General Terms and Conditions (GTC)

State: 04/01/2021

Hectronic

I. Validity / Offers

1. These General Terms and Conditions apply to all - also future - business relationships of Hectronic GmbH and Hectronic Vertriebs- und Service GmbH (subsequently: "supplier") with companies (natural or legal persons or a partnership with legal capacity that act in the exercise of their commercial or self-employed professional activity in concluding a legal transaction), legal entities under public law and separate funds under public law ("purchaser"). Terms of purchasing or other general terms and conditions of the purchaser only apply if the supplier has explicitly approved of their validity.
2. The offers of the supplier are subject to change and non-binding. Only the order of the goods by the purchaser is considered as a binding contract offer. The supplier can either accept this contractual offer in writing (e.g. by order confirmation) or by delivering the goods to the purchaser.
3. The supplier reserves the right to make modifications with respect to information of the supplier on the subject of the delivery or service (e.g. weights, dimensions, practical values, resilience, tolerances, technical data or product designations) and its representations (e.g. drawings and pictures), insofar as the delivery item is not significantly changed or its quality improved and the changes or deviations are reasonable for the purchaser.

II. Prices and Terms of Delivery

1. Unless otherwise agreed, the applicable prices and conditions are those of the price list of the supplier valid when the contract is concluded, plus the currently valid value-added tax. Prices not stated in other currencies are understood as Euro (€). The delivery is made ex works, the conditions being "EXW delivery warehouse" (Incoterms 2020). The purchaser shall bear potential incidental expenses such as transportation and packaging, in case of export deliveries also customs duties and other public charges. Unless otherwise agreed in advance the supplier shall not take back transportation and all further packagings in accordance with the packaging ordinance; they become the property of the purchaser.
2. If later than four weeks upon conclusion of the contract charges or other external costs which cannot be influenced by the supplier and are included in the agreed price vary or emerge the supplier is entitled to a change of price to the corresponding extent.
3. If the item is to be delivered to another member state of the European Union (EU) the purchaser is obliged to provide the supplier its value added tax identification number under which the delivery is to be processed and its branch of industry. The same applies accordingly if further states are involved in the provisions relevant for this regulation.

III. Payment and Offsetting

1. Unless otherwise agreed or stated in the invoices all fees are due immediately upon service provision and without cash discount and is to be paid in such a manner that the supplier can dispose of it on the due date. The purchaser bears the costs of the payment transaction. Payments to be made on a regular basis shall be made within 3 working days from the beginning of the respective accounting period. Unless otherwise agreed or stated in the invoices, the purchaser comes into default 14 calendar days after delivery and invoice date, in case of payments to be made on a regular basis 14 calendar days after the due date. Irrespective of other compensation claims the supplier is entitled to defer its own contractual obligations in case of delayed payments which it is not responsible for until the delayed payments have been made. The purchaser is only entitled to the rights to retain and set off insofar as these counterclaims are undisputed or legally established.
2. If the purchaser gets into default of payment the supplier may withhold behooving services, e.g. by deactivating access to the contractual software. Through this the purchaser is not exempt from its duty of payment of the (ongoing) fees.
3. If the purchaser is delayed with a non-neglectable amount or if it does not honour a bill when due or if other circumstances occur which lead to the assumption of a significantly deteriorated solvency of the purchaser after conclusion of the contract which endanger the claim for payment the supplier is entitled to declare due all claims from the ongoing business relationship with the purchaser which are not statute-barred and to demand security or cash in advance because of outstanding deliveries and services from the business relationship unless the purchaser provides sufficient security.
4. A cash discount agreed on refers to the invoice value and presupposes the complete offset of all due liabilities of the purchaser at the time of the discount.
5. In case of deliveries which are made in partial deliveries based on agreements or from the nature of the matter the supplier is entitled to demand a down payment for each partial delivery proportional to the total order volume.

IV. Execution of Deliveries, Delivery Periods and Dates

1. Unless explicitly designated as binding information on delivery and performance times is not binding.
2. Delivery and performance periods begin with the date of the order confirmation and are valid under the precondition of timely clarification of all order details and timely fulfilment of all obligations of the purchaser, such as procurement of all official certifications of the purchaser, providing letters of credit and guarantees or the making of down payments. If this is not the case the delivery time is extended reasonably. This does not apply if the supplier is responsible for the delay.
3. An installation period starts at the earliest, however, when components to be provided by the purchaser are orderly installed and when the further preconditions for installation which according to the agreement are basically to be provided by the purchaser (free access to place of installation, provision of assembly workers, suitable facilities, energy connections, etc.) are properly in place.
4. The date of delivery ex works or warehouse is relevant for compliance with delivery periods and times. They are considered as fulfilled with the notification of readiness for dispatch if the goods cannot be dispatched in time through no fault of the supplier.
5. Goods which are notified as ready for dispatch as provided by the contract must immediately be retrieved. Otherwise the supplier is entitled to dispatch them after a reminder at the purchaser's cost and risk or to store and immediately charge the goods at the purchaser's cost and risk at the supplier's own discretion. In this case, the purchaser shall be additionally charged with the extra storage costs arising at the usual rates.
6. In case of force majeure and other unforeseeable exceptional circumstances - e.g. in case of breakdowns, strike, lockout, lack of means of transport, official interferences, problems with the energy supply, lacking or delayed self-delivery, pandemics, etc. - delivery periods agreed upon are extended to a reasonable extent if the supplier is not responsible for these circumstances. If due to the circumstances listed the performance becomes impossible or unreasonable the supplier is exempted from its obligation to perform.
7. If through no fault of the supplier the transportation on the intended route or to the intended place or in the intended time becomes impossible it is entitled to deliver them on a different route or to another place if this is reasonable for the purchaser. The resulting extra costs are borne by the purchaser. The purchaser is given the opportunity to comment beforehand.
8. Partial deliveries are permitted if the partial delivery can be used by the purchaser within the framework of the contractual intended purpose, if the delivery of the remaining ordered goods is guaranteed and neither significant extra efforts nor additional costs are generated for the purchaser. Customary excess or short deliveries of the agreed quantity are permitted.
9. In case of agreements with continuous delivery the purchaser has to place orders and sort classifications for roughly equal monthly quantities; otherwise, the supplier is entitled to make the delivery to its reasonable discretion under reasonable consideration of the purchaser's interests. If the individual orders exceed the contractual quantity the supplier may - but need not - deliver the surplus quantity. It is allowed to charge the surplus quantity at the list prices valid at the time of order resp. delivery.
10. If the purchaser is in default of acceptance or culpably violates other duties of cooperation the supplier is entitled, irrespective of the assertion of farther-reaching rights, to withdraw from the contract and / or to assert a general compensation due to non-performance of 1% per completed week of delay; at most, however, of 5% of the order amount. Both contracting parties reserve the right to prove a higher or lower damage.
11. In principle, the supplier provides documentation belonging to the scope of delivery or otherwise owed only in German resp. English.
12. The contractual service meets the legal requirements applicable in Germany including the current European legal specifications. The purchaser is responsible for complying with special regulations of other countries.

V. Works in the Purchaser's Sphere of Influence

1. When performing assembly and other works in the sphere of influence of the purchaser, including the installation site outdoors, the purchaser is obliged to provide the technical support agreed or usual and announced well in advance by the supplier (e.g. provision of lighting, power current, dry and lockable rooms for the storage of material, preparatory earthworks, provision of suitable helpers, etc.). The workplace has to be freely accessible and cleared.
2. In case of additional expenses because the supplier cannot begin the works on site as announced due to an omission of the purchaser (e.g. if the place of assembly cannot be accessed) the purchaser shall be charged with these additional expenses at the current rates.
3. If the purchaser is obliged to accept items the acceptance must be made without delay at the acceptance date. If no acceptance date was agreed it has to be made within 10 calendar days upon notification of readiness for acceptance. If the purchaser does not refuse acceptance at due date and with giving reasons (description of deviation between actual and nominal condition) the acceptance is considered as accomplished. The purchaser may only refuse acceptance in case of a significant defect.

VI. Reservation of Title

1. All goods delivered remain property of the supplier (reserved goods) until all claims to which it is entitled within the framework of the business relationship are fulfilled (extended reservation of title).
2. The purchaser is obliged to store, maintain, and repair the goods delivered under reservation of title at its own expense and to insure them against fire, water damage, burglary, and theft.

3. Machining and processing of the reserved goods are performed for the supplier as manufacturer without committing it. The machined and processed goods are considered as reserved goods in the sense of clause VI.1. If the purchaser processes, connects or mixes the reserved goods with other goods the supplier has proportional co-ownership of the new goods in the ratio between the invoice value of the reserved goods and the invoice value of the other goods used. If the property expires by connection or mixing the purchaser already now transfers the ownership rights held of the new stock or the new item to the supplier to the extent of the invoice value of the reserved goods and stores them for the supplier free of charge. These rights of co-ownership are considered as reserved goods in the sense of Cl. VI.1.
4. The purchaser may only sell the reserved goods in ordinary course of business at its normal terms and conditions and as long as it is not delayed, under the condition that the liabilities from the resale acc. Cl. VI.5 to VI.7 are transferred to the supplier. It is not entitled to dispose of the reserved goods in any other way.
5. The purchaser already now assigns liabilities resulting from the resale or another legal basis (in particular transfer of property to the end customer, insured event, unlawful act) with respect to the reserved goods to full extent to the supplier as a security. The supplier accepts the assignment. When the goods of which the supplier has co-ownership shares acc. Cl. VI.3 a part corresponding to its co-ownership share is assigned to the supplier.
6. The purchaser is entitled to collect claims from the resale. This collection authority expires in case of revocation by the supplier. The supplier shall only make use of the right of revocation if it becomes aware of circumstances that suggest an essential deterioration of the solvency of the purchaser which endangers the claim for payment. If the purchaser acts contrary to contract - in particular, if it is delayed with a claim for payment - the supplier can demand to disclose the assignment and to provide the information and documents required for collecting the claims.
7. The purchaser has to immediately inform the supplier of any seizure or other impairment of the reserved goods by third parties. The purchaser bears all costs which arise to remove access or return the reserved goods insofar as they are not compensated by third parties.

VII. Warranty

1. In case of delivery of faulty goods, the supplementary performance is made according to the choice of the supplier through remedy of defect or delivery of a flawless product.
2. The supplier is entitled to predicate the supplementary performance owed from the purchaser paying the due purchasing price. The purchaser is entitled, however, to retain a part of the purchasing price which is appropriate in relation to the defect.
3. If the purchaser does not grant the supplier the opportunity to immediately convince itself of the material defect and/or if it does not make available the rejected goods or samples, in particular on request and within a reasonable period of grace, the supplier does not come in default with the supplementary performance.
4. If the defect results from a faulty third-party product the supplier is entitled to transfer its warranty claims against its sub-supplier to the purchaser. In this case claims under warranty against the supplier can only be made if the purchaser has asserted its claims against the sub-supplier by judicial process. A suspension of the limitation period towards the previous supplier (due to negotiations or a legal proceeding) also suspends the period of limitation of warranty claims against the supplier.
5. The warranty period is - except in case of malice, subject to Cl. VIII.7. and unless otherwise contractually agreed - generally 24 months, with wear parts and consumables (printers, card readers, etc.) and IT-components (such as modem) 12 months, with used articles 6 months.

VIII. General Limitation of Liability

1. Subject to the regulations below the supplier - also for its executives and other agents - shall only be liable for violation of contractual and non-contractual duties vis-à-vis the purchaser in cases of intent and gross negligence.
2. The supplier shall also be liable for damages from the violation of essential contractual duties, i.e. of contractual duties, the fulfilment of which shapes the contract and allows for its ordinary execution and the compliance of which the contractual partner regularly relies and may rely on, if it is only imposed with ordinary negligence.
3. Insofar as the supplier is not imposed with intentional behavior in the cases of Cl. VIII.1 and VIII.2, it shall only be liable for replacement of the typically resulting damage which the supplier has foreseen as a possible consequence of a breach of contract or which it should have foreseen in case of application of due diligence when concluding the contract.
4. Otherwise, the liability of the supplier is excluded, also for damages caused by defects or consequential damages.
5. The above limitations of liability are not applicable with culpably caused damages to life, body, and health and neither if and insofar as the supplier has assumed a guarantee for the condition of the sold item and in cases of mandatory liability according to the product liability law.
6. Insofar as the liability of the supplier is excluded or limited this also applies to the personal liability of its employees, legal representatives and agents.
7. Claims for compensation acc. the above clauses VIII. to VIII.6 expire within the statutory time limits.

IX. Information and Technical Support

Information and advice of the supplier is given without commitment and under exclusion of any liability unless the supplier has explicitly and in writing committed itself to provide information and recommendations. The purchaser has to examine by test series of his own if a product is suitable for the specific applications of the purchaser. The information of the supplier does not constitute a quality assurance for its products.

X. Software and Remote Maintenance

1. Insofar as software is included in the scope of delivery the purchaser is granted a non-exclusive right to use the goods delivered including their documentation. It is made available for use with the designated delivery item. Using the software with more than one system is prohibited unless the supplier explicitly grants multi-licenses.
2. The purchaser may only copy, modify or translate the software or convert it from object code into source code to the extent permitted by law (§§ 69 a. ff. UrhG). The purchaser commits itself not to remove manufacturer specifications - in particular copyright notices - or to modify them without explicit prior consent of the supplier.
3. All other rights to the software and the documentations including the copies remain with the supplier resp. with the supplier of the software. The awarding of sublicences is not permitted.
4. If the supplier installs software by means of remote maintenance without being physically present during commissioning the purchaser has to take all appropriate measures during commissioning and the initial phase of operation to keep damages by potential malfunctions of the software at a minimum. These include the execution of functional tests of the system connected to remote maintenance, an increased monitoring of the functional and machine parameters in the initial phase and the possibility of an immediate switch-off of the system in case of malfunctions.
5. The purchaser is obliged to establish and maintain the technical preconditions that allow for remote maintenance by the supplier.
6. If software is installed on systems of the supplier and if the supplier obtains the right to use the software via the Internet or a client (so-called ASP software) the ASP conditions of the supplier apply additionally. They are available under www.hectronic.de and www.hectronic.com or can be requested by the supplier.
7. Before commissioning software, it always has to be subjected to a functional and parameterisation test (e.g. for filing of the correct price models). The supplier has to be notified of malfunctions immediately.

XI. Place of Performance, Jurisdiction and Applicable Law

1. Unless otherwise agreed the place of performance for all obligations of both contracting parties is the seat of the supplier.
2. Place of jurisdiction is the seat of the supplier. The supplier is also entitled to sue the purchaser at the purchaser's seat.
3. German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).