

General Terms and Conditions for Delivery of AVNET EMG GmbH, Poing

11.2005

§ 1 Scope of Application

All current and future deliveries and any performance by AVNET EMG GMBH (hereinafter "AVNET") are made or rendered exclusively on the basis of these General Terms and Conditions for Delivery. Any deviating terms and conditions of the contracting partner shall apply only if expressly confirmed in writing by AVNET.

§ 2 Conclusion of Contract

AVNET's offers are made without engagement and are subject to due and timely receipt of supplies by AVNET.

Orders by the customer contain binding offers which AVNET will accept either by sending a written order confirmation or by sending the ordered goods at the final price invoiced.

Oral information, product specifications, performance figures, etc. shall not constitute any guarantee or agreement as to quality, unless they have been expressly confirmed to be "binding" in writing by AVNET. Minor deviations in the goods from the product information shall be deemed approved to the extent this is not unreasonable for the customer.

§ 3 Prices

All quotations of prices by AVNET, including those contained in order confirmations, shall be given without engagement. AVNET reserves the right to increase the prices in the event of an increase in the procurement costs or other costs relevant with respect to the purchase price.

§ 4 Delivery, Passage of Risk, Partial Performance, Product Returns, RMA-procedure

Unless agreed otherwise, all shipments by AVNET are insured and all transportation charges shall be paid by the customer in addition to the price of the products. Subject to possible other rights of AVNET, delivery of the products to the carrier shall constitute delivery to the customer and the risk shall thereupon pass to the customer. Selection of the carrier and delivery route shall be made by AVNET unless specified by the customer. AVNET shall use reasonable efforts to initiate shipment and schedule delivery as close as

possible to the customer's requested delivery dates. AVNET reserves the right to make deliveries in instalments. Delivery of a smaller quantity than the quantity specified shall not relieve the customer of the obligation to accept delivery and pay for the products delivered. Delay in delivery of one instalment shall not entitle the customer to cancel other instalments.

The minimum order value is € 250.

No orders for Standard Products ("Standard Products") may be rescheduled for delivery, altered or cancelled without the AVNET's consent, which consent may be given by AVNET in its sole discretion. AVNET reserves the right to allocate sales of Products among its customers in its sole discretion. Notwithstanding any provision of these Conditions to the contrary, orders for special, customised, value-added and other non-standard Products, including Products to be assembled in kit form, Products of manufacturers which do not appear on the AVNET's list of products, work-in-process and Products otherwise identified by AVNET as "NCNR" or "Non-Cancellable and Non-Returnable" ("Non-Standard Products") shall be non-cancellable and non-returnable.

Product returns shall follow AVNET's RMA-procedure at the time of the return. No return of Products shall be accepted by AVNET without a Return Material Authorization ("RMA") Number, which may be issued by AVNET in its sole discretion. Returned Products must be packaged in a manner that the product cannot be damaged in any way and this is solely the responsibility of the customer. All Products for return shall be returned freight prepaid in the manner specified in the RMA. If returned Products are claimed to be defective, a complete description of the nature of the defect must be included with the returned Products. Products not eligible for return shall be returned to the customer, freight collect

§ 5 Delivery Period

Delivery shall be effected, subject to due and timely receipt of supplies by AVNET, on the agreed dates. This shall apply also after order confirmations have been issued.

Delivery dates shall be deemed to have been met if AVNET hands over the goods to the agreed or selected forwarder so timely that the goods will, under normal circumstances, reach the customer in due time.

Notwithstanding the above the customer acknowledges that delivery dates provided by AVNET are estimates only.

§ 6 Disruption of Delivery, Default

Any circumstances or events which prevent or materially obstruct the delivery but for which AVNET is not responsible shall entitle AVNET to postpone performance for the duration of the impact of such circumstances or events plus an appropriate start-up period. If delivery is delayed for more than four weeks, either party may rescind the contract in full or in part. The disruption events for which AVNET shall not be deemed

responsible include, unless agreed otherwise, events of *force majeure*, natural disasters, acts of or omissions by third parties or governmental, official or military authorities, changes of law, shortage of materials, insurrection, war, terrorist attacks, delays in transport as well as failure or disruption of the usual sources of labour or materials.

In the event that delivery is prevented due to a change in the governmental or official import terms, AVNET shall be entitled to rescind the contract. In such event, AVNET will, at the customer's request, conclude a new contract with the customer adjusted to accommodate the changed terms.

In the event that AVNET is in default, § 10 shall apply with respect to the liability.

§ 7 Reservation of Title

Until all claims (including all claims from balances in current accounts) which AVNET may currently or in future have against the customer, irrespective of the legal basis thereof, are satisfied, the following security shall be granted to AVNET:

AVNET shall retain title to the goods. Any processing or modification of the goods shall in all cases be effected for AVNET as manufacturer but without any obligation on the part of AVNET. In the event that the (co-)ownership of AVNET expires due to product integration or mixing (*Verbindung*), it is herewith agreed that the (co-)ownership of the customer in the integrated or mixed product shall pass to AVNET *pro rata* (in proportion to the invoice value). All goods in which AVNET holds (co-)ownership rights are hereinafter referred to as reserved goods (*Vorbehaltsware*).

The customer shall be entitled to process and sell reserved goods within the ordinary course of business as long as it is not in default. Pledges or transfers by way of security (*Sicherungsübereignungen*) shall not be permitted. The customer herewith assigns all receivables replacing the reserved goods and arising from their resale or on any other legal basis (insurance, tort) (including all claims from balances in current accounts) in full to AVNET. AVNET accepts such assignment. AVNET grants to the customer revocable authorisation to collect the receivables assigned to AVNET for AVNET's account in the customer's own name. This authorisation may be revoked only if the customer fails to duly meet its payment obligations.

In the event of any seizure of the reserved goods by third parties, the customer shall inform such third party of the fact that the AVNET holds title to the goods and shall notify AVNET immediately.

In the event of a breach of contract of the customer - in particular any delay in payment – as well as in the event that a bankruptcy petition is filed against the customer AVNET shall be entitled to retrieve the reserved goods and, if appropriate, to demand the assignment of the claims of surrender which the customer may have against third parties. The customer shall in this event be obliged to supply AVNET with the details necessary to collect the assigned claims and to hand over the relevant documentation.

In the event that the value of the securities to which AVNET is entitled hereunder exceed not only temporarily the outstanding amount of AVNET's claims towards the customer by more than 10%, AVNET will, at the customer's request, release securities at its option insofar as their total value exceeds the debt to be secured by more than 10 %.

§ 8 Notification of Defects, Warranty

The customer shall be obliged to inspect the goods in accordance with Section 377 of the German Commercial Code (*Handelsgesetzbuch*; "HGB") and to notify AVNET of any open defects/other deviations within ten days after delivery of the goods.

If the goods, at the time of the passing of risk, are defective and AVNET has been notified of such defect in due time, AVNET shall, at its option, be obliged only to either rectify the defect or deliver goods free of defect. In the event that AVNET is not willing or able to do so within a reasonable period of time or for any other reason fails to effect the subsequent performance, the customer may, at its option, rescind the contract or demand a reduction of the price. In the event that the customer has suffered a loss or has incurred unnecessary expenses as a result of defects of the goods supplied by AVNET, § 10 hereof shall apply. No warranty is given (i) with respect to the suitability of the goods for a particular purpose, unless such suitability was expressly agreed in writing, (ii) with respect to defects which occurred after the passing of risk, e.g. by incorrect operation (non-compliance with the prescribed specifications or conditions of use), damage or other external influences, (iii) in the event of late notification of defects or (iv) towards persons other than the customer.

§ 9 Warranty Period

Unless otherwise specified, AVNET grants a 12 month product warranty period to its customers. Warranty claims shall become statute-barred within a period of 12 months. The limitation period shall commence upon delivery to the customer or upon a delay in acceptance by the customer. In the event that a manufacturer of goods grants a warranty for a longer period, AVNET will pass this extended warranty on to the customer at the customer's request, subject to the manufacturer's agreement.

§ 10 Liability

AVNET shall be liable for acts of wilful misconduct and gross negligence by its legal representatives, employees and vicarious agents (*Erfüllungsgehilfen*).

In all other respects, any liability on the part of AVNET, irrespective of the legal basis thereof (including, e.g., impossibility of performance, *culpa in contrahendo*, breach of an obligation, warranty, tort) shall be excluded. Such exclusion of liability shall not apply with respect to the following:

- claims for any injury to life, body or health;
- claims under the German Product Liability Act (*Produkthaftungsgesetz*);
- breach of a guarantee (given in writing) with respect to such damage against which

the guarantee was to provide protection;

- breach of a material contractual obligation;
- delay in delivery.

In the event of a breach of a material contractual obligation and in the event of a delay in delivery, AVNET's liability for slight negligence (*einfache Fahrlässigkeit*) shall in principle be limited to foreseeable and direct losses and, as to the amount, shall be limited to a maximum of € 50,000, unless a higher liability amount has been agreed in an individual case. In these cases, AVNET shall in particular not be liable for a loss of profits of the customer and/or unforeseeable indirect consequential damages. The limitation of liability according to the two foregoing sentences shall also apply if any loss is incurred due to gross negligence or wilful misconduct on the part of an employee or an agent who is not an executive employee of AVNET or a legal representative of its general partner (*Komplementärin*).

§ 11 Payment Terms, Set-off/Retention, Default in Payment

All invoices of AVNET shall be payable within 30 days from the invoice date without any deduction.

If the first credit evaluation of the customer has not yet been completed or the customer is in arrears with respect to payments due to AVNET or third parties or is there any other reason, in the reasonable discretion of AVNET, to doubt the customer's ability or willingness to pay, AVNET shall be entitled to effect the agreed delivery or any future deliveries only against cash on delivery or payment in advance. In the event that a customer does not pay the amount to be collected on delivery, AVNET shall be entitled to sell the goods - without any of its other rights being affected thereby - to another buyer for the account of the customer or for its own account, invoicing the customer for the difference between the price agreed with the customer and the price realised from such distress sale.

The customer shall not have any right of retention or set-off against the due payment claim of AVNET, unless the counter-claim is undisputed or has been finally adjudicated.

In the event of a default in payment by the customer, AVNET shall be entitled to demand default interest in accordance with Section 288 (2) BGB. Any further rights in connection with a default in payment by the customer shall remain unaffected.

§ 12 Limitations of Use, Indemnity

The goods sold by AVNET are intended to be used only for the purposes specified by the respective manufacturer. These purposes as a rule do not include the use of the products in life-preserving or supporting systems, in connection with nuclear materials or for any other purposes where a failure of the product may reasonably be expected to result in an injury to life, body or health or to unusually high pecuniary losses. In the event that the customer nevertheless uses or sells on any goods purchased from and/or programmed by

AVNET for such purposes, the customer shall do so at its own risk and sole responsibility. The customer herewith indemnifies AVNET and the respective manufacturer in full and at first demand against all claims, and against all legal actions, in connection with the use of goods for such purposes, including the costs incurred for adequate legal representation.

§ 13 Intellectual Property

If an order includes software or other intellectual property, such software or other intellectual property is provided by AVNET to the customer subject to the copyright and user license, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement.

§ 14 Resale/Export Control

All goods supplied by AVNET are destined to be retained in the country of delivery agreed with the customer. The resale or other use of the goods and the related technology and documentation are subject to the export control provisions (statutes, ordinances, directives, decisions, administrative acts) of the United States of America, the countries of domicile of the contracting parties and the European Union; they may, in addition, be subject to the export or import provisions of other countries. It is upon the customer to inform itself about those provisions, to comply with them and, if necessary, to apply for and obtain the relevant export, re-export or import licences itself.

§ 15 Place of Performance, Place of Jurisdiction, Miscellaneous

Place of performance for all obligations arising from the business relationship with AVNET shall be the seat of the respective place of operations executing the order. Munich, Germany, shall be the place of jurisdiction for all disputes between AVNET and the customer, including disputes in connection with claims from bills of exchange or cheques.

The laws of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

Should any provision of these General Terms and Conditions or any provision made in the context of other agreements with the customer be or become invalid, this shall not affect the validity of the remaining provisions or agreements. The contracting parties undertake to replace any invalid contractual provision by an arrangement the content of which comes as close as possible to the intended economic purpose of the invalid provision.

Personal data used in connection with the business relationship are stored and processed by AVNET, to the extent necessary for business purposes, in accordance with the statutory provisions.

