

Solectrix Systems GmbH – Standard Terms and Conditions of Sale

Current as of: February 10, 2018

1 General provisions

(1) The following Standard Terms and Conditions of Sale ("T&Cs") apply to all goods, services and offers made by Solectrix Systems GmbH.

(2) We only enter into contracts with persons or entities transacting in a commercial or professional capacity ("commercial operators") (*Unternehmer*), legal entities under public law (*Personen des öffentlichen Rechts*) and special funds under public law (*öffentlich-rechtlichen Sondervermögen*), and not with consumers as defined in section 13 of the German Civil Code (*Bürgerliches Gesetzbuch* – "BGB").

(3) All of our goods, services and offers are provided solely on the basis of these T&Cs, even if these T&Cs are not expressly mentioned during negotiations. We will not accept conflicting terms and conditions, even if we do not expressly object to them or we refer to correspondence from the counterparty in which reference is made to their terms and conditions. Our T&Cs will also apply to all future business dealings [with the same counterparty], even if they are not expressly agreed to again. Our T&Cs shall be deemed accepted no later than upon acceptance of the goods.

(4) Conflicting or differing terms and conditions of the customer shall apply only if we have expressly agreed to their application in writing.

(5) These T&Cs will also continue to apply in their entirety if Solectrix Systems GmbH, having the authority to do so, allows companies affiliated with it to become party to the contract with the customer in its stead, or to join as an additional party.

(6) Design drawings, models, cost estimates/quotes and similar company property of a corporeal or incorporeal nature remain our property, and we reserve all rights granted under copyright law. They must be treated as strictly confidential at all times. They may not be made available to third parties without our consent. If the customer breaches these duties, it shall be fully liable to us in accordance with the statutory provisions. The use of our name as a reference for marketing purposes and the like is subject to our prior consent.

2 Offers, orders

(1) Our offers are in all cases subject to change, particularly with regard to quantity, price and delivery time, unless they are expressly stated to be binding offers.

(2) The act of sending our price list(s) shall not be construed as an offer. The technical data, information about intended use and product diagrams contained in our marketing material and/or in our catalogues and other sales documentation do not imply an offer to enter into a warranty agreement (*Garantievertrag*) within the meaning of section 443 BGB.

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(3) The placement of an order for a product and/or service constitutes a binding offer by the counterparty to purchase the product/service.

(4) Stated delivery times are approximate and subject to change, unless they are expressly agreed as binding in the order confirmation.

(5) We expressly reserve the right to make technical and design modifications to the product (e.g. a later product release) so that the product demonstrates the agreed essential features. No defect or incorrect delivery (*Aliud*) may be inferred from this.

3 Prices, payment terms and invoicing

(1) Our prices are generally stated in euros.

Agreed prices apply to the contractually agreed package of goods and services. Additional or special goods and services and transport and packaging costs are charged separately.

(2) In all cases, the statutory rate of value added tax applicable at the time of delivery (if applicable) must be added to the offered and agreed prices.

(3) Unless otherwise agreed, if the item for delivery is to be shipped, Solectrix Systems may take out insurance against breakage on standard terms and charge the cost of the insurance to the customer.

(4) Unless the order confirmation (or alternatively, the invoice) provides otherwise, the price is payable in full within ten days of the date of the invoice. Invoices shall generally be issued electronically.

(5) The customer may offset its own claims against Solectrix Systems' claims for payment only if the customer's counter-claims are undisputed or have been upheld in court as final and binding.

(6) The customer shall be entitled to withhold payments or other consideration only if its counter-claims are based on the same contractual agreement and are undisputed or have been upheld in court as final and binding. If the customer reports a defect, it may withhold payments only to an extent that is reasonably proportionate to the defects that have emerged.

(7) If the customer defaults on payment, Solectrix Systems shall charge, as the loss caused by the default, the interest rate payable by Solectrix Systems for bank loans from a major European bank, however no less than the base rate plus nine percentage points.

(8) Solectrix Systems may insist upon advance payment or a security deposit for outstanding deliveries of goods and services if, after entry into the contract, it becomes aware of circumstances that are likely to pose a substantial threat to the customer's creditworthiness and jeopardize the satisfaction of Solectrix Systems' outstanding claims under the contract.

4 Delivery

(1) Unless otherwise agreed in writing, we deliver "ex works". Where the customer is responsible for collection (*Holschuld*), the risk passes to the customer when the goods are picked and made available for collection as agreed. Similarly, if we are responsible for sending the goods (*Schickschuld*), the risk passes when they are handed over to the carrier. Where we are required to deliver to an agreed destination (*Bringschuld*), the risk passes when the goods leave our

factory. The same applies in the event that the customer fails to accept the goods without a legitimate reason (*Gläubigerverzug*).

(2) We have the right to make reasonable partial deliveries.

(3) Our delivery obligation is at all times subject to the condition that we receive timely and proper deliveries from our suppliers. Similarly, our delivery obligation is subject to the provision of the materials, documents, authorizations and approvals required to be obtained by the customer as well as receipt of any agreed deposit and the clarification of all technical issues.

(4) Unless expressly agreed otherwise in writing, stated delivery dates are always subject to change.

(5) Delivery dates will be extended by any period of customer default on payment under the contract.

(6) In the event of obstacles to delivery caused by *force majeure* or unforeseen events for which we are not legally responsible, such as operational disruptions, strikes, lock-outs, orders issued by government authorities, the subsequent loss of export or import options and timely and proper delivery from our suppliers as referred to in paragraph (5) above, we will be released from the obligation to comply with agreed delivery dates for the duration and to the extent of their impact. In such cases we also have the right to rescind the contract, without such rescission giving rise to any rights on the part of the purchaser to claim compensation or make other claims.

(7) If an agreed delivery time is not met and no obstacle to delivery as described in paragraph (6) above exists, the purchaser must grant us, in writing, a reasonable grace period of at least two weeks. If we also fail to deliver within this grace period and are culpable for such failure, the purchaser may rescind the contract, but is not entitled to claim damages for non-performance or default, unless our failure to deliver was due to intentional or grossly negligent conduct.

(8) If the parties subsequently agree to other or additional services that affect agreed deadlines, such deadlines will be extended by a reasonable period.

5 Reservation of title

(1) The goods remain our property until fully paid for. If we are transacting with a commercial operator, all delivered goods shall remain our property until the customer has fully paid all current and future claims arising from the business relationship.

(2) If the customer acts in breach of contract, particularly if it defaults on payment, we may, following the expiry of a grace period without result, take back the goods. The mere act of taking back the goods shall be deemed rescission of the contract only if a reasonable grace period set by us has expired without result and express notice of rescission has been given. The costs incurred by us in connection with taking back the goods (particularly transport costs) shall be charged to the customer. We are also entitled to prohibit the customer from reselling or processing, combining or mixing delivered goods that are subject to a reservation of title. If goods are taken back and express notice of rescission is not given, the customer may demand the release of the goods only once it has paid the remainder of the purchase price and all costs.

(3) The customer may not pledge, transfer as security or assign the delivered items or the receivables they are replaced by. The customer must notify us in writing without undue delay if

third parties seize or take other action with respect to the goods so that we can file an action in accordance with section 771 of the German Code of Civil Procedure (*Zivilprozessordnung* – "ZPO"). The customer must pay any costs of this action under section 771 that we remain liable to pay despite succeeding in the case.

(4) The customer may resell, process or mix the purchased goods in the ordinary course of business, however in view of this it hereby assigns to us all receivables arising from the resale, processing or mixing or arising on other legal grounds (particularly under insurance policies or in tort) up to the final invoice amount agreed with us (including value added tax), as well as all incidental rights. If the delivered goods are co-owned by us by virtue of the reservation of title, a share of the receivables proportionate to our co-ownership interest shall be assigned. If the delivered goods are sold together with third party goods not owned by the customer, a share of the receivables will be assigned to us corresponding to the ratio between the final invoice amount for our goods and the final invoice amount for the third party goods. The customer remains authorized to collect these receivables even following their assignment, however this does not affect our authority to collect the receivables ourselves. However, we undertake not to collect the receivables as long as the customer uses the collected proceeds to meet its payment obligations, is not in default with payment, no application to commence insolvency proceedings has been filed, and payments have not been discontinued. However, if the above conditions are not met, the customer must give us notice of the assigned receivables and the debtors upon request, provide all information necessary to collect the receivables, furnish the relevant documents and give notice of the assignment to the debtor (third party). The foregoing also applies if the customer resells, processes or mixes the purchased goods in breach of contract.

(6) The reservation of title also applies up to the full value of any products made by processing or remodeling our goods. These actions are deemed taken on our behalf so that we are deemed the manufacturer. If our goods are processed or remodeled in combination with other goods that are not owned by us, we shall acquire a co-ownership interest proportionate to the objective values of these goods. In view of this, it is hereby agreed that in such cases, the customer acts as custodian of the goods on our behalf. If our goods subject to reservation of title are combined or inextricably mixed with other movable property (chattels) to become a discrete item, and if the other chattel is deemed the principal chattel, the customer shall transfer a co-ownership interest to the extent that it owns the principal chattel. The customer shall act as custodian of the (co-)ownership interest on our behalf. Goods created in this way are otherwise subject to the same provisions as the goods delivered subject to reservation of title.

(7) We will discharge the security interests to which we are entitled to the extent that the estimated value of our collateral (the goods subject to reservation of title) exceeds the nominal value of the claims to be secured by 50%. We will decide which security interests to discharge at our discretion.

(8) Where the validity of the reservation of title in the country for which the goods are destined is subject to special conditions or form requirements, the customer shall ensure that these conditions and requirements are met.

6 Acceptance, warranty

The purchased goods are manufactured and delivered by Solectrix Systems and are designed to be free of defects and to demonstrate the warranted features in accordance with existing inspection and testing requirements. If the customer is a person or entity engaged in trade or commerce (*Kaufmann*), our liability for defects is as follows, however it is subject to the customer

having duly complied with its duties to inspect and report defects under section 377 of the German Commercial Code (*Handelsgesetzbuch* – "HGB") (defects must be reported in writing or in text form).

(1) Where the purchased item has an obvious or verifiable defect or a defect that can be reproduced based on the existing inspection and testing requirements, we may elect to repair the defect or deliver a non-defective replacement (cure). This is conditional upon the defect being more than merely immaterial. If one or both forms of cure are impossible or would involve disproportionate cost, we may refuse to cure the defect. We may refuse to cure the defect for as long as the customer fails to meet its payment obligations to us to an extent that corresponds with the non-defective component of our performance.

(2) If we proceed with curing the defect, we will cover only the associated costs up to the amount of the purchase price, provided such costs have not increased because the purchased goods were moved away from the place of performance. We will cover the costs necessary to cure the defect, particularly including transport, road and labor costs and the cost of materials. We will not cover any additional costs that arise as a result of the item having been moved away from the place of performance.

(3) If the forms of cure referred to in paragraph (1) are impossible or unsuccessful, the customer may elect to either claim a corresponding reduction of the purchase price or rescind the contract in accordance with the statutory provisions. This particularly applies in the event of our culpable delay or refusal to cure, similar to the situation where cure is attempted unsuccessfully for the third time.

All other claims on the part of the customer, regardless of the legal basis, are excluded or limited in accordance with section 6.

(4) Damage caused by the following is not covered by any warranty given by us:

- inappropriate or improper use;
- incorrect assembly by the customer or third parties;
- natural wear and tear or wear from ordinary use;
- incorrect or careless handling;
- excessive load or stress;
- unsuitable operating supplies;
- chemical, electrochemical or electrical factors (unless we are legally responsible for them);
- improper modifications carried out without our prior approval;
- or repair work carried out by the customer or third parties;
- use in customized systems in conjunction with third party hardware/software.

(5) Claims based on defects in models, prototypes and pilot products are precluded. For these types of items, the customer is precluded from demanding cure or delivery of a replacement or from making a warranty claim etc. They are solely intended for evaluation purposes and are not intended or suitable for use in a live operating environment or for resale. The customer may not use such items in a live operating environment or resell them.

(6) The purchaser's right of recourse under section 445a BGB is excluded. This is without prejudice to liability under section 478 BGB.

(7) Claims based on defects become time-barred 12 months from delivery of the purchased goods.

No warranty is given for public statements made by third parties. Such statements do not constitute representations as to qualities or features.

Claims for reduction of the contract price and the exercise of a right of rescission are excluded if the claim to have defects cured has become time-barred. If sentence 3 applies, however, the customer may refuse to pay the purchase price to the extent it would be entitled to do so based on rescission or reduction of the contract price. If rescission is precluded and the customer continues to refuse payment, we may rescind the contract.

No reversal of the burden of proof shall apply.

(8) Representations and warranties are deemed validly made or given only if we do so expressly and in writing.

(9) The foregoing does not affect our liability for intentional and grossly negligent acts or omissions (including that of our legal representatives and agents for which we are vicariously liable) or liability for loss of life, bodily injury and injury to health. Furthermore, the foregoing does not affect our liability for breaches of so-called "material contractual obligations".

7 Software

(1) The goods may include software, specifically "embedded software" (e.g. FPGA firmware, BIOS, microcontroller firmware, drivers, software libraries, operating systems, application software and/or third party software).

(2) The software is to be used in accordance with the license terms of the respective manufacturer or software developer.

(3) Unless the terms of the respective software license expressly provide otherwise, such embedded software may be operated only on/with the associated Solectrix Systems hardware. The embedded software may be passed on to third parties only in conjunction with the Solectrix Systems hardware or a unit that contains this hardware.

(4) The customer may copy software only to the extent necessary in order to establish interoperability between the software and other programs or systems.

(5) Copyright notices, serial numbers and other distinguishing features used for program identification purposes must not be removed from the software or modified.

8 Miscellaneous

(1) Contract amendments are subject to our agreement.

(2) If individual provisions of these T&Cs are wholly or partially invalid or void, this shall not affect the other provisions. The parties undertake to agree to a provision that largely achieves, from an economic point of view, the spirit and purpose sought to be achieved by the invalid or void provision.

(3) In the course of business, the head office of Solectrix Systems shall be the place of performance, and the courts of Nuremberg have jurisdiction to hear all disputes under this contract. The contract is governed exclusively by German law.

(4) We may collect, store and use personal data pertaining to customers, suppliers or prospective customers. We handle all data solely for the purposes of processing business transactions and in accordance with the requirements of applicable data protection laws. The customer may request access to its personal data that we have collected, processed or used.