

TERMS AND CONDITIONS OF SALE

HD MicroSystems GmbH

- These Terms and Conditions of Sale (hereinafter referred to as "Conditions of Sale") shall apply exclusively; Seller does not accept any conditions of Buyer which conflict with or differ from these Conditions of Sale unless Seller has expressly agreed, in writing, to their applicability. These Conditions of Sale shall also apply exclusively when Seller, knowing that the conditions of Buyer conflict with or differ from these Conditions of Sale, delivers ordered goods to Buyer without expressly repudiating Buyer's conditions. Any agreement between Buyer and Seller which conflicts with or differs from these Conditions of Sale shall have a binding effect only if agreed upon in writing. These Conditions of Sale shall also apply to all future business between Buyer and Seller. In addition to these Conditions of Sale, the most recent version of the INCOTERMS of the International Chamber of Commerce in Paris shall apply to all cross-border transactions.
- Goods which are to be shipped within thirty (30) days from the date of Seller's order acknowledgement shall be invoiced at the price quoted by Seller. The price of any such goods which are to be shipped more than thirty (30) days after the date of the order acknowledgement may be subject to price adjustments as communicated by Seller. Such adjustments shall be applicable to goods shipped after their effective date unless, prior to the said date, Buyer shall cancel its order as to the undelivered balance of goods to which the price adjustment applies. Seller shall not exercise the right detailed above where shipment is delayed through its fault.
- Unless specifically agreed otherwise in writing, Seller's terms of payment shall be thirty (30) days from the date of invoice. Notwithstanding any separate written agreement, the payment term shall in no event be longer than the maximum payment term permitted by applicable law. Non-compliance with Seller's terms of payment shall constitute default without further reminder. Invoices not paid when due are subject to a late payment charge in the amount of nine percent (9%) over the current basic interest rate, provided Buyer is not a consumer. In the event of late payment Seller is additionally entitled to claim payment of a lump sum of forty (40) Euros, provided Buyer is not a consumer. Seller reserves the right to claim further damages. In the event Buyer fails to comply with the terms of payment, or in case Seller shall have indications that Buyer's credit standing is deteriorated, Seller may cancel all outstanding orders and decline to make further deliveries except upon receipt of cash or satisfactory security. Seller expressly reserves the right to rescind the agreement covering the sale of the goods in the case of Buyer's default with respect to the payment of the price.
- Seller shall retain title of all items comprising the goods delivered to Buyer until Buyer has paid all outstanding amounts due to Seller, regardless of whether the amounts relate to the goods or arise from any other obligation. Buyer may process and/or resell the goods within proper business practice, provided that he is prepared and able to correctly meet his obligations towards Seller. Buyer shall not have the right to pledge, chattel mortgage, assign goods or to make any other charges to the goods to which Seller retains title. If goods, to which Seller retains title, are processed with or mixed with new products, Buyer shall be deemed to be affecting such processing or mixing on behalf of Seller without thereby acquiring any claims on Seller. If goods, to which Seller retains title, are processed together with or mixed with other products, Seller shall acquire co-ownership of the resulting products in the ratio of the value of the goods Seller retains title to the value of the processed goods. If goods to which Seller retains title are attached to, mixed with or mingled with other goods, Seller will obtain co-ownership according to statutory provisions. The parties agree in advance that Buyer shall transfer co-ownership of the resulting products in the ratio of the invoice value of the goods to which Seller retains title to the value of the other goods if Buyer obtains sole ownership by processing, mixing or mingling of the goods. Buyer shall be obliged to provide adequate and free of charge storage of the goods to which Seller obtains co-ownership. Buyer assigns to Seller in advance any claims arising from a resale of the goods to which Seller retains title but limited to the portion of Seller's ownership in the goods. If Buyer processes or mixes the goods with predominant other goods of third parties, Buyer will assign to Seller in advance any claims against third parties at the amount of the invoice value of the purchased goods. If goods to which Seller retains title, are incorporated into/or become an essential element of a real estate, of a ship or of a ship-building or of an aircraft of a third party, Buyer will assign to Seller in advance any arising claims of remuneration against the third party in the invoice value of the supplied goods. If goods to which Seller retains title are incorporated into/or become an essential element of a real estate, of a ship or of a ship-building or of an aircraft of Buyer, Buyer will assign to Seller in advance any arising claims resulting from the sale of the real estate, real estate rights, ships or ship-buildings or an aircraft. Seller accepts the above-mentioned assignments. Buyer is entitled to collect the assigned claims. At Seller's request, Buyer shall inform Seller in due time about all necessary information concerning the stock of products to which Seller retains title and about the claims assigned to Seller. Buyer is obliged to inform his customers without further request and in due time of these assignments. Buyer shall be obliged to provide adequate storage of the goods to which Seller retains title and to insure the goods at Buyer's own expense against losses and damage. Buyer shall inform Seller immediately and in writing in case of pledge or other interferences of third parties, so that Seller is able to file an action in due time according to §771 ZPO (civil procedural code) and respectively to file a claim at insolvency administrator. If the third party is not able to pay judicial and out-of-court costs, Buyer shall be liable to reimburse to Seller all those costs in case of not notifying an action in due time according to §771 ZPO or in case of not filing a claim against the insolvency administrator. Besides Buyer shall be liable for losses resulting from not notifying a pledge or other interferences of third parties in due time. If the value of the security provided to Seller exceeds the value of Seller's claims to be safeguarded by more than 20 percent, Seller shall, at Buyer's request, release security of Seller's own choice accordingly. If Buyer ceases payments and/or declares bankruptcy, the entitlement of Buyer to dispose over products to which Seller retains title as well as the right to collect the claims assigned to Seller shall be discharged. Seller shall be entitled to request immediate restitution of all goods to which Seller retains title if these conditions would arise. In this case assertion of lien, granting a respite or cancelling the contract shall be excluded.
- Unless otherwise agreed in writing, Seller reserves the right to select the mode of transportation and the carriers to the point of delivery. Buyer shall bear the cost of special transportation arrangements requested by it.
- Returnable product carriers or containers delivered but not sold hereunder are the property of Seller and Buyer agrees that it will return them undamaged and at its sole expense to the destination designated by Seller within the period specified by Seller. Any deposit made by Buyer on such product carriers or containers shall be forfeited in the event of failure to return them undamaged within the specified period. Where no deposit is required, Buyer agrees to reimburse Seller for the value of any such product carriers or containers damaged or not returned within the specified period. Seller's count and rejection of damaged returnable product carriers and containers shall be accepted as final.
- Unless Buyer objects promptly in writing, but not later than fourteen (14) days after Buyer's receipt of the goods, the weights, numbers of units and/or volumes as determined by Seller shall be deemed correct and shall be relevant for invoicing.
- Should Buyer fail to take the goods in accordance with the terms of delivery originally specified by Seller and thereby enter in default of acceptance, Seller may at its option postpone the delivery or cancel the sale of the said goods without prior notice to Buyer; and in either case Seller shall be entitled to receive compensation for any resulting damages suffered. Such postponement or cancellation shall not affect any remaining portion of the relevant order.
- Seller warrants that the goods sold hereunder shall meet Seller's specifications in respect of such goods. Buyer assumes all risk and liability for results obtained by the use of the goods whether used singly or in combination with other products; and acknowledges and accepts that Seller offers no warranty as to the merchantability and fitness for any particular purpose of the goods. The warranty stated above is given in respect of goods of first-grade quality only and shall not apply to any waste or goods sold as sub-standard by Seller.
- Buyer is obliged to examine the goods for defects immediately after receipt of the goods. Buyer shall notify us in writing of any apparent defects immediately, latest within fourteen (14) days of receipt of the goods. The notification shall include description and extent of the defect. Latent defects have to be notified in writing immediately after discovery. In case of breach of the obligation to examine the goods for defects and to notify the defects the goods are deemed approved. If Buyer correctly submits and substantiates defects, Seller is entitled to fulfill its warranty obligations at its election either by repair or by replacement of goods in case Buyer is not a consumer. In cases where repairs are made, Seller shall bear the costs necessary to remedy the goods, provided that the costs do not exceed the purchase price and the costs do not increase because of the goods having been moved to a location other than the place of delivery. However, in case Seller is not able to repair the defect or to provide a replacement or where such a repair or replacement fails for other reasons or repair or replacement of goods will be delayed for more than an acceptable period due to reasons imputable to Seller, Buyer is entitled to demand, at Buyer's election, either the rescission of the respective contract or an appropriate reduction of the purchase price. All warranty claims are subject to a period of limitation of twelve (12) months after Buyer has received the goods, provided that Buyer is not a consumer. This provision does not apply in case the statutory provisions provide longer limitations according to §§ 438 (1) Nr.2, 479 (1), 634a (1) German Civil Code (BGB). Return of the goods shall be permitted upon Seller's prior written consent.
- Any technical information furnished by Seller with reference to the use of the goods and/or any of its products is given free of charge and Seller assumes no obligation or liability in respect of any information given or any results obtained. No technical information made available by Seller shall be construed to form part of a specification in terms of Art. 9 hereof, unless explicitly otherwise agreed. Buyer shall use all information received at its own risk.
- Any failure by either party to perform or timely perform any obligations hereunder caused by any disruption of operation, any shortfall of a supplier of Seller, energy-, raw material- or auxiliary product-shortages, acts or directives of authorities, traffic and shipping disturbances, where such events were not foreseeable; as well as any strikes, lockouts, pandemics and other force majeure events, shall release the affected party from its obligation to deliver or accept goods affected thereby for the duration of the event. If such release delays delivery or acceptance of goods by more than one (1) month, the quantities thus affected may be eliminated without liability of either party, but the rights and obligations of each party shall otherwise remain unaffected.
- If, for any reason, Seller is unable to supply the total demand of goods ordered, Seller may allocate its available supply of the goods among any or all purchasers or users (including Seller and its affiliates) or make partial shipments on such basis as it may deem fair and practical without liability for any failure of performance which may result therefrom.
- The agreement covering the sale of the goods may not be assigned or transferred by Buyer, in whole or in part, except with the written consent of Seller.
- Seller conducts its business in accordance with the Qnity Electronics Code of Conduct. Buyer acknowledges it is familiar with the content thereof and undertakes to comply therewith in its commercial relationship with Seller and in its dealings in relation to goods supplied by Seller. In particular, Buyer shall comply with all applicable and relevant anti-bribery laws, export control regulations and economic sanctions.
- As part of the sale of goods hereunder, Seller may collect, use and disclose Personal Information about Buyer including company name, address, banking and credit information as well as name, phone number, email address and other contact details of natural persons within Buyer's organization and Buyer's contractors. Seller may share Personal Information with its affiliates and selected third parties around the world in order to complete the sale of goods.
- If any part of these Conditions of Sale is or shall become or be declared illegal, invalid or unenforceable by any competent authority having jurisdiction (or either of the parties) such part shall be severed in the jurisdiction in question and such illegality, invalidity or unenforceability shall not in any way whatsoever prejudice or affect the remaining parts of these Conditions of Sale.
- All disputes shall be subject to exclusive jurisdiction of the Courts of Frankfurt am Main. However, in the Seller's election, Seller shall also be entitled to use the Courts at the Buyer's legal corporate domicile. The laws of Germany without giving effect to the principles of conflict of laws are exclusively applicable to the contractual relationship with the Buyer. The Convention of the United Nations of 11th April 1980 on the International Sale of Goods (CISG) in its latest version shall not be applicable under these Conditions of Sale.