General Terms of Delivery

issued by the Association of the Austrian Electrical and Electronics Industries (FEEI)

1 Scope

These general terms apply to legal transactions between companies with regard to the delivery of movable physical goods together with the associated firmware and documentation and, analogously, also to the provision of services together with the associated documentation.

2 Offer

2.1 Unless otherwise specified in the offer, offers of the seller shall be considered non-binding.

2.2 The buyer's general terms and conditions shall not apply under any circumstances.

2.3 Any documentation regarding offers and projects must neither be reproduced nor made available to third parties without the seller's consent. The return of such documents may be requested at any time and they shall be returned to the seller immediately.

3 Contract conclusion, amendment and interpretation

3.1 The contract is deemed concluded once the seller has sent a written order confirmation or a delivery or once it has started to perform the service after receipt of the order.

3.2 No warranty claims may be derived nor liabilities established from information provided in catalogues, brochures, advertising material, and written or oral statements by the seller or third parties not included in the contract.

3.3 Any subsequent amendments and/or supplements to the contract (including an amendment of the following formal requirements), its termination as well as all (other) unilateral declarations of intent provided for in the contract or these provisions or in connection therewith shall be made in writing to be valid.

3.4 Unless otherwise agreed, each party shall bear its own costs associated with the execution, performance and termination of the contract.

3.5 For the purposes of interpretation of the contract and in the absence of any express agreement to the contrary in individual cases it is expressly understood that the seller is an independent contractor and that the seller or its owners, partners, employees, consultants or sub-contractors are not or shall not be deemed to be agents, adjuncts, partners, joint ventures or employees of the buyer.

4 Delivery

4.1 Unless otherwise agreed, the delivery period shall commence on the latest of the following dates:

a) Date of order confirmation
b) Date of fulfilment of all technical, commercial and other requirements incumbent upon the buyer;
c) Date on which the seller receives an advance payment or security that needs to be provided before delivery of the goods.

4.2 Official permits, approvals or certifications by third parties ("permits") that might be required for executing installations shall be obtained by the buyer. Technical preparations, clearing work for construction, provision and inspection of the preliminary work ("preliminary services") shall also be carried out by the buyer to the contractually agreed extent and quality. If such permits or preliminary services are not obtained in time, the delivery period shall be extended accordingly.

4.3 The seller shall be entitled to effect and charge partial or advance deliveries. If delivery on call has been agreed, the goods shall be deemed called up 1 year after the order was placed at the latest.

4.4 In case any unforeseeable circumstances or circumstances outside the parties' sphere of influence such as, for example, all instances of force majeure, occur, which prevent compliance with the delivery period agreed upon, the latter shall be extended by the duration of such impediment in any case; these include, in particular, natural disasters, armed conflicts and terrorist attacks, cyber-attacks, the outbreak and spread of large-scale diseases, endemics, epidemics, pandemics, official interventions and bans, energy and raw material shortages, labour disputes, embargoes and sanctions whose non-compliance with may expose the seller to penalties or other disadvantages, transport and customs clearance delays, delivery stoppages and bottlenecks, transport damage, non-availability of a major supplier who is difficult to replace and other problems along the supply chain. Circumstances such as the aforementioned shall also allow an extension of the delivery period if they occur at the seller's suppliers and/or subcontractors. If the impediment lasts longer than 6 months, the seller shall be entitled, after an unsuccessful attempt to reach an amicable settlement and according to the regulation in item 8.5, to rescind the contract with regard to the parts of the contract that have not yet been performed or the performance of which has not yet commenced.

4.5 If, upon conclusion of the contract, a contractual penalty for default in delivery has been agreed and no deviating provision has been agreed, such penalty shall be paid in compliance with the following provision and, for the rest, any deviation from this provision in individual respects shall not affect its applicability:

In case of a delay in performance that has demonstrably occurred solely through the fault of the seller, the buyer shall be entitled to claim, for every full week of delay, a contractual penalty of no more than 0.5 %, up to a maximum of 5 %, of the value of that part of the overall delivery which cannot be used due to the delay in delivery of an essential part, provided a loss was incurred by the buyer in that amount.

Any further claims for damages from the delay are excluded if a contractual penalty is agreed upon.

4.6 In the cases described in item 4.4 a contractual penalty is not applicable

4.7 If acceptance has been agreed, the goods or services shall be deemed fully accepted upon commencement of their use within the scope of the buyer's business or commercial activities at the latest.

4.8 The seller shall be entitled to use subcontractors with regard to all deliveries and services, provided the seller informs the buyer accordingly.

5 Transfer of risk and place of performance

5.1 Unless otherwise agreed, the delivery of the goods shall be deemed sold EXW acc. to INCOTERMS® 2020 – ICC.

5.2 The place of performance of services is primarily the place specified in the written order confirmation, secondarily it is the place where the service is actually performed by the seller. The risk of a performance or partial performance agreed shall vest in the buyer upon performance being effected.

6 Payment

6.1 If no terms of payment have been agreed, 1/3 of the price shall be due upon receipt of the order confirmation, 1/3 after expiry of half the delivery period, and the rest upon delivery. Notwithstanding the above, the VAT included in the invoice shall be paid no later than 30 days following invoicing in each case.

6.2 In case of partial invoices, the partial payments shall be due upon receipt of the relevant invoice. This shall also apply to settlement amounts arising due to subsequent deliveries or other agreements beyond the original final amount, notwithstanding the terms of payment agreed for the main delivery.

6.3 Payments shall be made in the currency agreed to the seller's paying office without any deductions or charges. Any cheques or bills of exchange shall only be accepted as an undertaking to pay. All associated interest and expenses (such as debiting and discount charges) shall be borne by the buyer.

6.4 The buyer shall not be entitled to retain or offset payments on account of warranty claims or other counterclaims. Any discounts, bonuses or other rebates granted are subject to the timely payment in full by the buyer.

6.5 A payment shall be deemed made on the date the seller is able to dispose of the amount paid.

6.6 If the buyer is in default of any agreed payment or other performance from this or any other legal transactions, the seller may – unless otherwise agreed – without prejudice to any other rights the seller may have,

a) postpone fulfilment of its own obligations until said payment or other performance has been effected, and claim an appropriate extension of the delivery period,
b) demand payment of all outstanding receivables from this or other legal transactions and charge statutory default interest for these amounts, with effect from the respective due date, unless the seller is able to provide proof of any additional costs,
c) in the event of qualified insolvency of the seller, i.e. after two instances of default, perform this and other legal transactions only against cash in advance.

At any rate, the seller shall be entitled to invoice pre-trial expenses, in particular dunning expenses and lawyers' fees, according to applicable statutory provisions.

6.7 The seller shall retain title to all goods delivered until full payment of the amounts invoiced plus interest and costs.

To secure the seller's purchase price claim, the buyer hereby assigns to the seller its claims from reselling goods subject to retention of title, even after they have been further processed, transformed or mixed. The buyer shall be authorised to dispose of the goods subject to retention of title in case of reselling with payment of the purchase price being deferred, on the condition that the buyer informs the secondary buyer about the assignment for security, concurrently with the resale, or notes down the assignment in its books. Upon request, the buyer shall inform the seller about the claim assigned and the relevant debtor and provide all information and documents required for collection of the claim and to notify the third-party debtor about the assignment. In case of seizure or other claims being made, the buyer shall be obliged to refer to the seller's title and to notify the latter immediately.

6.8 The seller shall be entitled to submit the invoice electronically.

7 Warranty

7.1 In case the terms of payment agreed are complied with, the seller shall be obliged, under the following provisions, to eliminate any defect existing at the time of handover that is detrimental to functionality and based on faulty design or material or poor workmanship.

7.2 Unless otherwise agreed, the statutory period of warranty shall apply. This shall also apply to objects of delivery and performance that are firmly attached to a building structure or to the ground. The warranty period shall commence at the time the risk is transferred under item 5. The limitation period shall commence immediately at the end of the warranty period.

7.3 If delivery or performance is delayed for reasons outside the sphere of influence of the seller, the warranty period shall commence two weeks after the latter's willingness to delivery and/or perform.

7.4 The warranty claim is contingent upon the prerequisite that the buyer has reported any defects that have occurred in writing in due time and that the seller receives this report. The buyer shall provide evidence that the defect exists within an appropriate period of time, in particular by providing to the seller the documents and/or data available on the buyer's premises. In the event of a defect covered by warranty, the seller may first rectify or replace the goods at his discretion. If this is not possible or involves disproportionate costs and effort, buyer and seller may agree on a price reduction. A rescission from the contract on the grounds of warranty is excluded in any case.

7.5 For rectified or replaced parts of the delivery or service, the warranty period starts anew, but ends in any case no longer than 6 months after the end of the initial warranty period.

7.6 Any supporting staff, lifting devices, scaffolding and incidentals required for performing warranty work on the buyer's premises shall be provided to the seller free of charge. Materials and parts replaced by the seller within the scope of the warranty work shall pass into the seller's ownership free of charge.

7.7 If goods are manufactured by the seller based on design descriptions, drawings, models or other specifications provided by the buyer, the seller's liability shall only extend to execution as agreed.

7.8 Unless otherwise agreed, the warranty shall not include any defects that result from arrangement and assembly not effected by the seller, insufficient adjustment, non-compliance with installation requirements and conditions of use, excessive stress on parts beyond the performance specified by the seller, negligent or incorrect treatment and use of inappropriate operating material; this shall also apply to defects resulting from material provided by the buyer. Nor shall the seller be liable for damage resulting from acts by third parties, atmospheric discharges, overvoltage and exposure to chemicals. The warranty shall not cover the replacement of parts that are subject to natural wear.

7.9 The warranty shall lapse immediately once the buyer itself or a third party not explicitly authorised by the seller effects any modifications or repairs to the goods or services without written consent by the seller.

7.10 Items 7.1 to 7.9 shall apply accordingly to every instance of assuming responsibility for defects on other legal grounds.

7.11 Unless otherwise agreed, a statutory updating obligation covered by Directive (EU) 2019/771 is excluded for goods with digital elements and for digital services.

8 Rescission of the contract

8.1 Unless any more specific provision was agreed, the buyer shall be entitled to rescind the contract for default in delivery resulting from gross negligence on the part of the seller and the unsuccessful expiry of a reasonable period of grace granted.

8.2 Notwithstanding its other rights, the seller shall be entitled to rescind the contract

a) if the delivery of the goods and/or commencement or continuation of the performance becomes impossible for reasons within the sphere of responsibility of the buyer or is delayed despite an appropriate period of grace being granted,

b) if concerns with regard to the solvency of the buyer have been raised and the latter does neither make an advance payment upon request by the seller nor provide suitable security before delivery, or

c) if the buyer does not or not duly meet the obligations imposed upon it under item 14 or any other contract between the contracting parties.

8.3 Rescission may also be declared with regard to an outstanding part of the delivery or performance for the reasons listed above.

8.4 If insolvency proceedings are opened with respect to the buyer's assets or a request for initiation of insolvency proceedings is rejected for lack of sufficient assets, the seller shall be entitled to rescind the contract without granting a period of grace. If such rescission is declared, it shall become effective immediately once the decision is made not to continue the company. If the company is continued, the rescission shall become effective only 6 months after opening of insolvency proceedings or after rejection of the request for initiation for lack of assets. In any case, the contract shall be terminated with immediate effect, provided that the insolvency law governing the buyer does not provide for otherwise or if termination of the contract is essential to avoid serious financial disadvantages for the seller.

8.5 Notwithstanding the seller's compensation claims including pre-trial costs, in the event of rescission, every performance or partial performance already effected shall be settled and paid as contractually agreed. This shall also apply to any delivery or performance not yet accepted by the buyer as well as for any preparatory measures effected by the seller. The seller shall also be entitled to request the return of products already delivered instead.

8.6 The rescission must be declared by registered letter. Any other consequences of rescission are excluded.

8.7 Any claims asserted by the buyer for laesio enormis, error and frustration of contract shall be excluded.

9 Disposal of waste electrical and electronic equipment

The buyer domiciled in Austria shall ensure that the seller is provided with all relevant information enabling it to meet its obligations as a manufacturer/importer according to applicable statutory provisions.

10 Seller's liability

10.1 Unless otherwise agreed, the seller shall be liable for damage outside the sphere of the Produkthaftungsgesetz [Austrian product liability act] – in line with statutory regulations – only if its intent or gross negligence is proven. Unless otherwise agreed, the seller's total liability in the event of gross negligence shall be limited to the total net price.

10.2 Unless otherwise agreed, any liability for slight negligence, with the exception of personal injury, and compensation for consequential damage, pure financial loss, indirect loss, production downtime, cost of financing, cost of substitute power, loss of power, data or information, lost profit, savings not achieved, interest losses and losses from third-party claims asserted against the buyer shall be excluded.

10.3 Unless otherwise agreed, all forms of compensation shall be excluded in case of non-compliance with any requirements for assembly, commissioning and use (such as those included in operating instructions) or required permits.

10.4 If contractual penalties have been agreed, any further claims for damages shall be excluded.

10.5 Unless otherwise agreed, the provisions of item 10 shall apply to all liability claims of the buyer vis-à-vis the seller, on any legal ground and title whatsoever, and shall also apply to all staff members, subcontractors and suppliers of the seller.

11 Industrial property rights and copyright

11.1 If a product is manufactured or a service rendered by the seller based on design descriptions, drawings, models or other specifications provided by the buyer, the buyer shall fully indemnify the seller in the event of any violation of property rights.

11.2 Unless otherwise agreed, final planning documents such as plans, drawings and other technical documentation shall remain the intellectual property of the seller at all times, as shall samples, catalogues, brochures, images and the like, and shall be subject to the relevant statutory provisions, inter alia, with regard to reproduction, imitation and competition. Item 2.3 shall also apply to final planning documents.

11.3 For the intellectual property granted for the use of firmware, the seller hereby grants to the buyer the non-exclusive, non-transferable and non-sublicensable right to use this intellectual property at the contractually agreed location in accordance with the contractual specification and for the purposes underlying the contract. All other intellectual property rights are reserved to the seller and its licensors.

12 Assertion of claims

All claims of the buyer shall be asserted in court within 3 years from the time the risk is transferred under item 5, otherwise they shall be forfeited, unless other deadlines are provided for by mandatory statutory provisions.

13 Data protection

13.1 The parties undertake to comply with the provisions and requirements of data protection law, in particular Regulation (EU) 2016/679 ("GDPR") and the Datenschutzgesetz (DSG) [Austrian Data Protection Act], in their up-to-date versions, in the course of the execution of the present legal transaction.

13.2 If, in compliance with the aforementioned provisions, further data protection agreements should become necessary for the execution of the legal transaction, the parties shall agree on these separately in writing.

14 Compliance with export regulations

14.1 The buyer shall comply with the applicable provisions of national and international export control law when passing on the goods delivered or the services rendered, including pertinent documents, technology and technical support of any kind. In any case, the buyer shall comply with all applicable national export control regulations as well as those of the EU and/or the USA. If required to comply with export control regulations, the buyer shall provide the seller without undue delay upon request with all information about the final recipient, the intended use of the goods delivered or services rendered and any applicable export control restrictions.

14.2 Prior to passing on the goods or services, the buyer shall verify and take appropriate measures to ensure that

a) it does not violate any national or international sanctions and embargoes, in particular those of the EU, the USA and/or the United Nations – also taking into account any prohibitions of circumvention (e.g. through an unauthorized detour) – by such a passing on, by brokering contracts for such goods or services, or by providing other economic resources in connection with such goods or services;

b) such goods or services are not intended for any prohibited or arms-related, nuclear or weapons-related uses that require a permit, unless any required permits have been obtained;

c) the provisions of all relevant national or international sanctions lists, in particular those of the EU, the USA and/or the United Nations, concerning business transactions with the above-mentioned companies, persons or entities are complied with; or

d) the goods and services mentioned by the respective current versions of the annexes of the applicable EU regulations, such as No. 833/2014, as amended, and No. 765/2006, as amended, or Annex I of the Dual-Use Regulation (EU) No. 2021/821, as amended, are not, in violation of EU law, (i) exported directly or indirectly – e.g. via countries of the Eurasian Economic Union (EAEU) – to Russia or Belarus or (ii) resold to a third party business partner who has not committed in advance not to export the goods or services to Russia or Belarus.

14.3 For deliveries of goods or the provision of services, including pertinent documents, technology and technical support of any kind, which are listed in the relevant EU legal acts, in particular in Annexes XI, XX, XXXV and XL of EU Regulation No. 833/2014, as amended, and/or in Annex I of EU Regulation No. 258/2012, as amended, to customers domiciled in a country outside the European Union and outside a partner country listed in Annex VIII of EU Regulation No. 833/2014, as amended, the following provisions shall in any case also apply while the regulations mentioned in this item are in force:

14.3.1 The buyer must not directly or indirectly sell, export, re-export the goods and services provided by the seller under this contract or in connection with this contract in accordance with item 14.3 to the Russian Federation or Belarus or perform such acts for use in the Russian Federation or Belarus.

14.3.2 The buyer shall do its best to ensure that the purpose of item 14.3.1 is not frustrated by third parties in the commercial chain, including potential resellers.

14.3.3 The buyer shall establish and maintain an appropriate monitoring mechanism to detect behaviour by third parties in the commercial chain, including potential resellers, that would frustrate the purpose of item 14.3.1.

14.3.4 Notwithstanding any rescission pursuant to item 8.2c), the seller shall be entitled, but not obliged, to demand the immediate submission of a plan to remedy the breach and to suspend any business relationship with the customer and/or an affiliated company of the customer until the breach of item 14.3.1 has been remedied.

14.3.5 The buyer shall provide the seller with information regarding compliance with the obligations under items 14.3.1 - 14.3.3 within two weeks of a simple request. It shall immediately inform the seller of any problems in the implementation of items 14.3.1 - 14.3.3, including relevant activities of third parties which could frustrate the purpose of item 14.3.1.

14.4 In the event of a breach of the provisions contained in item 14, the buyer shall fully indemnify and hold the seller harmless from and against all claims, damages, penalties and costs asserted against the seller by authorities or other third parties. In the event of a breach of the provisions contained in item 14.3, the buyer shall pay an additional penalty. Unless otherwise agreed between the parties in an individual contract at the time of ordering the goods or services and depending on their volume, this penalty shall be 5% of the total net price.

15 General information

15.1 If individual provisions of the contract or of these terms & conditions should be invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced with a valid provision that approximates the intended objective as closely as possible.

15.2 The German-language version shall be deemed the authentic version of the terms & conditions and shall be used to interpret the contract.

16 Place of jurisdiction and applicable law

The exclusive place of jurisdiction for resolving all disputes arising from the contract – including those regarding its existence or non-existence – shall be the court with subject matter jurisdiction at the seller's head office; in Vienna, this shall be the court located in the district of the Local Court of Innere Stadt. The contract shall be governed by Austrian law to the exclusion of conflict of law rules. Application of the UNCITRAL UN Convention on Contracts for the International Sale of Goods shall be excluded.

17 Reservation clause

Performance of the contract on the part of the seller shall be subject to the reservation that no obstacles exist under national or international (re-)export regulations, in particular no embargoes and/or other sanctions.

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