

General Terms and Conditions (B2B)

for sourcing from Hilscher Gesellschaft für Systemautomation mbH (Headquarter) 11/2018

I. General

The following supply and payment conditions apply for the overall business relations with our customers. The purchaser accepts them as binding for the present contract and - as amended - for all future transactions. Any deviating agreement requires our written confirmation. The purchaser waives the applicability of the purchaser's own purchasing conditions. These will neither be an integral part of contract as a consequence of our silence or our deliveries.

II. Proposals/Quotations/Offers

Our quotations are always subject to confirmation. Illustrations, dimensions and weights, as well as information of any type are non-binding; the right of design modifications is reserved. Side agreements of any kind require our written confirmation for their validity; especially deviating drawing descriptions are only valid if unambiguously defined in detail.

III. Delivery

Deliveries are made according to our operational conditions. We do not guarantee that we meet delivery deadlines. If the purchaser is in arrears with the payment for a previous delivery, we are entitled to retain consignments without being liable for payment of damages. If we are impeded in contract performance by the set deadline due to production interruptions in our or our suppliers' facilities, e.g. by force majeure, traffic disruptions, strike, lock-out, the delivery period shall be extended accordingly. The purchaser may only withdraw from the contract after setting a reasonable period of grace upon expiry of the extended deadline. Such withdrawal must be notified in writing. If fulfillment of the contract is impossible for us due to the reasons mentioned in clause 2., we are released from our duty to deliver. We will immediately inform the purchaser of the impossibility to fulfill the contract. Claims for damages by the purchaser due to delay or non-fulfillment of the contract are excluded. We are entitled to make partial deliveries.

IV. Prices

Unless otherwise agreed upon, costs are charged at the prices valid on the date of delivery. Value added tax is not included in the prices and is shown separately.

V. Payment

Our invoices are payable within 30 days of the date of the invoice – unless otherwise agreed upon. However, we can also make any delivery conditional on immediate payment. Should the date of payment be exceeded, we are entitled - without any particular reminder - to charge interest at the amount of 9 percentage points above the base rate of the European Central Bank. We reserve the right to decide on the acceptance of cheques on a case-by-case basis. Cheques are only accepted on account of payment and only credited under usual reserve. Any liability for timely collection is excluded. Payment shall only be deemed made when we may dispose of the amount. As regards cheques, payment shall not be deemed made before the cheque is cashed. If a cheque is not cashed on the due date or if circumstances arise for the purchaser which in our opinion do no longer justify the granting of a period of grace, we are entitled to demand the full amount due immediately – even if cheques have been provided. The purchaser shall only be entitled to set off, retain or reduce amounts – even if notices of defects are given or if counter-claims are asserted – if the counter-claim has been determined validly or is indisputable. The purchaser shall only be entitled to retain amounts due for counter-claims resulting from the same contract.

VI. Title retention

Goods remain our property until all claims including those that arise in the future have been paid in full, regardless of the legal basis (this includes, but is not limited to, cheques, assignments, bonds, damages, etc.) This also applies to 1 conditional claims. Should goods subject to retention of title be processed or combined with our items not belonging to us in terms of §§ 947 and 950 German Civil Code, we shall acquire co-ownership in the new product(s) in proportion to the value of the goods subject to retention of title to the other processed and/or connected goods at the time of the processing or combination. In case that the purchaser purchases the sole ownership in the new goods, the purchaser already now cedes to us the co-ownership proportion in the new goods in relation to the value of the processed or combined good at the time of the processing or combination and shall keep them free of charge on our behalf. The purchaser may transfer the goods subject to retention of title in proper business operation against cash payment or ownership reservation; the purchaser is not entitled to make them available otherwise, especially for assignment as security or pledging. In order to safeguard our claims – irrespective of the legal reason (cf. item VI clause 1) – the purchaser cedes to us already now all receivables that are part of goods delivered by us in the amount of the resale price including value added tax and all ancillary rights. In case that the goods subject to retention of title are sold by the purchaser together with goods not belonging to us for a total price, the cessation to us only amounts to the sum invoiced by us to the purchaser for the sold goods subject to retention of title. In case that the purchaser's claims from the resale are credited to a current account, the purchaser also cedes to us the purchaser's claims from the current account opposite the customer. The cessation is for the amount invoiced by us for the resold goods subject to retention of title. Until recalled, the purchaser has the right, to collect the claims ceded to us. In case that circumstances occur for the purchaser that, in our opinion do no longer justify the granting of a period of grace, the purchaser is obliged to grant us access to his bookkeeping documents for the purpose of establishing the amount of cessation according to point VI clause 4, and to provide us with all information, submit any documents and to inform the relevant debtors of the cessation in writing upon our request. Given the circumstances as mentioned in point VI clause 7, the purchaser is obliged to grant us access to the goods subject to retention of title and still in his possession, to submit to us a detailed breakdown of such goods, to separate such goods and to surrender them to us. Should the amount of such surety exceed the amount of our claims by more than 20%, we will release such surety in our discretion upon request of the purchaser. The buyer is obliged to inform us in writing immediately if a third party has accessed the goods subject to retention of title or the claims ceded to us, and to support our intervention in every way. The costs of this are for the account of the purchaser.

VII. Packaging and dispatch

Our goods are delivered in the customary packaging. The clear acceptance of the goods by the forwarder or carrier shall be deemed proof of proper packing. Internal packaging and boxes are charged at cost price and are non-returnable. Dispatch is ex our works. We are entitled, but not obliged, to cover transport insurance on behalf of the purchaser and by invoicing the cost price. If dispatch is delayed by the purchaser by more than 14 days due to understandable circumstances, we are entitled to charge storage cost at the rate of 5.00 Euro per square metre of storage area per month.

VIII. Transfer of risk

We deliver FCA „Free Carrier“, Rheinstraße 15, 65795 Hattersheim according to Incoterms 2010. All consignments, including returns, if any, are transported at the risk of the purchaser.

IX. Guarantees

We deliver the goods in the design and workmanship applied by us at the time of delivery. The guarantee exists in that we repair or replace at our option defects or defective goods provably due to defects in materials or manufacture free of charge within the guarantee period. The guarantee is void if claims for defects are not notified to us immediately, if the purchaser or third parties have manipulated the goods, if defects are caused by ordinary wear and tear, as a result of disadvantageous operating conditions or as a result of non-compliance with our operating instructions or electrotechnical rules, or if our request for return of defective goods is not immediately complied with. Guarantee for goods from sub-suppliers is only granted to the extent to which such sub-supplier grants a guarantee for the goods. The guarantee period for goods produced by us is 36 months, calculated from the date of delivery ex works. The warranty for software is 12 months from date of acceptance / purchase. The aforementioned provisions shall not apply if statutory provisions pursuant to § 438 para. 1 no. 2 German Civil Code, § 479 para. 1 German Civil Code and § 634a para. 1 German Civil Code mandatorily stipulate longer periods. Should, despite all care taken, goods delivered by us show defects which already existed at the time of risk transfer, we shall repair or replace such goods at our option subject to timely receipt of a notice of defect. We shall always be provided with the opportunity to remedy defects within a reasonable period. Statutory recourse claims remain unaffected without limitation by this provision. Repeated goods replacement is permissible. Should any goods still be defective after two times replacement, the purchaser may appropriately reduce the purchase price or withdraw from the contract at the purchaser's option. Replaced parts which are no longer used for ordered goods, are transferred to our property. As regards accessories not originating from our manufacture, the terms of delivery of the relevant sub-supplier shall apply. Guarantees shall be settled by the amount of the sum invoiced for the relevant part in any case. Claims for consequential damages are excluded. Rejected goods shall be returned to us in proper packaging.

X. Liability

Claims for damages are excluded regardless of the kind of violation of duty, including illegal acts, unless due to willful misconduct or gross negligence on our part. In case of culpable violation of material contractual obligations (cardinal duties), we shall be liable for any negligence, but only up to the amount of typically occurring foreseeable damages. Claims for loss of profits, expenses saved, claims for compensation by third parties or other indirect consequential damages may not be asserted, unless a warranted property is specifically intended to protect the buyer against such damage. The limitations and exclusions of liability in paragraphs 1 and 2 shall not apply to claims that have arisen due to fraudulent behavior on the part of the seller, as well as to liability for warranted properties, to claims under the Product Liability Act or to damage resulting from injury to the life, or health. The above mentioned exclusion of liability also applies to our employees, workers, representatives and vicarious agents.

XI. Repairs

Repairs are carried out without guarantee if no deficiency report has been submitted. For repairs, complaints are to be made within one week after receipt of the device or completion of the repair at the latest. In case of hidden defects, the notice of defects shall be given within the guarantee period in any case. In addition, the statutory provisions pursuant to §§ 434 et. Sequ., 475 para. 1 German Civil code shall apply. The conditions of guarantee of item IX shall apply mutatis mutandis.

XII. Marking of goods, trade mark rights

A change of our goods or any special marking that represent the mark of origin of the purchaser or a third party or could purport that they are special products is impermissible. If third parties make justified claims to trade mark rights, we will acquire a license for the sold goods as such or replace them by goods that do not infringe trade mark rights at our option and our expenses. Should this not be possible for legal or technical reasons or should not be reasonable from economical aspects, we will take them back against refund of the purchase price. We accept no liability for infringements of third party trade mark rights for goods manufactured by us according to the purchaser's specifications. This also applies if we have participated in the development or have developed the goods in accordance with the purchaser's to the specifications.

XIII. Effectiveness

Should any of these terms and conditions be inapplicable for any reason whatsoever, this shall not affect the effectiveness of the remaining terms and conditions.

XIV. Place of performance, venue

The place of performance is Frankfurt/Main. The venue for all disputes is Frankfurt/Main, to the extent the purchaser is a registered merchant, public law legal entity, public law special fund, and the law does not mandatorily stipulate otherwise. These terms and conditions shall exclusively be governed by German law with exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

XV. Miscellaneous

Hilscher does not assume any responsibility for the products being appropriate to the aim intended by the customer; this responsibility is subject solely to the customer's discretionary power and responsibility. In particular it is hereby expressly agreed that any use in or for application for medical equipment, for aviation or space or nuclear purposes, in safety related automotive application inside of vehicles or for any illegal purpose or purposes violating national or international restrictions such as embargos shall be excluded. Hilscher and the Customer agree that products or programs have not been developed or designed for any of those or similar purposes. Hilscher points out that there might be third-party rights as regards the different field bus processes and communication protocols. Insofar as the use, reproduction, distribution or the provision of public access of the program affect third-party rights - in particular network technology patents and/or the rights of its user organizations - the Licensee shall independently acquire the relevant rights. Especially field bus technology uses patents whose utilization is allowed free of charge for the members of field bus user organizations (e.g. PROFIBUS Nutzerorganisation e.V.). If you are not a member, please contact the relevant field bus user organization for the acquisition of user rights. For the purpose of the field bus user organization's quality management, certification of a field bus device may also be mandatory. Please refer to the relevant user organization in this regard. In the event any Products are exported by Customer, Customer agrees to comply with all applicable German export control laws and regulations and the applicable export control laws of any other countries which may be applicable to said export. The same applies to the terror lists of the USA. Suppliers undertake that they shall comply with all laws and regulations regarding the treatment of employees, environmental protection and occupational safety as well as the provisions of the Dodd-Frank Act regarding the so-called conflict minerals and the Code of Conduct of the Electronics Industry Citizenship Coalition (EICC). In this regard, suppliers shall observe human rights, the right to collective bargaining, the abolition of forced labour and child labour, the elimination of discrimination when personnel is recruited and employed, and the prevention of corruption. In addition, the General Conditions of Sale and Delivery for Products and Services of the Electrical Industry shall be applicable.