

General Terms and Conditions of Sale, Delivery and Payment of Ingram Micro Distribution GmbH (Translation)



1. General – Extent of Application

- 1.1. The following Terms and Conditions of sale are only applicable with respect to companies that are reseller and buying products or services for resale only (referred to herein as "customer"). "We", "us" or "our" shall mean Ingram Micro Distribution GmbH.
- 1.2. Contracts regarding deliveries are exclusively based on these Terms and Conditions. We do not accept a customer's opposing conditions or conditions differing from our ones unless we have agreed in writing to their validity. Our Terms and Conditions are effective also in case we unconditionally deliver certain items or provide certain services to the customer, knowing that there are opposing conditions or conditions differing from our Terms and Conditions.
- 1.3. Additional and divergent agreements have to be approved by us in writing before becoming effective.
- 1.4. Our sales Terms and Conditions are also valid for all future transactions with the customer.

2. Offer and Order

Our electronic, written and oral offers are no offers in the legal sense, but have to be only understood as an invitation to the customer to make an offer and place an order. Generally we acknowledge to customer the receipt of customer's order, however, this acknowledgement does not constitute acceptance of the order even if the acknowledgement contains all respective data. The customer is bound by its order for 4 weeks from our receipt of the order. A contract is concluded only after our written confirmation of the order, or at the latest when the customer has accepted the delivery. Our offers and confirmations of orders are always subject to a positive credit rating for the customer and to a timely and properly self-delivery.

3. Intellectual Property Rights, Copyrights

- 3.1. The products including their circuit diagrams, drawings, drafts, descriptions and similar documents as well as the software are subject to the intellectual property rights of the respective manufacturer/licensor. The customer is not authorized to alter, cover or remove any reference to any intellectual property rights on the products.
- 3.2. The customer is responsible for advising its buyers about the above mentioned intellectual property rights and the applicable license conditions of the manufacturer/licensor and on the limitations stated in such license conditions.
- 3.3. We are only liable for damage based on an infringement of intellectual property rights in case the infringement was known to us or we should have known that these rights were infringed at the time of delivery of the products to the customer and that the infringement would cause the customer to be exposed to third-party infringement claims. Unless other remedies or higher compensation is offered by the manufacturer/licensor, our liability for any infringement of third party intellectual property rights is limited to the invoiced amount of the goods.

4. Quality, Disposal, Delivery Periods and Deliveries, Delay in Delivery

- 4.1. Regarding the extent and the time of delivery and the agreed quality of the goods, only our written statements are decisive. Additional agreements and amendments have to be approved by us in writing.
- 4.2. Unless agreed upon differently in our written statements, it is hereby agreed to deliver the goods ex the logistics centre in Straubing (EXW Incoterms 2010). The costs and the risk of the transport as well as the loading and shipping costs are charged to the customer. This is also applicable for return shipments as per article 10. Presently we charge a packaging lump sum for the goods in the amount of 1.00 Euro. The customer is responsible for complying with applicable deadlines, for example those of the General German Forwarding Conditions (German abbreviation: ADSp).
- 4.3. For transport packaging, we offer free of charge disposal with return at the logistics center Straubing (gate). If the customer wishes to have the packaging taken back at another location, he shall bear the resulting costs for the transport; in this case the disposal will be at our expense too.
For old electronic devices from other than private households (*Altgeräte aus anderen als privaten Haushalten*), we offer a take-back concept by the means of the Electrical and Electronic Equipment Act (ElektroG), which is deposited with the Stiftung Elektro-Altgeräte Register. The customer bears the costs for transport and disposal.
The customer assumes the responsibility of disposing of industrial batteries in a legally compliant and environmentally friendly manner. Additionally, we offer a fee-based return and disposal option for industrial batteries.
Please also note the further information available on our website at <https://de.ingrammicro.eu/public/rechtliche-hinweise/product-compliance>.
- 4.4. The delivery times stated by us are estimates only. The delivery time stated by us is conditioned upon clarification of all technical questions. A delivery time stated by us begins on the date stated in the respective confirmation, however, not before the customer has provided us with all documents, permits, acceptances and our receipt of any advance payments agreed upon. The delivery time is considered complied with if the goods have left the warehouse by the end of the delivery time or if they have been reported to be ready for collection.
- 4.5. The delivery time is delayed due to actions under labour disputes, especially strikes or lockouts, but also in the event of unpredicted causes beyond our control if it can be proved that such causes considerably influenced the manufacture or our delivery of the goods. This shall also apply in case a subcontractor is faced with such circumstances. We are not responsible for the above mentioned circumstances if they occur during an already existing delay. We will inform the customer about the beginning and end of such circumstances as soon as possible.
- 4.6. We are authorized to deliver by instalments and to invoice such instalments accordingly.
- 4.7. In case of a delivery delay arising from our negligence we are only liable up to an amount of 5% of the invoice amount related to the delay, however, in any event shall our liability be limited to the predictable and typically occurring damage.

- 4.8. If the delay is due to our misconduct or gross negligence, we are liable in accordance with applicable laws; however, our liability shall be limited to the predictable and typically occurring damages unless there was any intentional breach of contract from our side.
- 4.9. We are liable under law to the extent the underlying purchase contract is a firm deal or if the customer's interest in further fulfilment of the contract as a consequence of our delivery delay was caused by us.

5. Examination of the Goods

The customer shall examine the goods upon receipt with respect to their completeness and conformity with the order and shipping documentation. Customer shall report obvious errors and discrepancies immediately in writing. In case the customer does not report errors or discrepancies within 4 working days as of receipt of the goods, the delivery is deemed to conform to the contract, unless the errors or discrepancies could not be detected despite its careful examination of the products and the delivery. Transport damage or shortages visible upon delivery must be noted on the acknowledgement of receipt of the transport carrier.

6. Prices and Payment

- 6.1. The purchase price is stated in our confirmation of order. Otherwise, if no price has been agreed upon, the price is the price stated in our price list on the day of the acceptance of the order.
- 6.2. Our prices are net, „ex works“ (EXW) and increased with statutory VAT and the costs for transport and packaging.
- 6.3. We reserve the right to increase customer prices at our reasonable discretion in the event our prices rise after the conclusion of a contract, including in the event of price increases of our suppliers or currency exchange rate fluctuations, which are decisive for the price calculation of the purchased products. When exercising our reasonable discretion, we shall select the respective points in time of a price change in such a way that cost reductions are not taken into account according to standards that are less favorable for the customer than cost increases, i.e. cost reductions shall have at least the same price effect as cost increases. We will evidence this to the customer upon request.
- 6.4. Unless otherwise agreed in writing, payments are due 7 days after the invoice date without any deduction. In case the customer fails to pay on the invoice due date, we are entitled – irrespective of any other available remedies – to charge interest on any overdue amount at the applicable statutory rate. All open and unpaid invoices will become immediately due in case the customer is in arrears with its payments.
- 6.5. The delay, withholding or set-off of payments due to customer raising counterclaims is only permitted if the counterclaims are legitimate or if have not been disputed by us.
- 6.6. Customer's payments shall be applied to open claims in deviation to § 367 BGB in the following order: principal claim, interests, cost.

7. Reservation of Proprietary Rights

NB: This section 7 shall only apply to the extent retention of title and/or security interest in the customer's receivables (proceeds of sale) is permitted by and enforceable under the laws of your country.

- 7.1. We reserve title in the delivered goods until all and any debts resulting from the business relations between us and the customer have been settled.
- 7.2. The customer shall treat the delivered goods carefully, and shall in particular insure them adequately at its own cost against damage caused by fire, water and theft.
- 7.3. The customer is entitled to resell the delivered goods in the ordinary way of business; however, the customer is not entitled to pledge or to transfer them by way of security. Already at this time receivables resulting from the resale of the items are assigned to us to the amount of the final amount invoiced. Furthermore, the customer is entitled to collect the assigned receivables; our power to collect the assigned receivables ourselves is not affected by this regulation. However, we will not collect the assigned receivables as long as the customer meets its obligations under this section 7.3. We will not collect the assigned receivables as long as the customer meets its obligations to pay from the collected receivables, as long as it is not in arrears and has not filed a petition in insolvency or as long as it has not stopped his payments. We hereby accept the assignment of the receivables. The customer is obliged to provide us with all and any details and information necessary to collect the assigned receivables.
- 7.4. Any processing, re-working or other changes to the delivered goods under retention of title shall be deemed to be made for us. In case such goods are integrated into, connected to or mixed with other goods not belonging to us, we shall have a joint ownership in the new item in the ratio of the invoiced amount of the delivered goods to the other items processed at the time of its integration, connecting or mixing.

If the customer is the sole owner of the new item, the customer transfers a proportional co-ownership to us and be maintained for us at no charge. The aforementioned advance transfer is valid in the above mentioned cases only to the invoiced amount of the delivered goods which are resold together with other goods. In case the delivered goods or the assigned receivables are already pledged or granted as security to third parties, the customer has to notify us immediately by providing all information required for an intervention. Costs arising from this which cannot be collected by us from the respective third parties are charged to the customer's account.

- 7.5. We will release the collateral which we are entitled to as per the above mentioned conditions upon the customer's choice and request if the value of the collateral exceeds the debt for which collateral has to be provided by more than 20%.

8. Liability for defects

- 8.1. If the customer raises a warranty claim, it is required that the duty to examine the goods has been fulfilled and that a warranty claim has been submitted within the applicable deadlines. There is no warranty for second-hand goods except for damages arising out of death or bodily injury or for damages arising out of our wilful negligent breach of duty.

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- 8.2. If goods are found defective, the customer shall first seek remedies under the manufacturers' warranty terms before raising a claim against us. We will assist the customer in doing so by providing necessary information about the manufacturer and its warranty claims procedures. The customer's remedies for warranty claims under law remain unaffected.
- 8.3. In case and as far as the customer is not satisfied after raising a claim with the manufacturer, we are entitled at our own discretion to perform the contract by repairing the defects or replace the defective items. Replaced goods or parts are our property and have to be returned to us.
- If we are not prepared or not in a position to perform the contract or if the performance is delayed beyond reasonable times for causes beyond our control or if the performance is not successful for other reasons or if this is not reasonable for the customer, the customer is authorized either to cancel the contract or to request a reduction of the purchase price. Potential damage claims are regulated in article 9.
- 8.4. In case of a cancellation the customer accepts our set-off of the use advantages calculated up to the time of cancellation of the contract. The use advantage up to the time of the cancellation is calculated proportionally on the basis of the purchase price and the usual overall operating time of the goods, unless the use was restricted or not possible at all because of a defect. Both parties are free to evidence a lower or higher use advantage.
- 8.5. An immaterial defect does not entitle the customer to cancel a contract. As far as the customer has the right to cancel a contract due to inadequate performance and/or claim damages instead of performance of the contract or at least requires this, the customer shall upon our request explain in writing within a reasonable time period if it asserts its rights or requires performance.
- 8.6. If the examination of a claim for defects shows that there is no defect, we are entitled to charge a handling/service fee. In this case the customer is free to evidence a lower expense than the fee charged for our expenses.
- 8.7. Warranty claims become time-barred within 12 months calculated as of the passing of risk to the customer. Our handling of the customer's notice of defect does not mean that the defect is acknowledged. The receipt and handling of such notice of defect will only result in suspension of the period of limitation to the extent any legal requirements exist, and the period of limitation will not restart. This applies also when we try to perform the contract correctly after the customer's notice by repairing the defective products or delivering substitute items. A repair of defects only affects the period of limitation of the defective part as well as new defects resulting from this repair. The customer's rights under law (§§ 478, 479 BGB) remain unaffected.

9. Joint Liability

- 9.1. Unless otherwise stated in the following, claims for consequential or indirect damages – no matter what legal basis is – are hereby excluded. Particularly, we are not liable for any damage not resulting from the item itself, for lost profits or other economic loss of the customer.
- 9.2. This limitation of liability does not apply to damage arising from intent, wilful misconduct or gross negligence by us or one of our agents or legal representatives or if we have breached one of our essential duties under the contract, nor does the limitation of liability apply if guaranteed qualities are missing and the purpose of the guarantee was to provide the customer with cover against any damage not resulting from the delivery item itself.
- 9.3. Our obligation to pay damages in case of negligence is restricted to the foreseeable damage; however, our liability shall not exceed the amount covered by our product liability insurance. Upon the customer's request, we are prepared to provide a certificate of insurance.
- 9.4. Claims are time-barred under the periods of prescription within 12 months as of the passage of risk. This also applies to claims for compensation resulting from indirect and consequential damage, unless the claims arise from fraud or a tortious act or liability due to intent.
- 9.5. Any liability for damages exceeding the above mentioned scope is excluded irrespective of the legal basis for the claim. This does not apply to claims resulting from bodily injury or death, and claims under Product Liability Laws or to claims resulting from crime or due to an impossibility situation we are responsible for.

10. Goods Returned

Unless otherwise agreed or instructed, goods have to be returned at customer's expense to Ingram Micro Distribution GmbH, Europaring 20 - 22, 94315 Straubing, Germany, and are only accepted after our examination. Unless otherwise agreed, we accept return of goods only in case a return slip is included indicating the customer's RMA and customer account number. The customer must obtain the return slip and the RMA number upon request in writing or by contacting us under the phone number +49 (0)9421/738-222, fax +49 (0)9421/738-300 or online under www.ingrammicro.de. However, getting an RMA number does not mean automatically that a defect or another complaint is accepted. Customer bears the risk of the return shipment of the goods, including any loss due to accident. Appropriate costs for the return shipment of defective goods will be reimbursed only if these exceed 5% of the invoice value. Customer's rights under law (§ 478 II BGB) remain unaffected. We will charge a handling fee in case of goods returned for which the customer is responsible, especially, but not exclusively, if the customer refuses to accept delivery of the items.

11. Assignment

The assignment of any claim of the customer against us resulting from our business relationship needs to be approved by us in writing to be valid. This approval will not be refused unreasonably if the customer has a justified interest.

12. Export, Anti-Corruption

- 12.1. All products and technical know-how supplied by us are supplied in compliance with the provisions of the German Act on Foreign Trade and Payments (AWG) / the German Foreign Trade and Payments Regulation

(AWV) / the EC Dual Use Regulation and the US export provisions currently in force and effect, and are intended for use and to remain in the country of destination agreed with the customer. If the customer intends to re-export products, the customer is obliged to comply with US, EU and national export regulations. The re-export of products – whether individually or integrated into a system – in violation of applicable export regulations is prohibited.

- 12.2. The customer is obliged to obtain details of the provisions and regulations currently in force on its own initiative (Bundesamt für Wirtschaft und Ausfuhrkontrolle [Federal Office for Economic Affairs and Export Control], 65760 Eschborn or Bureau of Industry and Security, Washington, DC 20230). Irrespective of whether the customer indicates the final destination for the products supplied, the customer shall be obliged, on its own responsibility, to obtain any license or permit which may be necessary from the relevant foreign trade authority responsible prior to exporting such products. We have no duty to provide information.
- 12.3. Any onward supply of products to third parties by the customer with or without our knowledge may require the simultaneous transfer of the export license conditions. The customer shall be fully liable in case of non-compliance with the relevant regulations.
- 12.4. Without the prior consent of the authorities, the customer may not deliver products directly or indirectly to countries that are subject to a US embargo or to natural or legal persons of these countries as well as to natural or legal persons that are registered on US, EU or national prohibition lists (e.g. Entity List, Denied Persons List, Specifically Designated Nationals and Blocked Persons). Furthermore, the customer is not permitted to deliver products to natural or legal persons that are in any way connected with the support, development, production or use of chemical, biological or nuclear weapons of mass destruction. The customer is made aware that certain products are not intended for use in nuclear plants, medical, life-saving or life-sustaining systems, and agrees to bear the risk of such unintended use.
- 12.5. Customer has not made, and will not make, any direct or indirect payment, offer to pay, or authorization to pay, any money, gift, promise to give, or authorization of the giving, of anything of value to any government official, or the immediate family of any such official, for the purpose of influencing an act or decision of the government or such individual in order to assist, directly or indirectly, customer or us in obtaining or retaining business, or securing an improper advantage.

13. Miscellaneous

Additional agreements must be in writing. This also applies if the parties hereto waive the requirement of written notifications. In case individual provisions of these Terms and Conditions should become ineffective, the contract and the remaining provisions shall be unaffected thereby.

14. Project and Special Terms

- 14.1. Without prejudice to the application of these Terms and Conditions, additional and more detailed terms may be applicable to the sale of products of certain suppliers to special prices offered to the customer by our suppliers through us (also referred to as SBO, OPG, project agreement, etc.; "Project Terms"). By ordering products subject to special prices the customer agrees to be bound by the applicable Project Terms. In the event of non-compliance with the Project Terms we are entitled to reclaim in full all discounts, rebates and other allowances granted to the customer under the special price or to invoice the difference to the regular prices. The customer agrees to indemnify us for any claims made against us by the suppliers for Customer's non-compliance with the supplier's terms and conditions as well as for all further damages resulting from the customer's non-compliance with the supplier's terms.
- 14.2. Without prejudice to the application of these Terms and Conditions, additional and more detailed terms ("Special Conditions") may be applicable to the sale of products of certain suppliers. By ordering products from suppliers which are subject to Special Conditions the customer agrees to be bound by the applicable Special Conditions.
- 14.3. The Special Terms and Conditions are listed on our website www.ingrammicro.de/projektbedingungen.

15. Personal Data

- 15.1. The parties acknowledge and agree to comply with the applicable data protection and privacy legislation, including without limitation the German Federal Data Protection Law (Bundesdatenschutzgesetz or BDSG) and the EU General Data Protection Regulation (Regulation (EU) 2016/679), when processing personal data of the other party.
- 15.2. If in the course of providing Products or Services under these Terms and Conditions we process personal data as a data processor on behalf of the customer as a data controller, special provisions for such processing of personal data would apply in addition to these Terms and Conditions, available under www.ingrammicro.de/auftragsdatenverarbeitung.
- 15.3. Ingram Micro Privacy Statement is available at <https://corp.ingrammicro.com/Terms-of-Use/Privacy-Statement.aspx>; Personal Data-related questions or requests can be sent to privacy@ingrammicro.com.

16. Place of Fulfilment and Jurisdiction, Applicable Law

These Terms and Conditions and all offers, purchase orders or agreements concluded between customer and us in relation to our sale and the customer's purchase of products or services shall be construed in accordance with the laws of Germany, and any dispute arising from these Terms and Conditions and all offers, purchase orders or agreements concluded between customer and us shall be submitted to the competent court of Munich, or, if agreed in writing, the competent courts of customer's domicile. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

The Management
Dornach, July 2022