

# General terms of sale, delivery and payment

## Gantner electronics GmbH - Germany

### 1. General – Area of application

A) Sales and delivery take place only under the following exclusive conditions; conditions conflicting with or differing from our conditions will not be accepted unless we expressly agree to them in writing.

Our conditions apply, even if we proceed with delivery, with the knowledge of conflicting or differing conditions on the part of the buyer.

B) Our conditions apply only to entrepreneurs for the purposes set out in § 310 paragraph 1 BGB, as well as to public legal entities and public special estates.

C) Our terms of sale apply also to all future business with the buyer.

### 2. Offer – Proposal documents

A) Our offers are subject to confirmation from the Bochum warehouse, unless otherwise specified in our contract confirmation.

B) Our written offer is valid for one month.

### 3. Price/terms of payment

A) Unless otherwise specified in our order confirmation, our prices apply from the Bochum warehouse and do not include any transport costs to the buyer.

B) The legal value added tax is not included in our prices; it is separately calculated in the currently applicable amount on the day of the rendering of invoice.

C) Unless otherwise specified in our order confirmation, the purchase price is immediately, without discount, due with delivery of the goods. If the buyer delays payment, we are entitled to add overdue fines at a rate of 15 EUR per dunning level. Assertion of further damages is not excluded.

D) The acceptance of cheques for fulfilment of our demand for the purchase price, unless otherwise specified in our order confirmation, will only be under the condition that the validity of our demand for the purchase price is not affected. However, we agree not to make this demand valid provisionally, unless the satisfaction of our demand by cheque fails because of non redemption of the cheque. We commit present cheques for redemption within four weeks; the buyer assumes the risk of non redemption. Accordingly, it is considered, as agreed upon, that the buyer must pay interest on the demand for purchase price from the time of the goods delivery in the case of non redemption of cheques. The interest rate will be calculated as in point C. This does not apply if the non

redemption is due to delayed presentation on our part, or if the buyer can show that the reasons for the non redemption are beyond the buyer's control.

### 4. Delivery time – Delay

A) Dates of delivery are, unless otherwise agreed, nonbinding dates; in particular, no guarantee is assumed for the duration of transport and its timely arrival to the buyer.

B) Should the buyer set us a reasonable grace period, after we are already in delay, then, at the end of this grace period, the buyer is entitled to withdraw from the contract if delivery has still not been made; requirements for compensation instead of fulfilment are granted to the buyer only if the delay was due to deliberate acts or negligence. The amount of compensation due to the delay is limited to typical damages foreseeable at the conclusion of the contract. Limitations of liability do not apply if the damage is caused by us, to life, injury or health of the customer.

C) The limitations of liability in B do not apply if a commercial fixed price was agreed upon.

D) Should the buyer delay acceptance, we are entitled to compensation for the damages incurred, including any additional expenditure. In this case, the risk of accidental destruction or accidental degradation of the goods is assumed by the buyer at the time of default on acceptance.

### 5. Transfer of risk

A) Unless otherwise specified in our order confirmation, supply from the Bochum warehouse is agreed upon.

B) If transport of the goods is entrusted to the buyer or to a third party at the buyer's request, the goods travel at the risk of the buyer. We will only provide proper packaging and proper ordering of a cargo company; we do not accept further commitments regarding transport of the goods.

### 6. Guarantee and other responsibilities

A) The warranty claims of the buyer presuppose that the buyer has duly completed his investigation and reprimand obligations as specified in § 377 HGB.

B) If Gantner electronics does not grant an additional warranty, the guarantee period amounts to one year, starting from delivery. In the case of fraudulent concealment or the assumption of a warranty for the

appearance and workmanship, further obligations remain unaffected.

C) If the goods agreed upon are defective due to our fault, we are immediately obligated to our choice of either rework or replacement. We assume all work and material costs incurred during rework. Any necessary freight charges fall to the buyer. If we are not prepared for the rework/replacement, or fail to complete the rework/replacement, then the buyer is entitled to withdraw from the contract or to require an appropriate reduction of the purchase price, at the buyer's discretion.

D) Unless otherwise agreed, further claims on the part of the buyer – regardless of legal basis – are excluded. We are not responsible therefore for damages not actually suffered by the goods themselves; in particular, we are not responsible for lost profit, production or operational failure, or other financial damages to the buyer.

E) Existing limitations of liability do not apply, insofar as the cause of the damage or the delivery delay is due to deliberate acts, bad faith or negligence. Furthermore, they do not apply if the buyer claims fault on a warranty promise or the assumption of a procurement risk as specified in § 276 paragraph 1 P. 1 BGB of claims for damages instead of the achievement in accordance with §§ 280, 281, 283 BGB. Furthermore, the limitations of liability do not apply, if the damage caused by us is to life, injury or health of the customer.

F) If we fail to meet a significant contractual obligation due to negligence, we assume responsibility for substitution of the foreseeable damage. We are not responsible for the simple negligent injury of insignificant contract obligations.

G) For warranties taken over by Gantner electronics, the conditions printed on the current Infocounter at delivery apply.

H) If the delivered goods are not erroneous or damaged due to our action, we have the right to invoice the buyer for the costs of examination and freight charges incurred in determining this.

I) Should the use of a contractual product from Gantner Electronic GmbH Germany require License of products from Microsoft or other Licensor, we state explicitly, that the user himself is in charge for the required and sufficient licensing from Microsoft or other licensor.

Gantner Electronic GmbH Germany is exempt from Liability from Microsoft or

other Licensor, which originate from the use of contractual product from Gantner Electronic GmbH Germany through the user.

## **7. Overall liability**

A) Insofar as our responsibility for payment of damages as specified in #6 points D)-F) is excluded or limited, this also applies to all claims due to fault at contract conclusion or failure to meet other obligations in accordance with §§ 280, 282, 241 paragraph 2, 311

paragraph 2, BGB and other claims for damages, in particular requirements from improper action.

B) The ruling in accordance with point A) does not apply in cases in which we legally bear responsibility, in particular to the of §§ 1, 4 ProdHaftG.

C) Personal responsibility of the legal representatives, executing aides and sales employees for damages caused by them by negligence is excluded.

D) Claims for damages on the part of the customer due of defects fall under the statute of limitations after one year starting from delivery of the goods. This does not apply, in case of deliberate acts or blame on our part, or if damages consist of injury or health problems or loss of the life to the customer.

## **8. Retention of title**

A) Our goods are supplied exclusively under retention of title. Ownership passes to the buyer only upon fulfilment of all commitments of the buyer. This applies even if the buyer makes payment for certain goods designated by him. On a running account, the remaining property applies as insurance of payment of the balance.

B) The buyer is obligated to treat the goods properly; in particular, he is obligated to insure their replacement value at his own expense against fire, water and theft damage.

C) Upon seizure or other third-party intervention, the buyer must inform us immediately in writing, so that we can make a complaint in accordance with § 771 ZPO. As far the third party is not able to reimburse us for judicial and costs out of court of such a complaint in accordance with § 771 ZPO, the buyer is responsible for the costs we incur.

D) The buyer is permitted to resell the goods in the normal course of business; however, he assumes all costs, including the value added tax, which result from the resale to his customer or third parties, independent of whether the goods are resold with or without further processing. The buyer remains authorized for the collection of this request, even after the transfer. Our right to adjust the request remains unaffected. We agree, however, to exercise this right

only if the buyer does not fulfil his obligations to us and the payment is delayed. The buyer will make available to us, upon our request, all necessary data and documentation so as to enable us to request the payment to the debtor. At our special request, the buyer will notify the third party debtor of such a relinquishment.

E) Processing of goods delivered by us and still owned by us shall always take place at our request, without commitments arising from this on our part. If the goods are processed with other items not belonging to us, then we acquire co-ownership of the new product in the relationship of the value of our goods to the other component items at the time of processing. If the combination takes place in such a way that the buyer's item is to be regarded as the main product, the buyer must transfer co-ownership to us proportionately. The buyer will reserve full or co-ownership for us.

F) We agree to release collateral held by us at the request of the buyer if the value of our collateral exceeds the demands secured by more than 10%; we reserve the right to select the collateral which will be released.

## **9. Right of lien – Prohibition of charges**

A) The assertion of a right of lien or charges with any counterclaims of the buyer are excluded, as far as these counterclaims are not properly determined or expressly recognized by us.

## **10. Area of jurisdiction - Place of delivery – Choice of venue**

A) If the buyer from Gantner electronics is a business, legal entity under public law or a public special estate, our registered place of business is also the area of jurisdiction; Gantner electronics reserves the right to sue the buyer at the buyer's registered place of business. The same applies if the buyer does not have a general area of jurisdiction in Germany or if the buyer's domicile or usual place of residence is unknown at the time a suit commences.

B) Unless otherwise specified in our order confirmation, our registered place of business is the place of delivery.

C) This agreement is subject exclusively to German law. The conventions of the United Nations regarding contracts for the international purchase of goods do not apply.

## **11. Notices of defect**

A) Notices of defect are allowable within one week after receipt of goods. The buyer is obligated to inspect the delivered goods within this period, even if failure samples were sent. Defects are to be indicated

within the period mentioned in writing; otherwise the assertion of warranty claims is excluded. Timely sending of notices suffices for adherence to this time limitation. The full burden of proof for all presuppositions for claim, in particular for defects, falls to the buyer at the time of the statement of defects and for the timeliness of the notice of defect. Hidden defects found in the context of required investigation can be considered only if the notice of defect arrives within three months after the commodity leaves our plant. The supplier is not responsible for normal wear and defects due to poor care or otherwise inappropriate treatment of the goods.

## **12. Final clauses**

A) Changes and additions to these general terms of sale, payment and supply must be made in writing.

B) Should one or more of these general terms of sale, payment and supply be or become in whole or in part ineffective or impracticable, the remaining terms remain effective in their entirety. Such a term is replaced by an appropriate ruling which the Contracting Parties would have agreed upon had they known the ineffectiveness of the discarded term.