



General Terms and Conditions of Sale and Delivery

Vishay Europe Sales GmbH

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§ 1

Scope of application

- (1) These General Terms and Conditions of Sale and Delivery ("GTCs") shall govern all business relationships between Vishay Europe Sales GmbH (hereinafter referred to as the "Supplier") and purchasers. However, they shall only apply if the purchaser is an entrepreneur (*Unternehmer*) as defined in section 14 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*), a legal entity under public law (*juristische Person des öffentlichen Rechts*) or a special fund under public law (*öffentlich-rechtliches Sondervermögen*).
- (2) These GTCs shall apply to the exclusion of all other terms, even if the Supplier, despite being aware of the purchaser's terms and conditions, accepts orders without reservation or provides goods. The Supplier shall only recognise conflicting, varying or additional terms and conditions of the purchaser by expressly agreeing to their application in writing.

§ 2

Offer / Formation of contract

- (1) The Supplier's offers are non-binding and subject to change unless they provide otherwise.
- (2) The Supplier's data sheets shall apply. Except to the extent its fitness for the contractual purpose requires exact conformity, the actual product may vary slightly from the product descriptions and images in data sheets and brochures, particularly in terms of size and weight. Such descriptions and images do not represent warranted qualities. Customary variations and variations due to legal provisions or technical enhancements are permissible to the extent they do not impair the product's fitness for the contractual purpose.
- (3) The Supplier reserves all copyrights, intellectual property rights and title in price quotes, drawings and other documents and items. Such documents and items may be used solely for purposes of performing the contract. Unless the Supplier expressly gives its prior written consent, the purchaser may not exploit, copy, modify or create derivative works of said documents and items, or make them available to third parties as such or disclose their material substance to third parties or otherwise publicly disseminate said documents and items. The purchaser may use them solely for the purposes permitted under the contract and, at the Supplier's request, must return them to the Supplier in their entirety and destroy (or delete) any copies (including digital copies), unless they are still required by the purchaser in the ordinary course of business or for compliance with statutory records retention duties.
- (4) The purchaser's order constitutes a legally binding offer to enter into a contract. Unless the order provides otherwise, the Supplier can accept it within 10 working days (Monday to Friday) from receipt.
- (5) No contract will be formed unless or until the Supplier has confirmed the order in writing. The terms of such confirmation shall be controlling for the terms of the contract. If no order confirmation is given, a contract (to which these GTCs shall apply) will be formed upon delivery of the goods. In such case the purchaser waives receipt of the declaration of acceptance.

- (6) Transmission by facsimile or by e-mail is also sufficient in order to meet the writing requirement.
- (7) No guarantees exist except those guarantees expressly agreed by contract.

§ 3

Delivery

- (1) Unless agreed otherwise, "EXW Incoterms (2010) in relation to the warehouse from which the Supplier delivers in the specific case" shall apply to all deliveries.
- (2) The Supplier will insure goods against theft, breakage, transport damage, fire, water damage or other insurable risks only if expressly agreed with the purchaser, and any insurance shall be solely at the purchaser's expense.
- (3) If delivery is delayed at the purchaser's request or due to reasons for which the purchaser is responsible, the Supplier shall be entitled, beginning upon expiry of one month following the day agreed for the Supplier's performance, to charge a storage fee equivalent to 0.5% of the net invoice amount of the delayed delivery for each calendar month commenced. The Supplier retains the right to prove that it incurred greater loss or damage and assert its statutory rights, however, any compensation paid shall be applied toward claims of the Supplier. The purchaser shall have the right to prove that the Supplier incurred less loss or damage or none at all.

§ 4

Delivery deadlines

- (1) Any prospective delivery times/dates indicated by the Supplier for deliveries (delivery deadlines) shall in all cases be deemed approximate. The foregoing shall not apply if a fixed delivery deadline has been promised or agreed. Delivery deadlines shall be deemed met if, by the time they expire, the purchaser has received the Supplier's dispatch/collecton notice or, where agreed, the goods have been handed over to the party responsible for transportation.
- (2) If the Supplier can foresee that it will be unable to comply with a certain delivery deadline, it will notify the purchaser promptly and advise it of the anticipated new delivery deadline.
- (3) Compliance with agreed delivery deadlines is predicated on the timely receipt of all documents to be provided by the purchaser as well as the provision of the necessary information and satisfaction of all other duties (of cooperation) by the purchaser. If these requirements are not met in due time, the delivery deadlines shall be reasonably extended; the foregoing shall not apply if the Supplier is responsible for the delays.
- (4) In cases of *force majeure* or other events not foreseeable at the time of conclusion of the contract and for which the Supplier is not responsible, such as (1) delays in the issuance of export permits, the denial, suspension or revocation of such permits; (2) actions by authorities which restrict the ability to perform the contract; (3) strikes or lock-outs; (4) explosions, unrest, crises, uprisings, civil disobedience, armed conflicts, terrorism or war, whether or not declared (or the imminent risk of one or more of the aforementioned events occurring where it may reasonably be assumed that the occurrence of any such risk could result in personal injury or property damage); (5) quarantines or regional medical crises; (6) fire, earthquakes, floods or storms - the Supplier shall be released from its obligation of timely delivery or performance.

The same shall apply in the case of delays as a result of the Supplier's own suppliers failing to supply it correctly or on time, provided the



Supplier is not responsible for the delay and it had placed the order with its own supplier in due time such that timely delivery could have been expected.

If such events occur, the delivery deadlines shall be automatically extended by the duration of the event, plus a reasonable time for resuming work. The Supplier also has the right to rescind the contract if such events make it substantially more difficult or impossible for it to render performance and they are not merely temporary in nature.

- (5) The Supplier may make partial deliveries if: (a) partial delivery is usable for the purchaser and not inconsistent with the contractual purpose; (b) the provision of the remaining goods and services is assured; and (c) the purchaser does not incur any substantial additional expense as a result of the partial delivery.
- (6) If the Supplier defaults on providing goods or services or they become impossible to provide for whatever reason, any liability on the Supplier's part shall be limited to damages in accordance with § 10 of these GTCs.

§ 5

Prices / Terms and conditions of payment

- (1) Unless otherwise agreed, the net prices of the Supplier in effect at the time of conclusion of the contract plus statutory VAT shall apply. Prices shall be "EXW Incoterms (2010) in relation to the warehouse from which the supplier delivers in the specific case". Any insurance, transport and packaging costs as well as any assembly costs and any other taxes and duties shall be charged in addition, unless agreed otherwise.
- (2) Supplier's invoices shall be payable in full in euros (€) within 30 calendar days from delivery and invoicing. The date on which payment is received determines whether payment was on time. Any discounts offered to the purchaser shall be contingent on timely payment.

However, the Supplier may at any time, without stating reasons, make the provision of its goods and services conditional upon concurrent payment.
- (3) The purchaser shall be automatically deemed in default upon expiry of the applicable period for payment without the need for a default notice to be issued. During any period of default, the purchase price shall bear interest at the applicable statutory rate for default interest. The Supplier is also entitled to the lump sum default payment under section 288 (5) sentence 1 of the BGB. The Supplier reserves the right to assert claims for further default damages.
- (4) The purchaser may only withhold payment or exercise rights of set-off if its counterclaims are uncontested, ripe for adjudication, or have been declared final and binding by a court of law. § 8 (7) remains unaffected.

§ 6

Import and export control

- (1) Should any of the goods or services to be provided by the Supplier be subject to import and/or export control laws, in particular of the Federal Republic of Germany (e.g., the German Foreign Trade and Payments Act (*Außenwirtschaftsgesetz* - AWG), the German Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung* - AWV)), the European Union, or the United States (e.g., ITAR), the purchaser shall be required to provide the Supplier with any and all information and documents required for compliance with those laws without undue delay. This also applies to any end use statements. The purchaser shall in any event be responsible for obtaining any import permits.

- (2) If the Supplier is required to obtain an export permit, it shall apply for such permit on the basis of the information and documents timely provided to it by the purchaser in good time, so that the prospective delivery time/deadline may be complied with in due course. The Supplier shall not be responsible for any delays in the issuance of export permits, the denial, suspension or revocation thereof or any delay in delivery as a result thereof.
- (3) If the Supplier is unable to supply the relevant goods or provide the services for a period of more than six weeks after the agreed delivery date due to any delay in the issuance of an export permit or because such permit was denied, suspended or revoked without the party obligated to obtain such export permit being responsible for this, either party may rescind the affected parts of an existing purchase agreement by giving written notice. Neither party shall have a claim for damages against the other party in such cases.
- (4) The delivered goods may be subject to (re-)export restrictions. The purchaser shall comply with those provisions with respect to their use or in the event of resale or other exports. The Supplier assumes no liability for any breaches by the purchaser of legal requirements to which the purchaser is subject in this respect. If the Supplier incurs any loss or damage as a result of any breach of those legal requirements by the purchaser, the purchaser shall be liable to pay the Supplier damages.
- (5) The provisions of subsections (1) to (3) shall also apply to the export of listed technology. The purchaser shall furthermore notify the Supplier prior to disclosure if listed technology is involved and shall clearly and visibly label documents and products accordingly for the Supplier while indicating the applicable export provisions.

§ 7

Retention of title (*Eigentumsvorbehalt*)

- (1) The Supplier reserves title in the delivered goods until such time as all claims arising out of the business relationship with the purchaser have been paid in full (reserved goods, *Vorbehaltsware*). If the purchaser intends to bring the reserved goods to a destination outside of Germany, the purchaser must ensure at its expense that any and all local statutory requirements for establishing and maintaining such reservation of title have been met and shall notify the Supplier of this without undue delay.
- (2) The purchaser shall adequately insure the reserved goods at replacement value, at the purchaser's own expense, against damage caused by fire, water and theft.
- (3) The purchaser may not pledge the reserved goods to third parties nor transfer title therein as collateral. The purchaser shall notify the Supplier without undue delay of any attempts to attach the Supplier's property by third parties.
- (4) If the Supplier rescinds the contract by law due to breach of contract on the part of the purchaser (particularly due to the purchaser defaulting on payment) (enforcement event, *Verwertungsfall*), the Supplier may request the purchaser to return the reserved goods. The request to return the goods shall also be deemed as the Supplier's notice of rescission. The purchaser shall bear the costs incurred for returning the goods.

§ 8

Warranty for defects (*Gewährleistung* in terms of the BGB)

- (1) Unless these GTCs (including § 9) provide otherwise or specify additional terms, the relevant statutory provisions shall govern the purchaser's rights in the case of defects in quality or defects in title (*Sach-*



oder Rechtsmängel in terms of the BGB). The special statutory provisions governing supplier recourse (*Lieferantenregress*) shall in any case remain unaffected.

- (2) Furthermore, the Supplier is under no warranty obligation if the purchaser modifies the goods or has them modified without the Supplier's consent such that it is impossible or unreasonably difficult to remedy the defect as a result. In any case, the purchaser shall bear the additional costs for rectification of defects arising as a result of the modification.
- (3) The purchaser is required to inspect the delivered goods for defects without undue delay following receipt thereof. The purchaser must give the Supplier prompt written notice of obvious defects, being as specific as possible, at the latest within 8 working days of receipt and prompt written notice of hidden defects, at the latest within 8 working days from the date of their discovery. Otherwise delivery shall be deemed accepted.
- (4) At the Suppliers request, goods subject to complaint (*gerügte Ware*) shall be sent back to the Supplier without undue delay, initially at the purchaser's expense. In the case of justified complaints, the Supplier will reimburse the purchaser for the costs of the cheapest shipping method; the foregoing shall not apply to the extent the shipping costs are increased because the goods are located somewhere other than the place of intended use.
- (5) If the goods are in fact defective, the Supplier will cover the necessary expenses for the purpose of examining the goods and effecting subsequent performance (*Nacherfüllung in terms of the BGB*), particularly including transport, infrastructure, labour and material costs. However, if the purchaser's request to remedy a defect proves to be unjustified, the Supplier may require the purchaser to reimburse its costs.
- (6) If the goods are defective, the Supplier shall have a right to subsequent performance, which, at its election, may take the form of rectification of defects (repair, *Nachbesserung* in terms of the BGB) or delivery of new conforming goods (replacement, *Nachlieferung* in terms of the BGB).
- (7) The Supplier is entitled to make its subsequent performance dependent on the purchaser's payment of the purchase price owed, however the purchaser is entitled to retain a reasonable amount of the payment owed, such amount being proportionate to the severity of the defect.
- (8) If it is not possible to effect subsequent performance or if the Supplier's attempt to subsequent performance is unsuccessful, or if the reasonable period to be set by the purchaser for effecting subsequent performance has expired without result or can be dispensed with according to statute, the purchaser may, at its election, withdraw from the purchase contract or claim a reduction of the purchase price. However, there is no right of rescission in the case of minor defects.
- (9) Claims for damages other than those governed by § 10 of these GTCs are excluded.

§ 9

Warranty of non-infringement of intellectual property and copyrights

- (1) In accordance with this § 9, the Supplier warrants that the goods are not infringing the intellectual property rights or copyrights of third parties in the EU, the USA, Canada, Japan, South Korea or the People's Republic of China.
- (2) The parties will notify each other promptly in writing if a claim has been asserted against them based on the infringement of any such rights. The purchaser hereby gives the Supplier sole authority to litigate the dispute and conduct any settlement negotiations. If the Sup-

plier elects to exercise this authority, the purchaser shall be prohibited from acknowledging claims of the third party of its own accord without obtaining the Supplier's prior written consent. If the purchaser discontinues use of the goods for the time being, it shall advise the third party that such discontinuation of use is in no way to be construed as an acknowledgement of the third party's claim.

- (3) Claims based on infringement of third party intellectual property or copyrights shall be precluded where such infringement is caused by (i) special requirements, designs, specifications or instructions of the purchaser, (ii) any non-conforming use of the goods by the purchaser, (iii) rejection of Supplier's recommended changes or modifications to goods, where Supplier has offered to implement those changes or modifications, (iv) use of goods after receiving notice by Supplier of an (alleged) infringement of third party intellectual property or copyrights, or (v) because the purchaser unilaterally modified the goods or used them in combination with products that the Supplier did not deliver or (vi) in case purchaser does not observe the requirements of subsection (2) above.
- (4) In the event that the goods infringe any third party intellectual property or copyright, the Supplier shall, at its discretion and expense, grant the purchaser a right of use by concluding a licence agreement or modify or replace the goods such that the rights of third parties are no longer being infringed. If the Supplier is unable to do either of these things within a reasonable time, the purchaser may withdraw from the contract or claim a reasonable reduction of the purchase price.
- (5) Claims for damages other than those governed by § 10 of these GTCs are excluded.

§ 10

Liability for damages

- (1) Unless otherwise provided for in these GTCs, including the following provisions, the Supplier's liability for breaches of contractual and non-contractual obligations shall be governed by statute.
- (2) The Supplier shall be liable without limitation and irrespective of the legal basis if it or any of its legal representatives or vicarious agents commit a wilful or grossly negligent breach of duty resulting in loss or damage.
- (3) If the Supplier or any of its legal representatives or vicarious agents commit a negligent breach of duty, the Supplier shall be liable
 - a) (without limitation) for loss or damage resulting from injury to life, body or health;
 - b) for loss or damage resulting from the breach of material contractual obligations (*wesentliche Vertragspflichten*). Material contractual obligations are such obligations which must necessarily be fulfilled to enable the proper performance of the contract, and on whose compliance the purchaser would usually rely and be entitled to rely. However, in such cases the Supplier's liability shall be limited in quantum to loss or damage that was reasonably foreseeable at the time the contract was entered into.
- (4) The limitations of liability arising from subsection (3) shall not apply to the extent that the Supplier fraudulently conceals any defects, assumes a guarantee for the quality of the goods or a procurement risk. The foregoing shall also not affect any strict liability in particular under the German product liability Act (*Produkthaftungsgesetz*).
- (5) To the extent the above provisions exclude or limit the Supplier's liability, such exclusion or limitation shall also apply to the personal liability of its governing bodies, legal representatives, employees and vicarious agents.



- (6) Contractual penalties and liquidated damages which the purchaser owes to third parties in connection with the goods delivered by the Supplier may only be claimed as damages if this has been expressly agreed in writing with the Supplier.

§ 11

Statute of limitations

- (1) Notwithstanding section 438 (1) no. 3 of the BGB, claims based on defects in quality and defects in title (including non-contractual claims) shall become time-barred one (1) year from the date of delivery. However, the foregoing shall not apply in the cases described in § 10 (2), (3) a) and b) and (4) of these GTCs. Instead, the relevant statutory limitations period shall apply to such claims.
- (2) The limitations period for cases of supplier recourse as well as section 438 (1) no. 2 BGB (buildings and building materials) shall remain unaffected.

§ 12

Place of performance / Governing law / Jurisdiction / Severability

- (1) Unless expressly agreed otherwise, the place of performance for deliveries is the warehouse from which the Supplier makes its deliveries.
- (2) The business relationship between the Supplier and the purchaser is governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- (3) Exclusive (and international) place of jurisdiction for any and all disputes arising out of or in connection with the supply relationship shall be Hof (Saale). Mandatory statutory provisions governing places of exclusive jurisdiction shall remain unaffected.
- (4) If terms of these GTCs are or become void or invalid, whether in whole or in part, this shall not affect the validity of the remaining terms. Where terms have not been incorporated into the contract or are invalid, the terms of the contract shall be primarily determined by the relevant statutory provisions (section 306 (2) BGB). Only in other cases, and to the extent that construction of contract culminating in implied terms (*ergänzende Vertragsauslegung*) does not take precedence or is impossible, the parties shall agree on a valid term that most closely reflects the commercial intent of the void or invalid term.
