the customer is impairing.
- (c) The Customer shall pay interest on any amounts unpaid on their due date, calculated at the interest rate of 10% per annum, due on a monthly basis. Moreover, the Seller shall be entitled to claim reasonable compensation for all relevant recovery costs without prejudice however to the right of the Seller to claim compensation for all incurred damages.
- (d) No cash or other discount is allowed unless agreed in writing.
- (e) All invoices immediately become due when the Customer is in default of payment or otherwise in breach of any provision of the contract.
- (f) The Customer is not entitled to exercise any statutory right of retention, to withhold performance in respect of claims or to off-set any amounts unless these rights are based on court decision or the counterclaim has been acknowledged in writing by the Seller.

8. BANK GUARANTEE

At the Seller's first request the Customer shall submit to the Seller a bank guarantee with an established European credit institution or other security instrument reasonably selected by Seller with respect to its payment obligations. The Seller shall be entitled to request such guarantee at all times, both before any delivery has taken place, as well as during and after delivery.

9. DRAWINGS ETC.

- (a) All drawings, descriptive weights, dimensions and the descriptions and illustrations contained in the sales literature, price lists, estimates of performance or other specifications provided by the Seller are approximate only and shall not form part of the contract or constitute a guarantee. In addition, drawings, technical documents issued either before or after the conclusion of the contract for the use or information of the Customer and such other information as may be supplied to the Customer by the Seller including specifications shall not be copied, reproduced or communicated to any third party without the Seller's prior written consent.
- (b) The Seller reserves the right to change the specifications of the goods from time to time.

10. WARRANTY

- (a) If it is found, on due examination by the Customer, that the goods do not meet manufacturer's specifications, or with respect to value-added work by the Seller, it does not meet the Customer's specifications, or for paid services provided by the Seller does not meet the average quality in the market, the Seller shall be liable under the warranty, which is limited to the Seller (i) refunding the Customer's at market price for such goods or services (without interest and in any case limited to the purchase or service price), (ii) repairing such goods, or (iii) replacing such goods or fulfil the service; provided, however, that in all cases Customer provides acceptable evidence of the defects and that defective goods are returned to the Seller. Repair and replacement of goods does not prolong the warranty term set out in article 10 (c).
- (b) The customer can not claim any warranty rights if he is in default with its obligations set out in article 5 (d). The Customer is also obliged to notify the Seller immediately after the Customer has obtained knowledge about any fault or defect with its customer or any end user.
- (c) Each warranty expires in any event after 12 months of delivery by the Seller to the Customer.
- (d) The Seller shall transfer to the Customer whatever transferable warranties and indemnities the Seller receives from the supplier of the goods or the services including any transferable warranties and indemnities in respect of the infringement of the rights of any third party. In case the Customer obtains remedies against the supplier on this basis, the warranty as defined under Clause 10 (a) is reduced accordingly.

11. RETURN OF GOODS

- (a) No return of goods shall be accepted by the Seller without the Return Material Authorisation reference ("RMA" = Return Material Authorisation), which is issued by the Seller. A request to return goods because of visible defects must be made within one week of receipt. A request to return goods because of hidden defects must be made within one week of discovery and in any case not later than 12 months as of receipt thereof. Customer shall lose the right to return goods when he misses to timely send the requests as set out in this paragraph. Returned goods must be in original manufacturer's shipping cartons complete with all packing materials. Customer has to pay the expenses related to the return of goods. Before the return of goods, Customer has to notify a complete description of the nature of the defect, as well as the date and the circumstances of its discovery to the Seller. Except the case of defect, no goods can be returned. If the Seller consents to a return or cancellation of goods that are not subject to warranty claims, it reserves the right to make return or cancellation charges, including those charges specified in the RMA.
- (b) In case the customer returns goods claiming warranty rights and these goods are found to be fault-free customer shall bear all costs related to the unjustified claiming of warranty rights.

12. EXCLUSION OF LIABILITY

- (a) The Seller shall be liable without limitation for (i) its own wilful default or gross negligence (ii) its own fraudulent acts (iii) any damages resulting from the death or personal injury caused by the negligence of the Seller or its servants or agents or (iv) any damages based on other mandatory laws that do not allow to limit the Seller's liability.
- (b) Seller's liability shall be limited to direct loss and shall not include indirect or consequential loss. Hence, shall be excluded among others: loss of income, loss of turnover, loss by closure, increased production or operational costs, loss of customer base and loss of reputation. The Customer's recovery from the Seller for any claim shall not exceed the Customer's purchase price for the goods or services giving rise to such claim.
- (c) The Seller is not liable for damages to software, if the Customer has not taken all necessary measures for the protection of data and programmes.
- (d) The exclusion of liability described in this Clause 12 shall also apply for the Seller's employees and all other persons acting on its behalf.

13. FRUSTRATION ETC. (FORCE MAJEURE)

- (a) If the Seller is prevented at any time from performing any contractual obligation, or if any loss, damage, injury or delay in delivery is occasioned by or due to any cause beyond the Seller's control including (but without prejudice to the generality of the foregoing expression), the commission of any criminal act, shortage of goods, act of war (whether declared or not), civil commotion, accident, strikes or lock-outs, man-made disasters, Acts of God, or any restriction imposed by any local municipal or government authority (including Customs Authorities) whether national or foreign, the Seller's time for performance of delivery and any other obligation shall be suspended for as long as the cause of the lack of performance, loss, damage, injury or delay is outstanding or, provided that the force majeure remains 4 weeks or longer, the Seller may, at its option, cancel any order or remaining part thereof without liability by giving notice of such cancellation to the Customer.
- (b) If the contract is terminated in whole or in part in such circumstances the Customer shall be liable to pay the Seller for any goods delivered or services rendered under each or any contract on a pro-rata basis.

14. INTELLECTUAL PROPERTY RIGHTS, PATENTS, TRADE MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS

- (a) The Customer acknowledges that rights in respect of trademarks, trade names, copyrights, patents and other intellectual property rights connected with the goods and services and any value-added work thereto do not pass to the Customer, unless otherwise specifically authorised.
- (b) The Customer agrees to indemnify the Seller against all claims, damages, costs (including legal and lawyer costs) made by any person or company which the Seller may incur, either as a result of work done in accordance with the Customer's specifications or for the infringement of any intellectual property rights resulting from such customisation. The Customer is liable irrespective of a fault on his part.
- (c) If an order includes software or other intellectual property, such software or other intellectual property is provided by the Seller to the Customer subject to the copyright and user licence, the terms and conditions of which are set forth in the licence agreement accompanying such software or intellectual property. Nothing herein shall be construed to grant any rights or licence to use any software in any manner or for any purpose not expressly permitted by such licence agreement. Unless otherwise set forth in writing by an authorised signatory of the Seller, the Seller is not the licensor and the Customer acquires the licence directly from the manufacturer or the manufacturer's licensor.

15. DATA PROTECTION

The Seller shall save and treat personal information of the Customer necessary for the good execution of the contract in accordance with statutory provisions. The Customer shall have the right to access its personal data, to correct them if they appear incorrect, in accordance with the Seller's regulations on data protection, which are available on request.

16. SUB-CONTRACTING

The Seller reserves the right to sub-contract any part of any work or supply of any goods or services.

17. THIRD PARTY CLAIMS

The contract or contracts to which these T&C's apply is between the Customer and the Seller only. No third party shall acquire any rights against the Seller and the Seller shall have no liability to any third party arising out of or in connection with any contract. Customer shall hold the Seller harmless of any third party claims, if the claims have been caused by the Customer in whole or part.

18. ASSIGNMENT

The Customer may not transfer or assign his contract or his rights without the prior written consent of the Seller.

19. HEADINGS

The headings of these T&C's are for convenience only and shall have no effect on the interpretation thereof.

20. WAIVER

The Seller's failure to enforce its rights under or insist on any occasion upon the performance of the contract or these T&C's shall not act or be deemed as a waiver of such rights (including with respect to a breach by the Customer) or acceptance of any variation of these T&C's.

21. NOTICE

Any notice required in these T&C's shall be in writing (by regular mail, fax or email).

22. TERMINATION

1. The Seller shall be entitled by notice in writing to terminate immediately any contract without prejudice to any claim or right the Seller may otherwise make or exercise where:

- (a) exceptional circumstances render impossible any further cooperation between parties such that a termination appears appropriate.
 - (b) the Customer is in breach of any term, condition or provision of any contract and/or these T&C's or as set out in law, to the extent that these are not remedied by the Customer within a reasonable delay.
 - (c) the financial situation of the customer deteriorates in a way that the Customer has a petition for its winding-up presented, enters into administration, becomes insolvent or has ceased payment, passes a resolution for voluntary winding-up (other than for the purpose of a bona fide amalgamation or reconstruction), enters into an arrangement or composition with its creditors or has a receiver or manager appointed over all or any of its assets, or that the claims for payment by the Seller appear endangered.
 - (d) an attachment or distress or seizure is levied upon any of the Customer's property.
2. Upon termination the Seller can suspend and cancel any confirmed delivery and claim all outstanding amounts immediately.

23. APPLICABLE LAW AND JURISDICTION

Contracts between the Seller and the Customer are governed by Swiss law to the exclusion of international private law. The UN Convention on the International Sale of Goods does not apply.

The only jurisdiction for all disputes arising directly or indirectly in connection with the contractual relations is the head office of the Seller. The Seller reserves the right to sue the Customer at the Customer's registered office.

In case of differences on the content or the consequence of any clause of these T&C's their German Version will be solely applicable.