

MBS ELECTRONIC SYSTEMS GMBH - General Terms and Conditions (GTC)

GENERAL

MBS Electronic Systems GmbH (the company), submits all quotations and proposals and accepts all orders subject to the following conditions of contract which apply to all contracts for product supplied or work done by them or their employees to the exclusion of all other representations, conditions or warranties, expressed or implied. The buyer agrees to execute and return any license agreements as may be required by the company in order to authorise the use of those licensable items. If the licensable item is to be resold, this condition shall be enforced by the re-seller on the end customer. Each order received by the company will be deemed to form a separate contract to which these conditions apply and any waiver or any act of non-enforcement or variation of these terms or part thereof shall not bind or prejudice the company in relation to any other contract. The company reserves the right to re-issue its price list at any time and to refuse to accept orders at a price other than at the price stated on the price list in force at the time of order. The company reserves the right to vary the specification or withdraw from offer any of its products without prior warning. The company reserves the right to refuse to accept any contract that is deemed to be contrary to the company's policies in force at the time. The application of these GTC may only be varied by agreement in writing between the Parties

PRICING

All prices shown on the company's price list, or on quotations offered by them, are based upon the acceptance of these conditions. Any variation of these conditions requested by the buyer could result in changes in the offered pricing or refusal to supply. All quoted pricing is exclusive of VAT and delivery and includes packaging in accordance with company's standard commercial packaging methods. Any special packing or packaging requested by the buyer shall be at buyer's sole expense. In addition to the invoiced value, the buyer is liable for all import duty or taxes as may be applicable in the buyer's location. If there is any documentation required for import formalities, whether or not for the purposes of duty assessment, the buyer shall make this clear at the time of order.

DELIVERY

All delivery times offered by the company are to be treated as best estimates and no penalty can be accepted for non compliance with them. For guidance, where items are not currently held on stock, standard estimated delivery time is 12-14 weeks. The company shall deliver product using the courier service indicated by the buyer and at the buyer's cost. If multiple shipments are requested by the buyer, multiple delivery charges will be made—and separate invoices will be raised. If requested at the time of ordering, an alternative delivery service can be used, but only if account details are supplied to the company so that the delivery can be invoiced directly to the buyer by the delivery service.

INSURANCE

All shipments from the company must be insured by the buyer. If any goods received by the buyer are in an unsatisfactory condition, the following courses of action shall be taken. If the outer packaging is visibly damaged, then the goods should not be accepted from the courier, or they should be signed for only after noting that the packaging has sustained damage. If the products are found to be damaged after unpacking, the company must be informed immediately. Under no circumstances should the damaged goods be returned, unless expressly authorised by the company. Damage should be reported within 48 hours of receipt. Any returns made to the company for any reason, at any time shall be packaged in the original packaging or its direct equivalent and must be adequately insured by the buyer.

PAYMENT

The company's terms of payment for all account holders are 30 days net in the company's bank account. In all other cases payment is required in advance of delivery. Any charges incurred in making the payment, for either currency conversion or otherwise shall be paid by the buyer. Interest accrues on overdue payments and is calculated monthly on amounts outstanding as of the date on which such amounts become due until the date the company receives full payment from buyer. Interest is payable at a rate equal to 8% above the current European Central Bank base rate.

TECHNICAL SUPPORT

The company offers a dedicated technical email address for all products which are not subject to separate Support Contracts (e.g. FLS-Desk). It also accepts emailed support queries. Details of Support Contract services provided are given separately in the respective contracts. Technical support is provided free of charge for 12 months from the invoice date for queries regarding the products used in the system configuration for which they were sold. Features not documented in the user manual or a company written offer will not be supported. Interfacing with products, other than those that are pre-approved by the company as being compatible, will not be supported. If the development tools and system hardware is demonstrably working, then no support can be given with application level problems.

WARRANTY

The company provides 12 months warranty against defective parts and workmanship. The basis of this warranty is that the fault be discussed with the company's technical support staff before any return is made. If agreed that a return for repair is necessary, then the defined faulty item shall be returned carriage paid to the company and insured in accordance with the Insurance terms given above. Returned goods will not be accepted by the company unless this has been expressly authorised. After repair under warranty, repaired product will be returned to the buyer carriage paid by the company

using their preferred method. Under no circumstances will the company be liable for any incidental or consequential damage or expense of any kind, including, but not limited to, personal injuries and loss of profits arising in connection with any contract or with the use, abuse, unsafe use or inability to use the company's products. The company's maximum liability shall not exceed, and the buyer's remedy is limited to, either i) repair or replacement of the defective part or product or at the company's option ii) return of the product and refund of the purchase price, and such remedy shall be the buyer's entire and exclusive remedy. No other warranty is offered by the company on these products. All warranty claims are invalidated if the supplied operating or maintenance instructions are ignored; or if the buyer abuses, attempts unauthorized repairs or alterations of the products.

PASSING OF RISK AND TITLE

The passing of risk for any supply made by the company shall occur at the time of dispatch from the company. The title however shall not pass to the buyer until payment has been received in full by the company.

INTELLECTUAL PROPERTY RIGHTS (IPR)

The buyer agrees to preserve the IR of the company at all times, and that no contract for supply of products involves loss of IPR by the company unless expressly offered as part of the contract by the company.

CONFIDENTIALITY

Both Parties shall treat all information relating to the Contract which is neither generally known nor generally accessible in strict confidence, and shall use it only for the purpose of fulfilling the Contract. Furthermore the Parties shall ensure that their personnel and contracted specialists also treat all such information in a confidential manner. In case of doubt, all information is to be treated confidentially.

LICENCES AND EXPORT REGULATIONS

The sale, resale or other disposition of the products and any related technology or documentation may be subject to German export control laws, regulations and orders and may be subject to the export and/or import control laws and regulations of other countries (e.g. ITAR**). The buyer agrees to fully comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any products to any country to which such export or transmission is restricted or prohibited. The buyer acknowledges its responsibility to obtain any licenses required to export, re-export or import our products and on request discloses to the company all relevant information as may be required for the performance of the Contract.

WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE).

The company will ensure that any end-of-life items received with prior arrangement will be processed in the best available manner. The company should be informed that items are being sent and the shipment should be made at the expense of the buyer to the company. This offer is limited to "Circuit boards" that have been supplied by the company, regardless of the date of supply, and specifically excludes any associated computers, housings and power supplies that have been used with them. While this offer exceeds the legal requirements, the company reserves the right to amend its policy without notice.

INDEMNITY

The buyer shall indemnify the company against all claims made against the company by a third party in respect of the products supplied by the company.

SEVERABILITY

If any part of these terms and conditions be deemed incomplete, legally invalid, void or unenforceable for any reason, then such provision may be severed from these GTCs and be replaced by an effective provision as economically equivalent as possible. The remaining terms of the Contract shall remain in full force and effect.

FORCE MAJEURE

The company shall not be held responsible for failure to perform or delay in performing any of its contractual obligations, if such failure or delay is due to unforeseeable events beyond the company's reasonable control ("Force Majeure"), including but not limited to acts of God, declared or undeclared wars, terrorism, insurrection, epidemics, sabotage, labour disputes, shortages of labour, interruption or delays in transportation, fire, explosion, equipment or machinery breakdown, failure or delays of the company's source of supply, shortage in material or energy, acts, orders or priorities of any government, embargo and any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of the company.

GOVERNING LAW

This agreement and performance of both parties shall be governed by Federal Republic of Germany laws and, where relevant by applicable United States procurement laws. Any disputes under any contract entered into by the company shall be settled in a court of the company's choice operating under German law, and the buyer agrees to attend any such proceedings. No action can be brought arising out of any contract more than 12 months after the completion of the contract. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the contract.

** *ITAR: The International Traffic in Arms Regulations controls the export and import of defence-related articles and services on the United States Munitions List (USML).*