Meilhaus Electronic GmbH
Am Sonnenlicht 2
D-82239 Alling
Tel./Fax: **++49 - (0) 8141 - 5271-0/-129**
E-Mail: **sales@meilhaus.com**

General Terms and Conditions of Business

Terms of Delivery and Payment of the firm Meilhaus Electronic GmbH

Preliminary Note

These General Terms and Conditions of Business are formulated according to German legal understanding; the terms used in them are taken from German understanding of language and law. If, in an individual case the English legal understanding of the following provisions should differ from the German legal understanding, the German legal understanding shall solely prevail.

I. Scope of Application

All of our current and future deliveries and services are exclusively made/rendered on the basis of these General Terms of Delivery and Payment. Any terms and conditions of our customers diverging from our Terms of Delivery and Payment shall not be valid and are hereby expressly rejected.

II. Offer, Order, Conclusion of Contract

1.) We supply exclusively to entrepreneurs in terms of § 14 BGB.

2.) The product details set forth in our catalogue or on our homepage, our price lists, our price and product information communicated to our customers orally, electronically or in writing do not constitute legally binding offers, but only a request made to our customers for submitting offers.

3.) An order placed with us by a customer is a binding offer. A contract with the customer only comes about when we accept such offer by means of a written confirmation of the order. As a matter of principle, we only accept orders from a minimum order value of € 50.00 on.

4.) We reserve the right to make any changes in design, choice of materials, specifications and model even after sending a confirmation of an order, provided such change is not in confl ict with the confirmation of the order or with the customer's specifications. Beyond that, the customer will agree to any proposals for changes made on our part as far as they are reasonable for the customer. Improvements of the products shall be permissible as far as they are reasonable for the customer, taking our interests into account, too. The documents, such as illustrations, drawings dimensions and weights, that form the basis of the offer or confirmation of the order shall be generally regarded as approximate values, unless they are expressly designated as binding. Drawings and other offer documents continue to be owned by us; any exploitation rights under copyright are exclusively due to us.

5.) We generally accept orders with the proviso that we receive delivery from our suppliers in time.

6.) Any binding arrangement agreed upon with us, in particular also additions to or alterations of contracts or collateral agreements to contracts must be made in writing to become effective; in case of electronic transmission, it shall be sufficient to state the full name of the sender instead of a signature.

III. Prices

1.) The price applicable to the conclusion of the contract shall be the net price stated in our confirmation of the order plus value-added tax at the rate in force on the day of consignment. The price is understood ex place of consignment Alling.

2.) If the Customer asserts legal exemption from the German turnover tax, the Customer is obliged towards Meilhaus Electronic to comply with the obligations to produce proof imposed under German tax law and by the German fiscal authorities on Meilhaus Electronic for proving such exemption from turnover tax. In particular for intra-Community deliveries, the Customer is obliged to issue a "confirmation of arrival" in line with the specifications under German tax law. The risk of provability of the exemption from taxation is borne by the Customer; if respective proof cannot be produced towards the competent local fiscal authorities of Meilhaus Electronic for reasons that Meilhaus Electronic is not responsible for and/or the Customer fails to issue a "confirmation of arrival" in line with the legal requirements within a period of one month from the contractual delivery of the goods, the Customer shall in addition owe to Meilhaus Electronic payment of the German turnover tax at the legal rate.

3.) The individual prices published on our price list are not binding.

4.) If, due to fl uctuations in the exchange rate, our purchase price of the goods ordered should change by more than 3 % compared with the price in force on the day of the confirmation of the order, we shall be entitled to make a respective price adjustment. In such a case, the customer can cancel the order by written notice within a period of 8 days from the receipt of the written price adjustment.

5.) If the period between conclusion of the contract and delivery is longer than 4 month and we are not responsible for the delay in delivery, we can reasonably increase the price, taking into account any costs of materials and labour and other ancillary costs incurred that are to be borne by the seller. If the purchase price increases by more than 10 %, the customer shall be entitled to rescind the contract.

6.) Any unforeseeable changes in customs duties, import and export duties entitle us to make a respective price adjustment.

IV. Delivery, Place and Time of Performance, Consignment, Passing of Risk

1.) Except as may be otherwise agreed upon, the sale is always made ex our warehouse in Alling; this applies also when we undertake to deliver/consign the goods.

2.) The time of delivery stated in our confirmations of orders only indicates the expected date of delivery and is expressly subject to the proviso that we receive delivery from our suppliers in time.

3.) The risk passes to the customer at the moment the goods are handed over to the forwarding agent, carrier or other persons entrusted with the forwarding. The means of transport used shall be chosen by us.

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4.) The purchase price includes neither costs of freight and packaging nor costs of a special packaging that may be required. These costs are charged to the customer separately.

5.) Insurance against damage in transit of any kind shall only be effected at the express request of the customer, charging the amounts disbursed to the customer.

6.) We are entitled to make partial deliveries at any time; the customer cannot reject any par-tial deliveries or partial services.

V. Force Majeure, Right of Exceptional Termination for Lack of Creditworthiness

1.) In an event of force majeure (§ 275 BGB - Civil Code), we are entitled to defer the delivery for the period of the impediment plus a reasonable start-up period or, in case of a presumably lasting impediment, to withdraw from the contract completely or in part with regard to the part of the contract that has not been performed yet. In such a case, the customer can require us to state whether we will withdraw from the contract or deliver within a reasonable period of time. If we do not make a respective statement, the customer can withdraw from the contract.

2.) Without prejudice to the legal rights of rescission, we shall be entitled to rescind the contract in particular if the customer has given incorrect information with regard to facts concerning its creditworthiness, if it suspends payments, if it has made a declaration in lieu of an oath or if there has been filed an application for the institution of insolvency proceedings against its assets.

VI. Payment

1.) Except as may be otherwise agreed upon, our invoices shall be due for payment immediately upon receipt of the goods. Irrespective of the above, we generally grant the customer a term of payment of 30 days without affecting the maturity of the claim. We reserve, however, the right to make deliveries only against immediate payment or by cash on delivery in individual cases, in particular in case of initial orders.

2.) In case of a delay in payment, we charge default interest according to § 288 BGB (Civil Code) to the customer. This shall not affect an assertion of further damages. Also in case of a subsequent extension of terms of payment, interest shall be incurred until the date of payment, unless otherwise agreed in writing.

3.) All of our claims shall become immediately due when the customer fails to observe any contractual arrangements, in particular those concerning payments, or when any facts reducing the customer's creditworthiness have come to our knowledge. In such a case, we shall be entitled to make/render any outstanding deliveries/services only against advance payment and shall be entitled to securities for our claims as usual according to type and scope, even if they are conditional or limited in time. Apart from that, we can, in such a case, prohibit a resale and a machining or processing of any goods delivered that are still subject to reservation of title (cf. section VII. below).

4.) Any set-off or any exercise of rights of retention is only permissible with regard to claims of the customer against us that are undisputed or have become res judicata.

VII. Reservation of Title

1.) As a matter of principle, the customer only acquires ownership of the goods delivered upon complete payment of all claims resulting from this contract as well as from our business relationship, in particular also those from respective current balances of claims.

2.) A machining or processing is always made for us as a manufacturing within the meaning of § 950 BGB (Civil Code), without obliging us. Machined or processed goods are regarded as reserved goods within the meaning of section **1.)** above. In case of a processing, combination or mixing of the reserved goods by the customer with goods of a different origin into a new item or mixed goods, we shall be entitled to co-ownership of it, namely in the ratio of the invoice value of the reserved goods to the total value of the new item or mixed goods. The co-ownership share is regarded as reserved goods within the meaning of section **1.)** above.

3.) If the reserved goods are connected or mixed with other items and if the item owned by the customer is to be regarded as principal item within the meaning of § 947 Subsec. 2 BGB (Civil Code), the customer already now assigns its co-ownership share to us, namely in the ratio of the invoice value of our reserved goods to the total value of the new principal item. The co-ownership share assigned is regarded as reserved goods within the meaning of section **1.)** above.

4.) The customer is obliged to keep the reserved goods for us, exercising the due care of a prudent businessman. At our request, we must be granted access to the reserved goods at any time for the purpose of stocktaking and appropriate marking of the reserved goods. In case of an attachment or any other encroachment on our rights, the customer must immediately inform us, stating all details required for enabling us to take all measures legally available to us against such encroachment on our rights.

5.) The customer is only entitled to sell the reserved goods in the ordinary course of business on its normal conditions, agreeing a reservation of title, subject to the condition that its claims from such resale pass to us according to the items below. The customer is not entitled to any other disposal of the reserved goods.

6.) Already now, the customer's claims from a resale of the reserved goods, also within the scope of contracts for work or contracts for work and materials, are assigned to us together with all ancillary rights. We accept such assignment. They shall serve as a security for us to the same extent as the reserved goods.

7.) If the reserved goods are sold by the customer together with other goods not purchased from us, the assignment of the claims from resale shall only apply to the amount of the invoice value of our reserved goods, but with priority. In a sale of goods in which we hold coownership rights according to items

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2.) and **3.)** above, the assignment of the claims shall be applicable to the amount of the co-ownership share.

8.) The customer shall be entitled to collect claims from the resale according to items **6.)** and **7.)** above until this right is revoked by us, which revocation shall be permissible any time. At our request, the customer must give us the names of the debtors of the assigned claims so that we can disclose the assignment and collect the assigned claims ourselves.

9.) If the value of existing securities altogether exceeds the claims by more than 20 %, we shall be obliged to release securities at our choice to such an extent at the customer's request.

VIII. Notice of Defects/Warranty

1.) For a period of 1 year from the delivery of the goods, we warrant that they are free from defects. Any defects caused by wear and tear as well as any defects in the goods caused by improper use, mounting, etc. of the goods are not covered by the above warranty.

2.) Any public statements, promotion or advertising made by the manufacturer do not form a contractual description of quality with regard to the goods delivered by us.

3.) We do not make any guarantees within the meaning of § 443 BGB (Civil Code), unless expressly otherwise agreed in writing.

4.) Immediately upon receipt, the customer must check the goods delivered and give notice of any obvious defects, differences in quantity or wrong delivery without any delay; in addition, § 377 HGB - Commercial Code shall apply.

5.) In case of a justified notice of defect, we will remedy the defect (subsequent performance) at our choice by either rectifying the defect or delivering a replacement. In case of a failure of subsequent performance, the customer can generally demand, at its choice, a reduction of the purchase price or a rescission of the contract. In case of an only minor lack of conformity with the contract, in particular in case of only minor defects, the customer does not have a right of rescission.

6.) All items complained about as defective shall be sent to us, freight paid. Any consignments sent unpaid will be rejected. In case of a justified notice of defect, we will reimburse the customer for the freight costs.

IX. Damages

1.) As far as we are legally or contractually liable for damages, we shall only be liable for grossly negligent or intentional fault on part of our legal representative, our staff members and/or our vicarious agents, unless it is a case of breach of an essential contractual duty the fulfilment of which is a condition sine qua non for the performance of the contract. Such claims for damages, however, are limited in any case to compensation for the foreseeable direct damage that is typical of the contract.

2.) In case we are legally liable for damages from injury to life, body or health as well as for claims of the customer under product liability law, item **1.)** above shall not be applicable.

3.) Claims for damages of the customer shall become statute-barred after 1 year from the receipt of the goods. This shall not be applicable if we can be blamed for fraudulent intent.

X. Export and Re-Export/Supplier's Statement for Goods with Preference Origin

1.) Products and technical know-how delivered by us are generally intended to remain in the Federal Republic of Germany. In case of export/re-export, the customer shall be obliged to inform himself/herself about any permissions that may be required under foreign-trade regulations of the Federal Republic of Germany/EU and/or the manufacturing country and to obtain such permissions. If the export/re-export is impermissible or not practicable, that shall not affect the contract concluded between us and the customer, unless expressly otherwise provided in writing.

2.) We are not obliged to issue supplier's statements according to applicable EU law. As far as any such statements are made by us at the customer's request in individual cases, that shall not be connected with a warranty liability.

XI. Additional Provisions for Software Deliveries

1.) The software (also) delivered by us, including user manual, is protected by law (under copyright law, patent law, trademark law, etc.). As far as we deliver software of a third-party manufacturer, there apply the respective terms and conditions of licence and use of the latter; unless expressly otherwise agreed in an individual case, we only arrange the right of use between manufacturer and Customer on the basis of the manufacturer's specifications in such cases.

2.) Before concluding the contract, the person ordering must check on his/her own responsibility whether the software meets his/her wishes and needs; such check is possible without acquiring a licence.

3.) As far as we do not only arrange rights of use in the software (cf. above under **1.)**), the Customer is entitled to use the software permanently for its contractual purposes. Our software, including subsequent new versions, as well as parts thereof and the related documentation may only be used on one central unit. On principle, any alteration, revision and duplication is prohibited; the software may only be duplicated to the extent required for its contractual use, in particular for backup purposes. The Customer shall protect the software against access by a third party. Any persons who, by order of the Customer, exercise the Customer's right of use are not regarded as third parties. In case the Customer sells the software to a third party, the Customer must not use the software himself/herself anymore and is obliged to destroy any copies of the software remaining in his/her possession.

4.) Upon delivery of the software, the licence to use according to the above provisions is regarded as having been granted and the respective agreed licence fee becomes due for payment. Upon receipt of the delivery, these software conditions are regarded as accepted.

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5.) A supply of source programmes is subject to a special written agreement.

6.) Software Warranty

In addition to the provisions under Item VIII of these General Terms and Conditions of Business, the following shall apply to software:

6.1 According to the current state of the art, software is never complete free of errors in its structure. In case of material defects, an instruction for a workaround for avoiding the consequences of the defect is regarded as sufficient rectification.

6.2 We do not warrant that the program functions meet the requirements of the customer or interoperate in the selection made by him/her.

6.3 As far as we deliver software of third-party manufactures, we assign our warranty claims against such third party to the customer in case there should occur any defects in the software. In connection with such defects, the costumer can only assert any claim against us after having unsuccessfully asserted such claims against the third party before court.

6.4 The client is responsible to ensure by making appropriate backup copies of the data that no loss of data occurs in connection with the use of the software. Any liability for the replacement or loss of data shall be excluded.

XII. Protective Rights

1.) As far as claims are asserted against our customer based on an infringement of industrial property rights or copyrights and such infringement is attributable to us, we will defend the customer at our own expense against all claims of third parties and indemnify the customer against all payment obligations connected with the alleged infringement that have become **fi**nal or agreed upon with our consent by way of settlement. This, however, is subject to the condition that the customer informs us immediately in writing about all claims asserted against him/her as well as the subsequent proceedings, authorizes us to independently conduct and conclude the legal dispute and gives appropriate support in that connection.

2.) We can, at our own option:

- procure the right for the customer to continue to use the product;
- substitute or alter the product in such a manner that an infringement of protective rights does not exist anymore;
- in case the above measures are not possible for us on reasonable economic conditions, take the product back and credit to the customer the value reduced according to the principles of depreciation.

3.) The customer shall not be entitled to any claims other than those mentioned above in case of an infringement of protective rights.

XIII. Place of Jurisdiction

In case our contractual partner is a merchant, the following shall apply:

1.) The place of jurisdiction, also for actions in proceedings based on/relating to documentary evidence, bills and cheques, shall be the registered seat of our company. However, we are also entitled to sue the customer at its competent place of jurisdiction.

2.) This agreement is subject to the laws of the Federal Republic of Germany, excluding the provisions of the UN Sales Convention.

XIV. Other Provisions

If any individual provisions of the contract with the customer, including these General Terms and Conditions of Business, should be or become ineffective in part or as a whole, this shall not affect the validity of the remaining provisions and of the contract as a whole. The partially or completely invalid provision shall be replaced by a provision the economic result of which comes as close as possible to that of the invalid provision.

Meilhaus Electronic GmbH
President/CEO: Albert Meilhaus
Registergericht: Amtsgericht München
Registernummer: München HRB 57787
Umsatzsteuer-Identifikationsnummer
gemäß §27a Umsatzsteuergesetz: DE 128 236 429
WEEE-Reg.-Nr. DE 56187207

Bankverbindung:
Münchner Bank e. G. Volksbank
Kto. 1 172 000 • BLZ 701 900 00
IBAN DE22 701 900 00 000 1172000
BIC: GENO DE F1 M01