

General Delivery Conditions ("DELIVERY CONDITIONS") of TDK Europe GmbH

Article I: General Provisions

1. Legal relations between Supplier and Purchaser in connection with components of the Supplier (hereinafter referred to as „Products“) shall be solely governed by the present DELIVERY CONDITIONS. The Purchaser's general terms and conditions shall apply only if expressly accepted by the Supplier in writing. The scope of delivery shall be determined by the congruent mutual written declarations.
2. The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to the Purchaser's Documents; these may, however, be made accessible to those third parties to whom the Supplier has rightfully subcontracted Products.
3. The Purchaser has to non-exclusive right to use standard software and firmware, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. Without express agreement the Purchaser may make one back-up copy of standard software.
4. Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser.
5. The term "claim for damages" used in the present DELIVERY CONDITIONS also includes claims for indemnification for useless expenditure.
6. An acceptance of the general terms and conditions as well as an acceptance of any other referenced information and / or referenced documents of the purchaser is not associated with this order acceptance.
7. The Products ordered are finally described by the specification signed by both parties. In case no such signed specification exists, Supplier's specification shall be the final description of the Product.
8. The export of Products and documentation to which the contract relates may for example as a result of their nature or purpose be subject to the need for approval (see also notes in the delivery notes and invoices).
9. Products marked "ALNR" are subject to German export license obligations, and those marked "ECCN" to the corresponding US provisions (Exception "ALNR:N" and "ECCN:N").

Article II: Prices, Terms of Payment, and Set-Off

1. Prices are ex works and excluding packaging; value added tax shall be added at the then applicable rate.
2. Price shall be subject to the appropriate VAT, which shall be invoiced separately.
3. Payment shall be made free Supplier's paying office.
4. The Purchaser may set off only those claims which are undisputed or non-appealable.

Article III: Retention of Title

The Items pertaining to the Products ("Retained Goods") shall remain the Supplier's property until each and every claim the Supplier has against the Purchaser on account of the business relationship has been fulfilled.

Article IV: Time for Products; Delay

1. Times set for Products shall only be binding if all Documents to be furnished by the Purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if the Supplier is responsible for the delay.
2. If non-observance of the times set is due to:
 - a) Force majeure, such as mobilization, war, terror attacks, rebellion or similar events (e.g. strike or lockout),
 - b) Virus attacks or other attacks on the Supplier's IT systems occurring despite protective measures were in place that complied with the principles of proper care;
 - c) Hindrance attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or other circumstances for which supplier is not responsible; or
 - d) The fact that Supplier does not receive its own products in due time or due form such times shall be extended accordingly.
3. If the Supplier is responsible for delay (hereinafter referred to as "Delay") and the Purchaser has demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Products which due to the Delay could not be put to the intended use.
4. Purchaser's claims for damages due to delayed Products as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above are excluded in all cases of delayed Products, even upon expiry of a time set to the Supplier to effect the Products. This shall not apply in cases of liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health. Rescission of the contract by the Purchaser based on statute is limited to cases where the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.
5. At the Supplier's request, the Purchaser shall declare within a reasonable period of time whether it, due to the delayed Products, rescinds the contract or insists on the delivery of the Products.
6. If dispatch or delivery due to Purchaser's request, is delayed by more than one month after notification of the readiness for dispatch was given, the Purchaser may be charged, for every additional month commenced storage costs of 0.5 % of the price of the items of the Products, but in no case more than a total of 5 %. The Parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

Article V: Passing of Risk

Risk shall pass from Supplier to Purchaser in accordance with the relevant agreed INCOTERM.

Article VI: Receiving Products

The Purchaser shall not refuse to receive Products due to minor defects.

Article VII: Defects as to Quality

The Supplier shall be liable for defects as to quality ("*Sachmängel*"), hereinafter referred to as "Defects", as follows:

1. Defective parts or defective services shall be, at the Supplier's discretion, repaired, replaced or provided again free of charge, provided that the reason for the Defect had already existed at the time when the risk passed.
2. Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in the case of rescission and reduction. This shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and thing are used for building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para 1 No. 2 (defects of a building) German Civil Code ("*Bürgerliches Gesetzbuch*"), in the case of intent, fraudulent concealment of the Defect or non-compliance with guaranteed characteristics ("*Beschaffheitsgarantie*"). The legal provisions regarding suspension of the statute of limitations ("*Ablaufhemmung*", "*Hemmung*") and recommencement of limitation periods shall be unaffected.
3. Notification of Defect by the Purchaser shall be given in written form without undue delay.
4. In the case of notification of a Defect, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the Defect. The Purchaser, however, may withhold payments only if the subject-matter of the notification withhold payments only if the subject-matter of the notification of the Defect involved is justified and incontestable. The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle the Supplier to demand reimbursement of its expenses by the Purchaser.
5. The Supplier shall be given the opportunity to repair or to replace the defective good ("*Nacherfüllung*") within a reasonable period of time.
6. If repair or replacement is unsuccessful, the Purchaser is entitled to rescind the contract or reduce the remuneration; any claims for damages the Purchaser may have according to No. 10 shall be unaffected.
7. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation soil, or claims based on particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attribute to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof are likewise excluded.
8. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labor, and material, to the extent that expenses are increased because the subject-matter of the Products has subsequently been brought to another location than the Purchaser's branch office, unless doing so complies with the normal use of the Products.
9. The Purchaser's right of recourse against the Supplier pursuant to Sec. 478 German Civil Code is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 8 above shall apply mutatis mutandis to the scope of the right of recourse the Purchaser has against the Supplier pursuant to Sec. 478 para. 2 German Civil Code.
10. The Purchaser shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of contract on the part of the Supplier. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser. Any other or additional claims of the Purchaser exceeding the claims provided for in this Article VIII, based on a Defect, are excluded.

Article VIII: Industrial Property Rights and Copyrights; Defects in Title

1. Unless otherwise agreed, the Supplier shall provide the Products free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of delivery only. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Products made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Article VII No. 2 as follows:
 - a) the Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Products concerned or whether to modify the Products such that they no longer infringe the IPR or replace them. If this would be impossible for the Supplier under reasonable conditions, the Purchaser may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions;
 - b) The Supplier's liability to pay damages is governed by Article XI;
 - c) The above obligations of the Supplier shall apply only if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the Supplier's discretion. If the Purchaser stops using the Products in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
2. Claims of the Purchaser shall be excluded if it is responsible for the infringement of an IPR.
3. Claims of the Purchaser are also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Products being modified by the Purchaser or being used together with products not provided by the Supplier.
4. In addition, with respect to claims by the Purchaser pursuant to No. 1 a) above, Article VII Nos. 4, 5 and 9 shall apply mutatis mutandis in the event of an infringement of an IPR.
5. Where other defects in title occur, Article VII shall apply mutatis mutandis.
6. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Article VIII, based on a defect in title, are excluded.

Article IX: Conditional Performance

1. The performance of this contract is conditional upon that no hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions exist. The obligation to supply Products or services shall not apply if applicable legal provisions preclude their supply including but not limited to German or other export restrictions.
2. The obligation to supply Products or services also does not apply if and to the extent necessary approvals for the supply (including but not limited to approvals agreed with purchaser in individual contracts) have not been given and / or not been given in time by purchaser and / or if such circumstances subsequently become known to Supplier.
3. The Purchaser shall provide any information and Documents required for export, transport and import purposes.

Article X: Impossibility of Performance; Adaption of Contract

1. To the extent that delivery is impossible, the Purchaser is entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages is, however, limited to an amount of 10 % of the value of the part of the Products which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of liability based on intent, gross negligence or loss of life, bodily injury or damage to health; this does not imply a change in the burden of proof to the detriment of the Purchaser. The Purchaser's right to rescind the contract shall be unaffected.
2. Where events within the meaning of Article IV No. 2 (a) to (c) substantially change the economic importance or the contents of the Products or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons the Supplier shall have the right to rescind the contract. The same applies if required export permits are not granted or cannot be used. If the Supplier intends to exercise its right to rescind the contract, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with the Purchaser.

Article XI: Other Claims for Damages

1. Unless otherwise provided for in the present DELIVERY CONDITIONS, the Purchaser has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort.
2. This does not apply if liability is based on:
 - a) the German Product Liability Act ("*Produkthaftungsgesetz*");
 - b) intent;
 - c) gross negligence on the part of the owners, legal representatives or executives;
 - d) fraud;
 - e) failure to comply with guarantee granted;
 - f) negligent injury to life, limb or health; or
 - g) negligent breach of a fundamental condition of contract ("*wesentliche Vertragspflichten*")However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above case applies.
3. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.

Article XII: Venue and Applicable Law

1. If the Purchaser is a businessman, sole venue for all disputes arising directly or indirectly out of the contract shall be the Supplier's place of business. However, the Supplier may also bring an action at the Purchaser's place of business.
2. This contract and its interpretation shall be governed by German law to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG).

Article XIII: Severability Clause

The legal invalidity of one or more provisions of this Agreement in no way affects the validity of the remaining provisions. This shall not apply if it would be unreasonably onerous for one of the parties to be obligated to continue the contract.

Article XIV: IATF 16949

Supplier's manufacturing sites serving automotive business apply the IATF 16949 standard. The IATF certifications confirm Supplier's compliance with requirements regarding the quality management system in the automotive industry according to IATF 16949. Even if IATF 16949 may appear to support the acceptance of unilateral customer requirements and customer specific requirements, Supplier hereby emphasizes that only such requirements mutually agreed upon in writing shall be implemented in our Quality Management System and shall apply.