

1. General – Extent of Application

- 1.1. The following conditions of sale are only applicable with respect to companies in the sense of § 310 I BGB (= German Civil Code).
- 1.2. Contracts regarding deliveries are exclusively based on the following conditions. We do not accept a customer's opposing conditions or conditions differing from our ones unless we have agreed in writing to their validity. Our conditions are effective also in case we unconditionally deliver certain items or provide certain services to the customer, knowing that there are opposing conditions or conditions differing from our ones.
- 1.3. Additional and divergent agreements have to be approved by us in writing before becoming effective.
- 1.4. Our sales conditions are also valid for all future transactions with the customer.

2. Offer and Order

Our electronic, written and oral offers are no offers in the legal sense, but have to be only understood as a request to the customer to make an order. The customer is bound to his order 4 weeks as of the receipt of the order in our company. A contract is concluded only after our written confirmation of order, at the latest, however, after the customer has accepted the delivery. Our offers and confirmations of order are always subject to a positive credit investigation for the customer and to a timely and properly self-delivery.

3. Industrial Property Rights, Copyrights

- 3.1. The contractual products including their circuit diagrams, drawings, drafts, descriptions and similar documents as well as the software are normally subject to industrial property rights or copyrights of the manufacturer/licensor. The customer is not authorised to alter, cover or remove any reference to such industrial property rights on the contractual products.
- 3.2. The customer is obliged to advise his buyers on the above mentioned industrial property rights and license conditions of the manufacturer and on the limitations stated in the license conditions.
- 3.3. We are liable for damage based on an infringement of such property rights only in case it has been known to us or in case we should have known that these rights are existing and that these cause a customer being exposed to third-party claims. Our liability in this respect is limited to the invoiced amount of the goods.

4. Quality, Delivery Periods and Deliveries, Delay in Delivery

- 4.1. Regarding the extent and the time of delivery and the agreed quality of the goods, only our written details are decisive. Additional agreements and amendments have to be approved by us in writing.
- 4.2. Unless agreed upon differently in our written statements, it is hereby agreed to deliver the goods ex the logistics centre in Straubing. The costs and the risk of the transport as well as the loading and shipping costs are charged to the customer. This is also applicable for return shipments as per point 10. Presently we charge a packaging lump sum for the goods in the amount of 1.00 Euro. The customer is responsible for keeping possible preclusive periods, for example those of the General German Forwarding Conditions (German abbreviation: ADSp).
- 4.3. Transport packaging and other packaging can not be returned as per the packaging regulation; exempted from this regulation are pallets. The customer has to cover the costs for the disposal of the packaging.
- 4.4. The delivery periods stated by us are agreed upon only as approximate. The beginning of the delivery period stated by us prerequisites the clarification of all technical questions. A delivery period stated by us begins on the issuance date of the respective confirmation, however not before the customer has provided us with all documents, permits, acceptances and the receipt of the downpayment agreed upon. The delivery period is considered to have been kept if the goods have left the warehouse by the end of the delivery period or if they have been reported to be ready for shipment.
- 4.5. The delivery period is reasonably extended in case of measures regarding industrial disputes, especially strikes or lockouts, also in the occurrence of unpredictable hindrances beyond our control, if it can be proved that such hindrances considerably influence the manufacture or delivery of the delivery item. This is also true in case a subcontractor has to do with such circumstances. We are not responsible for the above mentioned circumstances if they occur during a delay already existing. We will inform the customer about the beginning and end of such hindrances as soon as possible.
- 4.6. We are authorised to deliver by instalments and to invoice such instalments respectively.
- 4.7. In case of a delay in delivery based on slight negligence we are only liable to an amount of 5% of the delivery amount in delay, in any case, however, limited to the predictable damage occurring in typical cases.
- 4.8. If the delay is based on intention or on gross negligence from our side, we are liable according to the legal regulations, however limited to the predictable damage occurring in typical cases if no intentional breach of contract on our side is applicable.

- 4.9. According to the legal regulations we are liable to the extent the underlying purchase contract is a firm deal or in case the customer is no longer interested in a further fulfilment of the contract as a consequence of the delay in delivery caused by us.

5. Examination of the Goods

The customer has to examine the goods immediately with respect to their completeness and conformity with the terms and conditions of sale with the documentation. He has to report obvious failures and deficiencies immediately in writing. In case the customer does not report the deficiency within 4 working days as of receipt of the goods, the delivery is considered to be conformable to the contract, unless it has not been possible to find the deficiency in spite of a careful examination of the product. Transport damage or shortages visible upon delivery have to be noted on the acknowledgement of receipt of the forwarding agent as per § 438 HGB (= German Commercial Code).

6. Prices and Payment

- 6.1. Valid is the price stated in our confirmation of order. Otherwise, in case nothing else has been agreed upon, the price stated in our price list on the day of the acceptance of the order is valid.
- 6.2. Our prices are net, „ex works“ plus statutory VAT and the costs for transport and packaging.
- 6.3. We reserve right to increase prices respectively in case prices rise after the conclusion of a contract, especially in the event of wage settlements, increased material prices or exchange rate fluctuations. We will prove this to the customer upon request.
- 6.4. Unless agreed upon differently, payments are due 14 days after the invoice date without any deduction. In case the customer exceeds the payment periods granted, we are entitled – irrespective of further-reaching rights – to request interest on arrears to the amount of 8% per year above the respective base interest rate as per BGB (= German Civil Code). All open accounts become immediately due in case the customer gets into arrears.
- 6.5. The delay of payments or the setoff because of possible counterclaims of the customer is only permitted if these counterclaims are legally effective or if they have not been contested on our part.

7. Reservation of Proprietary Rights

- 7.1. We hereby reserve right to the delivery items until all and any debts resulting from the business relations between us and the customer have been settled.
- 7.2. The customer is obliged to treat the delivery items carefully; he is particularly obliged to insure them adequately at his own cost against damage caused by fire, water and theft.
- 7.3. The customer is entitled to resell the delivery items in the ordinary way of business; however, the customer is not entitled to pledge or to transfer them by way of security. Already at this time debts resulting from the resale of the items are assigned to us to the amount of the final amount invoiced.
Furthermore, the customer is entitled to collect the assigned debts; our power to collect the debt ourselves is not affected by this regulation. However, we will not collect the assigned debts as long as the customer meets his obligations to pay by this regulation. We will not collect the assigned debts as long as the customer meets his obligations to pay from the collected proceeds, as long as he is not in arrears and has not filed a petition in insolvency or as long as he has not stopped his payments. We hereby accept the assignment. The customer is obliged to provide us with all and any details and information necessary to collect the assigned debts.
- 7.4. If necessary, the customer processes, manufactures or changes the conditional commodity for us. In case the conditional commodity is processed, connected to or mixed with other goods not belonging to us, we are entitled to the incurring co-ownership share of the new item in the ratio of the invoiced amount of the conditional commodity to the other items processed at the time of its processing, connecting or mixing.
If the customer is the sole owner of the new item, it is hereby agreed that the customer transfers a proportional co-ownership to us. It will be kept for us at no charge. The above mentioned advance assignment is valid in the above mentioned cases only to the invoiced amount of the conditional commodity which is resold together with the other goods. In case the conditional commodity or the debts assigned in advance are pledged or accessed by third parties, the customer has to notify us immediately by indicating all information required for an intervention. Costs arising from this which can not be collected by the respective third parties are charged to the customer's account.
- 7.5. We hereby oblige ourselves to release the collateral which we are entitled to as per the above mentioned conditions upon the customer's choice and request if the value of the collateral exceeds the debt for which a collateral has to be provided by more than 20%.

8. Liability for defects

- 8.1. If the customer would like to put forward a warranty claim, it is necessary that he has orderly fulfilled his duties to examine the goods and to lodge a complaint. There is no warranty for secondhand goods.
- 8.2. As far as goods are defective, the customer is obliged to seriously recourse to an out-of-court settlement if a manufacturer's warranty exists before recouring to Ingram Micro Distribution GmbH. Ingram Micro Distribution GmbH will support the customer in doing so. The other warranty claims of the customer remain unaffected.
- 8.3. In case and as far as the customer is not satisfied after such a claim, we are at first instance and upon our own choice entitled to fulfil the contract by correcting the faults or delivering substitute items. Exchanged goods or parts are our property and have to be returned to us. If we are not prepared or not in a position to fulfil the contract or if the fulfillment is delayed beyond reasonable times for reasons beyond our control or if the fulfillment is not successful for other reasons or if this is not reasonable for the customer, the customer is authorised either to withdraw from the contract or to request a reduction of the purchase price. Potential damage claims are regulated in article 9.
- 8.4. In case of a withdrawal the customer has to set off the use advantages drawn up to the withdrawal from the contract. The use advantage up to the time of the withdrawal is calculated proportionally on the basis of the purchase price and the usual overall operating time of the goods, unless the use was restricted or not possible at all because of a fault. Both parties are free to prove a lower or higher use advantage. An unimportant fault does not entitle the customer to withdraw from the contract.
- 8.5. As far as the customer has the right to withdraw from the contract due to inadequate fulfillment and/or can claim damages instead of fulfillment of the contract or at least affirms this, upon our request, the customer will explain within an adequate period in writing if he asserts his rights or wants service provision until further notice.
- 8.6. If the examination of a notice of defects shows that there is no redhibitory defect, we are entitled to charge an expense/service lump sum. In this case the customer is free to prove lower expenses than those charged.
- 8.7. Warranty became time-barred within 12 months, calculated as of the passage of risks. Our handling of the customer's notice of defect does not mean that the fault is acknowledged. The handling of this notice of defect will only lead to a suspension of the period of limitation to the extent as legal requirements exist. Thereby, the period of limitation will not restart. This applies also when we try to fulfill the contract correctly after the customer's notice by repairing the defective products or delivering substitute items. A repair of defects only affects the period of limitation of the defective part as well as new defects resulting from this repair. As far as the goods are subject to a consumer goods purchase, the customer's rights remain unaffected as per §§ 478 and 479 BGB (= German Civil Code) on condition that the customer has fulfilled his duty to examine the goods and to lodge a complaint as per § 377 HGB (= German Commercial Code).

9. Joint Liability

- 9.1. Unless stated differently in the following, further-reaching claims of the customer – no matter what legal reasons for – are hereby excluded. Particularly we are not liable for any damage not resulting to the item itself, for lost profits or other economic loss of the customer.
- 9.2. This release from liability is not applicable in so far as the damage cause can be traced back to intentional default or to gross negligence by us or one of our agents or legal representatives or if we have neglected one of our essential duties of the contract. The release from liability is also not applicable if guaranteed qualities are missing and if the purpose of the guarantee was to provide the customer with cover against any damage not resulting to the delivery item itself.
- 9.3. Our obligation to pay damages in case of simple negligence is restricted to the foreseeable damage, in any case, however, to the amount covered by our product liability insurance. Upon the customer's request, we are prepared to grant him insight into our insurance policy.
- 9.4. Claims are struck by the statute of limitations within 12 months as of the passage of risk. This is also applicable to claims for compensation resulting from indirect damage claims if no claims are put forward because of malicious silence with regard to a defect resulting from a tortious act or liability claims because of intention.
- 9.5. Any liability for damages exceeding the above mentioned scope is excluded – disregarding the legal nature of the claim. This is not applicable to claims resulting from a violation of life, body or health, claims as per §§ 1 and 4 of the Product Liability Law or to claims resulting from an offence or because an impossibility we are responsible for.

10. Goods Returned

Goods returned are only accepted after our examination. Secondhand and/or faulty goods have to be returned free of charge to Ingram Micro Distribution GmbH, Zwickauer Strasse 14, 94315 Straubing, Germany.

11. New goods have to be returned free of charge to Ingram Micro Distribution GmbH, Logistik-Center, Europaring 20, 94315 Straubing, Germany. Unless agreed upon differently, we accept goods returned only in case a return slip is included indicating the customer's RMA and customer account number. The customer will obtain the return slip and the RMA number upon request in writing or by contacting us under the phone number +49 (0)9421/738-222, fax +49 (0)9421/738-300 or online under www.ingrammicro.de. However, getting an RMA number does not mean automatically that the deficiency or another complaint are acknowledged. In any case the customer bears the risk of the return shipment of the goods, including loss by accident. We will charge a warehousing lump sum in case of goods returned for which the customer is responsible, especially, however not exclusively, if the customer refuses to accept the delivery items.
12. **Assignment**
For validity, the assignment of any claim of the customer against us resulting from our business relationship needs to be approved by us in writing. This approval will not be refused unreasonably if the customer has a justified interest.
13. **Export**
Products delivered by us are meant for being used in the country of delivery agreed upon with the customer. The customer may require an official approval for the re-exportation of contractual products which is subject to the Foreign Trade and Payments Provisions of the Federal Republic of Germany; in case of products imported from the U.S.A., it is subject to the Export Control Provisions of the United States of America. The customer has to ask the Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA), 65760 Eschborn/Taunus about the German provisions or the US-Department of Commerce, Office of Export Administration, Washington DC 20320 about the respective provisions in the U.S.A. independently. Regardless of whether the customer indicates the final destination of the contractual products delivered or not, it is his task to obtain the required license of the respective Foreign Trade Office in charge before exporting such products. For any delivery of contractual products to third parties, be it with or without our knowledge, it is necessary to transfer the provisions of the export license. The customer is liable to us for observing these provisions.
14. **Miscellaneous**
Additional agreements must be in writing. This is also true if the parties hereto waive the requirement of written notifications. In case individual provisions of these terms and conditions should become ineffective, the contract and the remaining provisions shall be unaffected thereby.
15. **Special conditions**
Without prejudice to the application of these Terms and Conditions, additional and more detailed terms may be applicable to the sale of products of certain suppliers to special prices offered to the customer by our suppliers through us (also referred to as SBO, OPG, project agreement, etc.) ("Special Terms"). These Special Terms prepared by our suppliers are listed on our web site www.ingrammicro.de/projektbedingungen which has to be consulted by the customer before each order subject to special prices. By ordering products subject to special prices the customer agrees to be bound by the applicable Special Terms. In the event of non-compliance with the Special Terms we are entitled to reclaim in full all discounts, rebates and other allowances granted to the customer under the special price or to invoice the difference to the regular prices. The customer agrees to indemnify us for any claims made against us by the suppliers for Customer's non-compliance with the supplier's terms and conditions as well as for all further damages resulting from the customer's non-compliance with the supplier's terms.
16. **Place of Fulfilment and Jurisdiction, Applicable Law**
The place of fulfilment for all obligations resulting from this contractual relationship is Munich. The place of jurisdiction for all legal actions resulting from the contractual relationship as well as from its coming into existence and its effects is Munich with respect to full merchants. However, we are also entitled to take the customer to court at his place of jurisdiction. The whole contractual relationship is governed by the laws of the Federal Republic of Germany, excluding provisions governed by the UN Purchase Law Convention.

The Management
Dornach, June 2007