

Art. 1 General

(1) Supplies and services of GMS Electronic Vertriebs GmbH - hereinafter GMS - shall be subject exclusively to the Terms and Conditions set out hereinunder. We shall not recognize any Purchasers` conditions which are contradictory to or deviate from these Conditions, unless we have expressly agreed in writing to their being applied. Our Conditions of Sales shall continue to apply even if, in the awareness of Purchasers` conditions which are contradictory to or deviate from our Conditions, we carry out the supply to the Purchaser without reservations.

(2) In the event of special conditions being agreed in writing for specific services, these General Conditions of Sale shall apply as subsidiary and supplements. As subsidiary and supplements to those Conditions in turn shall apply the General Conditions of Supply for Goods of the Electrical Industry.

(3) Our Conditions of Sale shall apply to all future transactions with Purchasers.

(4) Our Conditions of Sale shall only apply to companies in the meaning of Article 310, Paragraph (1) BGB (Civil Code).

Art. 2 Prices and Payment

(1) Unless specifically derived otherwise from the confirmation of order, all prices shall be net prices and shall be binding. Value Added Tax, packing, freight and Customs duty shall be invoiced separately.

(2) The deduction of discounts shall require separate written agreement.

(3) Unless specifically derived otherwise from the confirmation of order, the sum of the invoice (without deduction) shall be due for payment within 30 days of the date of invoice, without regard to complaints about deficiency. The provisions of the law shall apply with regard to the consequences of delay in payment.

(4) Rights of offsetting shall only pertain to Purchasers if their counterclaims have been determined with force of law, are uncontested and have been recognized by GMS. In addition to this, Purchasers shall only be entitled to exercise a right of retention if their counterclaim rests on the same contractual relationship.

Art. 3 Delivery Time

(1) Details regarding delivery times are approximate timings, and non-binding. Binding delivery dates shall only come into effect with express written agreement. The commencement of the delivery time indicated by us shall be subject to the clarification of any technical queries.

(2) The maintaining of a delivery obligation shall further be subject to the fulfilment of Purchasers` obligations in good time and in due and proper manner. The right of repudiation of the unfulfilled contract shall be reserved.

(3) In the event of Purchasers falling into delay an acceptance or in the event of their culpably infringing other obligations to provide co-operation, GMS shall be entitled to demand the reimbursement of any damages as may have been incurred, including any additional expenditure. The right to pursue further claims shall be reserved.

(4) In the event of the preconditions of Article 3 pertaining, the risk of accidental loss or accidental destruction of the purchased items shall be assigned to Purchasers at the time at which this item became overdue for acceptance or fell into arrears for payment.

(5) GMS shall be liable in accordance with the provisions of the law, provided that the delay in delivery is attributable to an infringement of contract due to gross or culpable negligence on the part of GMS. In the event of the delay in delivery not being attributable to an intentional act on the part of GMS, liability to provide compensatory damages shall be restricted to the foreseeable damages which may typically arise.

(6) GMS shall be liable in accordance with the provisions of the law, provided that the delay in delivery attributable to GMS is based on culpable infringement of a substantial contractual obligation; in this case however, liability to provide compensatory damages shall be restricted to the foreseeable damages which may typically arise.

(7) GMS shall otherwise be liable, in the event of delay in delivery, for each completed week of delay and within the framework of a lump-sum compensation for delay, in the amount of 3% of the value of the supply, but as a maximum not more than 10% of the value of the supply.

(8) GMS shall not be liable for the exceeding of the agreed delivery time, in the event of this being caused by circumstances which are not attributable to GMS. GMS shall in particular not be liable for delays and services which are caused by instances of force majeure or due to events which substantially impeded delivery by GMS or render it impossible; these shall in particular include strike, lock-out, official decrees, etc. GMS shall be entitled to postpone delivery by the duration of the impediment, plus a reasonable start-up time, or to withdraw from the contract due to the part still unfulfilled.

Art. 4 Assignment of Risk - Packaging Costs

(1) Unless agreed otherwise in writing, deliveries shall be effected on instructions from GMS directly ex-works or our stocks at the expense and risk of Purchasers.

(2) Transport packing and all other packing under the terms of the Packaging Decree shall not be recovered, with the exception of pallets. Purchasers shall be obliged to arrange for disposal of the packaging at their own expense.

(3) If Purchasers so wish, GMS shall cover the delivery by a transport insurance policy. The costs incurred shall be borne by Purchasers.

Art. 5 Guarantee

(1) Purchasers shall be obliged to advise GMS in writing of any apparent deficiencies within a period of two weeks from receipt of the goods; otherwise the pursuit of claims under the guarantee shall be excluded. Dispatch in good time shall be sufficient for the maintaining of specified periods of grace. Purchasers shall bear the whole burden of proof for all claim preconditions, and in particular for the deficiency itself, for the time of the deficiency, and for the submission of the complaint in good time.

(2) In the event of a defect or deficiency in the item purchased pertaining which is attributable to us, GMS shall, at our discretion, either make good or provide a replacement delivery. In the event of making good, GMS shall be obliged to bear all expenses required in making good the defect or deficiency, in particular transport costs, transit costs, and costs of labour and materials, up to the amount of the purchase price, provided that these are not substantially increased by the fact of the purchased item having been moved to a location other than that of the place of fulfilment.

(3) In the event of GMS not being prepared, or not in a position, to make good the defect or deficiency, or effect replacement delivery, or in the event of their delaying this beyond a reasonable period of grace, for reasons attributable to GMS, or in the event of the making good of defect or deficiency or the effecting of replacement delivery not coming to pass, than Purchasers shall be entitled, at their discretion, to withdraw from the contract (repudiation), or to demand an appropriate reduction in the purchase price (reduction).

(4) In the event of Purchasers withdrawing from the Contract due to legal or material insufficiency after failure to effect subsequent fulfilment, they shall not acquire any supplementary claims for compensation due to the defect or deficiency.

(5) GMS shall be liable in accordance with the provisions of the law in the event of Purchasers pursuing claims for compensatory damages which are based on wilful or gross negligence. In the event of no wilful infringement of contract being attributable to GMS, liability to effects compensatory damages shall be restricted to the foreseeable damages which may typically arise.

(6) In the event of GMS culpably infringing a substantial contractual obligation, liability shall be restricted to the foreseeable damages which may typically arise.

(7) Apart from this, liability to effect compensatory damages shall be excluded. In this context, GMS shall in particular not be liable for damages which are not incurred on the object of supply itself.

(8) The mandatory provisions of the Product Liability Law (Produkthaftungsgesetz) shall remain unaffected thereby.

(9) The statute of limitations for claims for defect or deficiency shall be 12 months, calculated from the assignment of risk.

Art. 6 Overall Liability

(1) Any further liability beyond the compensatory damages provided for in Article 5 shall be excluded, without consideration of the legal nature of the claim made.

This shall apply in particular to claims for compensatory damages arising from culpability at the concluding of the contract, due to other infringements of obligation, or due to petty claims for the replacement of defective goods in accordance with Article 823 BGB (Civil Code).

(2) Inasmuch as liability for compensatory damages is excluded or restricted, this shall also apply in respect of personal liability for compensatory damages for staff, employees, workers, representatives, and assistants in fulfilment of GMS.

Art. 7 Assurance of Right of Retention

(1) GMS shall retain ownership of the goods supplied until payment in full of all claims arising from the business relationship between GMS and Purchasers.

(2) In the event of behaviour by Purchasers which is contrary to contract, and in particular of delay in payment, GMS shall be entitled to take back the goods. The recovery of the goods by GMS shall not constitute withdrawal from the contract, unless GMS expressly declares this in writing. The offering of the goods in pledge by GMS shall always constitute a withdrawal from the contract. After recovery of the goods, GMS shall be entitled to resell them, the proceeds of resale being offset against Purchasers' obligations, less reasonable costs of resale.

(3) Purchasers shall be obliged to notify GMS forthwith of an access by third parties to the goods, such as in the event of offering in pledge, as well as of any damage or destruction involving the goods. Change of ownership of the goods, and of change of domicile on the part of Purchasers is to be notified to GMS forthwith.

(4) Purchasers shall be entitled to sell the goods onwards by way of due and proper business transaction. Purchasers shall here and now assign to GMS all claims in the amount of the final invoice (including V.A.T.) as may be incurred by Purchasers in respect of a third party by way of resale. GMS shall accept the assignment. After the assignment, Purchasers shall be empowered to pursue claims. GMS shall reserve the right to pursue the claim themselves as soon as Purchasers fail to meet their payment obligations in the due and proper manner, or fall into arrears in payment.

(5) The working or processing of the goods by Purchasers shall always be effected on behalf of and on instructions from GMS. In the event of processing being carried out together with items which do not pertain to GMS, GMS shall acquire the right of joint ownership in the new item in the proportion of the value of the goods supplied by GMS (value of the invoice plus V.A.T.) in relation to the other items processed. The same shall apply in the event of the goods being mixed with other items not pertaining to GMS.

Art. 8 Court of jurisdiction

(1) Court of jurisdiction shall be exclusively Landau (Rhineland-Palatinate).

(2) The law of the Federal Republic of Germany shall apply, with the exclusion of the UN Purchasing Law.

(3) Unless agreed otherwise in the confirmation of order, the place of domicile of GMS shall be the place of fulfilment.

Art. 9 Partial unworkability

(1) In the event of one or more provisions being or becoming unworkable, the validity of the remaining provisions shall not be thereby affected. The provisions found unworkable in whole or in part shall be replaced by a provision which most closely approximates the unworkable provision in terms of financial effect.

"Payment shall be effected exclusively *ex gratia*, without acknowledgement of a legal obligation and without acknowledgement of an obligation to effect payment for the future in the event of a similar enshrined material content."