

# General Delivery Conditions of SLE Technology GmbH for Entrepreneurs

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## § 1 Scope of Application

- (1) All deliveries, services, and quotations/offers provided/submitted by SLE Technology GmbH – hereinafter also referred to as "Manufacturer" – shall exclusively be made on the basis of present General Delivery Conditions, which thus shall be an integral part of any contracts the Manufacturer concludes with her/his contractual parties – hereinafter also referred to as "Customer" or "Customers" – for her/his supplies and services offered. They shall furthermore apply to any future deliveries, services, and/or quotations/offers to the Customer, even if they have not separately been agreed again.
- (2) Any terms and conditions of the Customer and/or third parties shall not apply, even if the Manufacturer does not explicitly objects to the application of such terms and conditions in individual cases. Even in the event that the Manufacturer refers to any written communication, containing and/or pointing out the Customer's or any third party's terms and conditions, such reference shall not constitute consent to the applicability and/or validity of the respective terms and conditions.

## § 2 Quotation and Contract Conclusion

- (1) All quotations made by the Manufacturer shall be subject to change and non-binding, unless they are expressly marked as binding or contain a specified acceptance period. Orders or contracts may be accepted by the Manufacturer within fourteen (14) day of receipt.
- (2) The legal relationship between the Manufacturer and the Customer shall solely be governed by the respective contract, including present General Delivery Conditions. The contract shall contain the full record of any agreements between the parties hereto regarding the subject matter of the contract. Any verbal concessions of the Manufacturer prior to contract conclusion shall be deemed to be without legal obligation. Any verbal agreements of the contracting parties hereto shall be superseded by the contract unless such agreements make explicit reference to their continued applicability and validity.
- (3) Any supplements and amendments to agreements, including present General Delivery Conditions, shall be made in writing in order to be legally valid. Transmission by telefax or e-mail shall suffice to comply with the written form requirement – any other telecommunication transmission shall not be deemed to fulfil these requirements.
- (4) Manufacturer's information on the subject of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances, and technical data) as well as our representations thereof (e.g. drawings and illustrations) shall not be considered guaranteed characteristics, but solely descriptions or identifications of the respective delivery or performance. Customary deviations and deviations, which occur due to legal regulations and/or represent technical improvements, as well as the replacement of components by equivalent parts shall be permissible, insofar as they will not affect usability for the contractually intended purpose.
- (5) The Manufacturer shall retain ownership or copyright of all quotations and estimates submitted by him as well as of any drawings, illustrations, calculations, brochures, catalogues, models, tools, and other documents and aids made available to the Customer. The Customer shall not be authorized to make these objects accessible to third parties as such, or in terms of their content, publish them, use and/or duplicate them either her-/himself or have them used and/or duplicated by third parties without the express prior consent of the Manufacturer. The Customer shall, at the request of the Manufacturer, return these items in their entirety, and destroy any copies thereof, unless they are required any longer in the due course of business, or in the event that negotiations do not lead to the conclusion of a contract.

### **§ 3 Prices and Payment**

- (1) The prices shall apply to the scope of service and delivery stated in the respective order confirmations. Any additional and/or special services shall be charged separately. Prices are quoted in EURO, ex works, plus packaging, legal value-added tax (VAT), customs duties (in case of export deliveries) as well as fees and other public charges.
- (2) Insofar as the agreed prices are based on the Manufacturer's list prices, and the delivery is intended to take place later than four (4) months after the conclusion of the contract, the list prices of the Manufacturer valid at the time of delivery shall apply (less an agreed percentage or fixed discount per item).
- (3) Invoice amounts shall be due for payment within fourteen (14) days without any deductions, unless other terms of payment have been agreed in writing. The relevant date of payment shall be receipt of payment by the Manufacturer. Cheques shall not be considered valid until redeemed. In case the Customer fails to effect payment by the due date, the outstanding amounts shall be subject to interest at the rate of 5% p.a. as of the respective due date. Once the Customer is in default, all outstanding amounts shall be subject to interest at the rate of 10% p.a. – the Manufacturer's right to claim higher interest and additional damages in case of such default shall remain unaffected.
- (4) Setting off counterclaims of the Customer or retention of payments on the basis of such claims shall only be admissible to the extent that these counterclaims are uncontested or have been legally established.
- (5) The Manufacturer shall be entitled to execute or provide outstanding deliveries or services only against advance payment or provision of security if, after the conclusion of the contract, circumstances become known which significantly reduce the creditworthiness of the Customer, and on the basis of which payment of the outstanding claims of the Manufacturer by the Customer, resulting from the respective contractual relationship (including any other individual orders governed by the same framework agreement), will be jeopardized.

### **§ 4 Delivery and Delivery Period**

- (1) All deliveries shall be ex works.
- (2) Any deadlines and time periods for deliveries and/or services stated/promised by the Manufacturer shall be considered approximations only, unless a fixed deadline or a fixed time period has been expressly assured or agreed on. Insofar as shipment has been agreed, any delivery periods and delivery dates shall refer to the time of transfer to the forwarding agent, freight carrier, or any other third party commissioned with the transport.
- (3) The Manufacturer may -- without prejudice to her/his rights arising from the Customer's default -- request the Customer to extend delivery and performance deadlines, or postpone delivery and service deadlines by the time period during which the Customer fails to meet her/his contractual obligations towards the Manufacturer.
- (4) The Manufacturer shall not be liable for impossibility of delivery or for delays in delivery, as far as these are due to force majeure or any other events, unforeseeable at the time of the conclusion of the contract (e.g. any disruptions of operations, difficulties in procuring materials or energy, transport delays, strikes, legitimate lock-outs, manpower shortage, energy or raw materials shortage, difficulties in obtaining necessary regulatory approvals, regulatory actions, or failure of suppliers to supply in a timely, sufficient, or proper manner), which the Manufacturer is not responsible for. If such occurrences prevent or significantly encumber the provision of goods and/or services, and such impairment will not only be of a temporary nature, the Manufacturer shall be entitled to withdraw from the contract. In case of temporary impairments, the delivery or service periods/dates shall be extended by the time period of the respective impairment, plus a reasonable start-up period.\*Insofar as the Customer cannot reasonably be expected to accept the goods or services as a result of the delay, she/he shall be entitled to withdraw from the contract by immediately submitting a written declaration to the Manufacturer to this effect.

- (5) The Manufacturer shall only be entitled to make partial deliveries, if –
  - the Customer is able to use this partial delivery within the scope of the contractual purpose,
  - the delivery of the remaining goods ordered is ensured, and
  - the Customer does not incur any significant additional expenditure or additional cost as a result of this partial delivery (unless the Manufacturer agrees to assume such expenses).
- (6) In case the Manufacturer defaults on a goods delivery or a service performance, or if the Manufacturer is not able to deliver the goods or perform the services for whatever reason, the Manufacturer's liability for compensation/damages shall be limited to the scope stipulated in § 8 of present General Delivery Conditions.

## **§ 5 Place of Performance, Shipping, Packaging, Transfer of Risk, Acceptance**

- (1) Unless otherwise specified, the place of performance for all obligations arising from the respective contractual relationship shall be the Manufacturer's registered office. In case the Manufacturer also has to provide the installation, the place of performance shall be the place where the installation is to be carried out.
- (2) The shipping method as well as packaging shall be subject to the dutiful discretion of the Manufacturer.
- (3) Risk shall pass to the Customer at the latest upon handover of the delivery item(s) (whereby the commencement of the loading procedure shall be decisive) to the freight forwarder, carrier, or any other third party assigned to the purpose of executing shipment. This shall also apply if partial deliveries are made, or if the Manufacturer has taken on other services (e.g. shipping or installation). In case the shipment or transfer is delayed as a result of a circumstance caused by the Customer, the risk shall pass to the Customer from the day on which the delivery item is ready for dispatch and the Manufacturer has notified the Customer thereof.
- (4) Any storage costs after transfer of risk shall be borne by the Customer. For any storage by the Manufacturer, storage costs shall amount to 0.25% of the invoice amount of the delivery items to be stored for each full week. The assertion and proof of further or lower storage costs shall remain subject to reservation.
- (5) The shipment shall be insured by the Manufacturer against theft, breakage, transport, fire, or water damage, or any other insurable risks only at the express request of the Customer and solely at the expense of the latter.
- (6) Insofar as acceptance has to take place, the delivery item shall be deemed accepted, if --
  - the delivery and, in case the Manufacturer also owes the installation, the installation is complete,
  - the Manufacturer has informed the Customer of this fact with reference to the acceptance of the goods pursuant to present § 5 (6), and has requested the Customer to accept,
  - twelve (12) working days have passed since the delivery or installation, or the Customer has started to use the purchased goods (e.g. has commissioned the equipment delivered), and in this case six (6) working days have passed since delivery or installation, and
  - the Customer has failed/declined to accept within this period for any reason other than a defect indicated to the Manufacturer, preventing or substantially impairing the use of the purchased goods.

## **§ 6 Warranty, Material Defects**

- (1) The warranty period shall be one (1) year from delivery or, insofar as acceptance is required, from acceptance.
- (2) The delivered items shall be examined carefully immediately after delivery to the Customer or to any other third party appointed by him. They shall be deemed to have been approved unless the Manufacturer receives a written notification of defect within seven (7) working days of delivery (where mentioned defect has or any other defects have become obvious or detectable, following immediate and thorough inspection), or otherwise within seven (7) working days of discovering deliberate defect, or any earlier period in which the defect has

become apparent to the Customer in the course of conventional use of the delivery item without any closer inspection. At the request of the Manufacturer, the object of the complaint/the disputed goods shall be returned to the Manufacturer freight prepaid. In the case of a justified complaint, the Manufacturer shall refund the expenses for the most cost-effective shipping route; however, this shall not apply if shipping costs increase due to the fact that the delivery item is located in a place other than the place of its intended use.

- (3) In case the delivered goods show material defects, the Manufacturer shall be obliged and entitled, at her/his discretion, to either rectify or replace the goods concerned within a reasonable period of time. In the case of failure, i.e. due to impossibility, unreasonableness, refusal, or inappropriate delay of the repair or replacement delivery, the Customer shall be entitled to withdraw from the contract or reduce the purchase price adequately.
- (4) If a defect is based on the fault of the Manufacturer, the Customer may demand compensation/damages pursuant to the conditions specified in present § 8.
- (5) In the event components of other manufacturers show defects, which the Manufacturer cannot eliminate for licensing or actual reasons, the Manufacturer, at his option, shall assert his warranty claims against the respective suppliers on behalf of the Customer, or assign them to the Customer. Warranty claims against the Manufacturer shall only exist in case of such defects, under the other conditions and pursuant to present General Terms of Delivery, if the judicial enforcement of the aforementioned claims against the supplier has been unsuccessful or will be futile due to insolvency, for instance. For the duration of the legal proceedings, the expiration period of the respective warranty claims of the Customer against the Manufacturer shall be suspended/ inhibited.
- (6) Warranty shall be void if the Customer modifies the delivery item without consent of the Manufacturer or has it modified by third parties, and the elimination/correction of the defect(s) resulting thereof becomes impossible or unreasonably difficult. In either case, the Customer shall bear any additional costs incurred, as a result of the changes made, in order to remedy the respective defect(s).
- (7) Any one-off delivery of used items agreed upon with the Customer shall be subject to exclusion of warranty for material defects.

## **§ 7 Property Rights**

- (1) The Manufacturer shall warrant in accordance with present § 7 that the delivery item is free from any third-party industrial property rights or copyrights. Each contracting party hereto shall commit to notify the respective other contracting party immediately in writing in case claims are asserted against her/him for the violation of such rights.
- (2) In the event that the delivery item infringes a third-party industrial property right or copyright, the Manufacturer shall at her/his own discretion and expense commit to modify or replace the delivery item, thus ensuring that no third party rights will be violated further on, and the delivery item continues to fulfil/perform the contracted and agreed functions, or – by concluding a license agreement – to procure usage rights for the Customer in order to grant her/him the right of use. In case the Manufacturer fails to do so within an appropriate period of time, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price adequately. Any claims for damages of the Customer shall be subject to the restrictions as set forth in § 8 of present General Terms of Delivery
- (3) In case of any infringement caused by other manufacturer's products, yet supplied by the Manufacturer, the Manufacturer shall either, at her/his choice, assert her/his claims against such pre-supplier(s)/sub-contractor(s) for the account of the Customer, or assign such claims to the Customer. Claims against the Manufacturer in such cases and in accordance with present § 7 shall only exist, if the legal enforcement of the aforementioned claims against such pre-supplier(s)/sub-contractor(s) has been unsuccessful or, for instance, will be futile due to insolvency.

## **§ 8 Liability for Compensation in Case of Fault**

- (1) Liability of the Manufacturer for damages, regardless of the legal grounds, but in particular as a result of impossibility, delay, defective, or incorrect delivery, breach of contract, breach of obligations in the course of contract negotiations and/or tort, as far as this is in each case due to fault, shall be restricted in accordance with present § 8.
- (2) The Manufacturer shall not be liable in case of simple negligence on the part of her/his organs, legal representatives, employees, or other vicarious agents, insofar as this does not represent a violation of essential contractual obligations. Essential to the contract, however, shall be the Manufacturer's obligation to timely delivery and installation of the delivery item, free from essential defects, as well as to any advice, protection, and custody duties on her/his part, thus enabling the Customer the contractual use of the delivery item, and/or ensuring the protection of life and health of the Customer's personnel, and/or the protection of the Customer's property against significant damage.
- (3) Insofar as the Manufacturer is liable for damages according to present § 8 (2), her/his liability shall be limited to damages, foreseeable to the Manufacturer upon contract conclusion as a possible consequence of a breach of contract, or which she/he should have foreseen, had she/he been applying due diligence and care. Any indirect damage and/or consequential damage, resulting of defects of the delivery item, shall also only be substitutable/compensated insofar as such damage may typically be expected in the course of the intended use of the delivery item.
- (4) In case of liability for simple negligence, the Manufacturer's obligation to pay compensation for material damage as well as any further consequential property loss shall be limited to the amount of EUR 5,000,000.00 per claim (in accordance with the amount covered by the Manufacturer's current product liability or general liability insurance), even if the case at hand may represent a violation of essential contractual obligations.
- (5) Any of the above-mentioned exclusions and limitations of liability shall apply to the same extent in favour of the organs, legal representatives, employees as well as any other vicarious agents of the Manufacturer.
- (6) Insofar as the Manufacturer provides technical information and/or advice, and this information and/or advice has not been included in the contractually agreed scope of services owed by her/him, it shall be provided free of charge, with any liability excluded.
- (7) Any limitations of present § 8 shall not apply to the Manufacturer's liability for intentional/deliberate behaviour, for guaranteed product characteristics/properties, for loss of life, physical injury or health damage, or to the Manufacturer's liability under the product liability law.

## **§ 9 Retention of Title**

- (1) The retention of title as agreed in the following shall serve to secure all current and future claims of the Manufacturer against the Customer, arising from the supply relationship existing between the contracting parties hereto (including any current account balance claims based on this supply relationship).
- (2) The goods supplied to the Customer by the Manufacturer shall remain the property of the Manufacturer pending the payment of all secured claims in full. The goods as well as any goods covered by/subject to the retention of title as per present clause are hereinafter referred to as "reserved goods".
- (3) The Customer shall keep the reserved goods in custody/storage at no expense to the Manufacturer.
- (4) The Customer shall be entitled to process and sell the reserved goods in the normal course of business pending the event of recovery (paragraph 9). Any pledges and assignments of securities shall be prohibited.
- (5) In case the reserved goods are processed by the Customer, processing shall take place on behalf and for the account of the Manufacturer. The Manufacturer shall directly acquire ownership or – in case materials of several other owners are processed, or the value of the processed item(s) is higher than the value of the reserved item(s) – co-ownership (fractional ownership) of the newly created item(s), in proportion of the value of the reserved goods to the

value of the newly created item(s). In the event that no such acquisition of ownership by the Manufacturer occurs, the Customer shall hereby transfer her/his future ownership or, in the aforementioned proportion, co-ownership of the newly created item(s) to the Manufacturer as security. In case the reserved goods are combined with other items to a uniform item, or inseparably mixed/blended, and if one of the other items has to be regarded as the main item, the Manufacturer shall – insofar as the main item belongs to her/him – transfer co-ownership of the uniform item to the Customer, in the proportion as defined in paragraph 1 of present § 9.

- (6) In case of resale of the reserved goods, the Customer shall hereby assign to the Manufacturer, as a precautionary measure, the resulting claim against the purchaser – in case of the Manufacturer's co-ownership of the reserved goods in proportion to the respective co-ownership share. The same shall apply to any other claims taking the place of/superseding the reserved goods, or otherwise arising with regards to these reserved goods, e.g. insurance claims or claims for tort in the event of loss or destruction. The Manufacturer hereby revocably authorizes the Customer to collect any claims assigned to the Manufacturer in her/his own name. The Manufacturer may only revoke her/his aforementioned direct debit authorization in case of recovery.
- (7) In the event that any third parties access the reserved goods, in particular by way of seizure/attachment, the Customer shall immediately inform them of the Manufacturer's property, and notify the Manufacturer thereof in order to enable her/him to enforce his property rights accordingly. In case the third party is unable to reimburse the Manufacturer for any judicial or extra-judicial costs incurred in this regard, the Customer shall be liable to the Manufacturer.
- (8) The Manufacturer shall release the reserved goods as well as any goods or claims replacing them, by request and choice of the Customer, insofar as their value exceeds the amount of the secured claims by more than 50%.
- (9) If the Manufacturer withdraws from the respective contract in the event of breach of contract by the Customer (recovery case) – in particular for default of payment –, the Manufacturer shall be entitled to demand the surrender of the reserved goods.

## **§ 10 Confidentiality, Non-Disclosure**

- (1) The Customer shall commit to treat any objects (e.g. software, documents, information) received by the Manufacturer or disclosed to her/him prior to or in the course of the performance/enforcement of the contract, which are legally protected and/or contain commercial or trade secrets or are designated as confidential, in a confidential manner, even beyond the end of contract.
- (2) For the duration of the respective contract as well as subsequent thereto, the Customer shall commit not to disclose any trade secrets and knowledge or know-how of the Manufacturer, nor to use them for the benefit of any other company. The Customer shall impose the aforementioned obligation of confidentiality *mutatis mutandis* on her/his employees and/or any sub-contractors engaged as agents who, as such, have contact with/access to this confidential information.
- (3) This obligation of confidentiality/non-disclosure shall cease to apply insofar as the transmitted objects are generally known or have already been known without any violation of present confidentiality/non-disclosure obligation.

## **§ 11 Final Provisions**

- (1) In case the Customer is a merchant, a legal entity/person under public law, or a special asset under public law, the place of jurisdiction for all disputes arising from the business relationship between the Manufacturer and the Client shall be, at the discretion of the Manufacturer, the registered office of the Manufacturer or the Customer. For any complaints against the Manufacturer, the registered office of the Manufacturer shall be the exclusive place of jurisdiction. Any mandatory statutory provisions regarding exclusive jurisdictions shall remain unaffected by this provision.
- (2) The relations between the Manufacturer and the Customer shall exclusively be subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply.

- (3) Insofar as one of the provisions of the respective contract and/or of present General Delivery Conditions is or becomes invalid, void, or unenforceable, the validity/applicability of the remaining provisions shall remain unaffected thereby. The parties hereto agree to replace the invalid, void, or unenforceable provision with an effective and enforceable provision, corresponding closest to the intended, commercial purpose of the invalid, void, or unenforceable provision. The same shall apply in the event of a gap in the contract.

**Note:**

The Customer herewith acknowledges that the Manufacturer will store data arising from the respective contractual relationship in accordance with § 28 of the Federal Data Protection Act for the purpose of data processing, and furthermore reserve the right to transfer data to third parties (e.g. insurance companies) insofar as this may be required for the execution/performance of the contract.

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