

General Terms and Conditions for Delivery of Avnet EM Sp. z o.o.

09.2004

§ 1 Scope of Application

All current and future deliveries and any performance by AVNET EM Sp. z o.o. (Hereinafter "AVNET") are made or rendered exclusively on the basis of these General Terms and Conditions for Delivery (the "Terms"). Any deviating terms and conditions of the contracting partner shall apply only if expressly confirmed in writing by AVNET.

§ 2 Conclusion of Contract

1. A purchase order placed by the customer (the "Purchase Order") constitutes a binding offer. AVNET accepts the offer either by sending a written order confirmation (the "Order Confirmation") or by sending the ordered goods to the customer.
2. Oral information, product specifications, performance figures, etc. provided by AVNET to the customer after or prior to sending by AVNET of the Order Confirmation shall not be a binding offer of AVNET and shall not constitute any guarantee or agreement as to quality, unless they have been expressly confirmed by AVNET in the Order Confirmation or otherwise confirmed by AVNET in writing to be "binding". Minor deviations in the goods delivered to the customer from the product information contained in the Order Confirmation shall be deemed approved to the extent this is not unreasonable for the customer.

§ 3 Prices

1. All quotations of prices provided by AVNET to the customer prior to sending by AVNET of the Order Confirmation shall not be a binding offer.
2. AVNET reserves the right to increase the prices specified in the Order Confirmation in the event of an increase in the procurement costs or other costs relevant with respect to the purchase price.

§ 4 Delivery, Passage of Risk, Partial Performance, Product Returns, RMA-procedure

1. Unless agreed otherwise, all shipments by AVNET are insured and all transportation charges shall be paid by the customer in addition to the price of the products. Subject to possible other rights of AVNET, delivery of the products to the carrier shall

constitute delivery to the customer and the risk shall thereupon pass to the customer. Selection of the carrier and delivery route shall be made by AVNET unless specified by the customer. AVNET shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to the customer's requested delivery dates. AVNET reserves the right to make deliveries in instalments. Delivery of a smaller quantity than the quantity specified shall not relieve the customer of the obligation to accept delivery and pay for the products delivered. Delay in delivery of one instalment shall not entitle the customer to cancel other instalments.

2. The minimum order value is € 250.
3. No orders for standard products ("Standard Products") may be rescheduled for delivery, altered or cancelled by the customer without the AVNET's consent, which consent may be given by AVNET in its sole discretion. AVNET reserves the right to allocate sales of products among its customers in its sole discretion. Notwithstanding any provision of the Terms to the contrary, orders for special, customised, value-added and other non-standard products, including products to be assembled in kit form, products of manufacturers which do not appear on the AVNET's list of products, work-in-process and products otherwise identified by AVNET as "NCNR" or "Non-Cancellable and Non-Returnable" ("Non-Standard Products") shall be non-cancellable and non-returnable.
4. Product returns shall follow AVNET's RMA-procedure at the time of the return. No return of Products shall be accepted by AVNET without a Return Material Authorization ("RMA") Number, which may be issued by AVNET in its sole discretion. Returned Products must be packaged in a manner that the product cannot be damaged in any way and this is solely the responsibility of the customer. All Products for return shall be returned freight prepaid in the manner specified in the RMA. If returned Products are claimed to be defective, a complete description of the nature of the defect must be included with the returned Products. Products not eligible for return shall be returned to the customer, freight collect

§ 5 Delivery Period

1. Delivery shall be effected on the dates provided for in the Order Confirmation or otherwise agreed between Avnet and the customer in writing, subject to due and timely receipt of supplies by AVNET.
2. Delivery dates shall be deemed to have been met if AVNET hands over the goods to the agreed or selected forwarder so timely that the goods will, under normal circumstances, reach the customer in due time.
3. Notwithstanding the above the customer acknowledges that delivery dates provided by AVNET in the Order Confirmation or otherwise agreed between Avnet and the customer are estimates only.

§ 6 Disruption of Delivery, Default

1. Any circumstances or events which prevent or materially obstruct the delivery but for which AVNET is not responsible shall entitle AVNET to postpone performance for the duration of the impact of such circumstances or events plus an appropriate start-up period. If delivery is delayed for more than four weeks, either party may rescind the contract in full or in part. The disruption events for which AVNET shall not be deemed responsible include, unless agreed otherwise, events of *force majeure*, natural disasters, acts of or omissions by third parties or governmental, official or military authorities, changes of law, shortage of materials, insurrection, war, terrorist attacks, delays in transport as well as failure or disruption of the usual sources of labour or materials.
2. In the event that delivery is prevented or materially obstructed due to a change in the governmental or official import terms, AVNET shall be entitled to rescind the contract. In such event, AVNET will, at the customer's request, conclude a new contract with the customer adjusted to accommodate the changed terms, provided that AVNET and the customer agree all terms and conditions of such new contract.
3. In the event that AVNET is in default, § 10 shall apply with respect to the liability.

§ 7 Reservation of Title

1. AVNET shall retain ownership of the goods until the satisfaction by the customer of all AVNET's claims relating to delivery of these goods, including the claims for payment of purchase price, shipment and other costs and any interest due to AVNET accrued thereon (the goods delivered by AVNET with respect to which AVNET retains the ownership are further referred to as the "Retained Goods").
2. In the event of integration or mixing of the Retained Goods with some other goods owned by the customer before the ownership of the Retained Goods has passed to the customer, AVNET and the customer shall be co-owners of the goods created as a result of the integration or mixing of the Retained Goods with the customer's goods.
3. The Retained Goods and the goods, which AVNET holds in co-ownership as a result of integration or mixing, are hereinafter referred to as the "Reserved Goods".

The customer shall be entitled and is hereby authorised by AVNET to process and sell the Reserved Goods within the ordinary course of business as long as it is not in default. Pledges or transfers by way of security shall not be permitted. The customer herewith assigns all receivables it may have as a result of sale of the Reserved Goods or on any other legal basis (insurance, tort) (including all claims from balances in current accounts) in full to AVNET. AVNET accepts such assignment. AVNET grants to the customer revocable authorisation to collect the receivables assigned to AVNET for AVNET's account in the customer's own name. This authorisation may be revoked only if the customer fails to duly meet its payment obligations.

4. In the event of any seizure of the Reserved Goods by third parties, the customer shall inform such third party of the fact that AVNET is the owner or the co-owner of the goods and shall notify AVNET immediately.
5. In the event of a breach of contract of the customer - in particular any delay in payment – as well as in the event that a bankruptcy petition is filed against the customer AVNET shall be entitled to retrieve the Reserved Goods and, if appropriate, to demand the assignment of the claims of surrender which the customer may have against third parties (*ggf. Abtretung der Herausgabeansprüche des Kunden gegen Dritte zu verlangen*). The customer shall in this event be obliged to supply AVNET with the details necessary to collect the assigned claims and to hand over the relevant documentation.
6. In the event that the value of the securities to which AVNET is entitled hereunder exceed not only temporarily the outstanding amount of AVNET's claims towards the customer by more than 10%, AVNET will, at the customer's request, release securities at its option insofar as their total value exceeds the debt to be secured by more than 10 %.

§ 8 Notification of Defects, Warranty

1. The provisions of warranty resulting from the Civil Code (*rekojmia*) are hereby excluded.
2. AVNET warrants to the customer that upon delivery to the customer the goods purchased hereunder shall conform to the applicable manufacturer's specifications for such goods and that any value-added work performed by AVNET on such goods shall conform to the customer's specifications relating to such work. AVNET makes no other warranty, express or implied, with respect to the goods and services. In particular, AVNET makes no warranty with respect to the merchantability of the goods or services or their suitability or fitness for any particular purpose or use or respecting infringement.
3. .A claim by the customer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall be notified to AVNET within 10 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure and in any event within the warranty period pursuant to clause 9. If delivery is not refused, and the customer does not notify AVNET accordingly, the customer shall not be entitled to reject the goods and AVNET shall have no liability for such defect or failure, and the customer shall be bound to pay the price as if the goods had been delivered in accordance with the contract.
Where a valid claim in respect of any of the goods which is based on a defect in the quality or condition of the goods or their failure to meet specification is notified to AVNET in accordance with these Terms, AVNET may replace the Goods (or the part

in question) free of charge or, at AVNET's sole discretion, refund to the customer the price of the Goods (or a proportionate part of the price), in which case AVNET shall have no further liability to the customer.

§ 9 Warranty Period

The period of warranty given to the customer by AVNET pursuant to § 8 above is 12 months. The warranty period shall commence upon delivery of the goods to the customer or, in the event of delay in acceptance of the goods by the customer, on the date on which the goods would have been delivered to the customer if there was no delay in acceptance by the customer. In the event that a manufacturer of goods grants a warranty for a longer period, AVNET will pass this extended warranty on to the customer at the customer's request, subject to the manufacturer's agreement.

§ 10 Liability

1. The customer hereby agree that the only liability arising out of or in connection with the contract will be the contractual one as stipulated in this clause below, subject to the compulsory provisions of law.
2. AVNET shall be liable for the actual loss (*szkoda*) suffered by the customer and not for any loss of profits (*utraczone korzyści*).
3. The total amount of AVNET's liability howsoever arising under or in connection with the contract shall not exceed the purchase price of the goods delivered by AVNET under such contract provided that in any event this amount shall not exceed 50,000 €.

§ 11 Payment Terms, Set-off/Retention, Default in Payment

1. Subject to point 2. below, all invoices of AVNET shall be payable within 30 days from the invoice date without any deduction.
2. If the first credit evaluation of the customer has not yet been completed or the customer is in arrears with respect to payments due to AVNET or third parties or is there any other reason, in the reasonable discretion of AVNET, to doubt the customer's ability or willingness to pay, AVNET shall be entitled to effect the agreed delivery or any future deliveries only against cash on delivery or payment in advance. In the event that a customer does not pay the amount to be collected on delivery, AVNET shall be entitled to sell the goods - without any of its other rights being affected thereby - to another buyer for the account of the customer or for its own account, invoicing the customer for the difference between the price agreed with the customer and the price realised from such distress sale.
3. The customer shall not have any right of retention or set-off against the due payment claim of AVNET, unless the counter-claim is undisputed or has been finally adjudicated.

4. In the event of a delay in payment by the customer, the customer shall pay statutory interest.
5. Any further rights in connection with a delay in payment by the customer shall remain unaffected.

§ 12 Limitations of Use, Indemnity

The goods sold by AVNET are intended to be used only for the purposes specified by the respective manufacturer. These purposes as a rule do not include the use of the products in life-preserving or supporting systems, in connection with nuclear materials or for any other purposes where a failure of the product may reasonably be expected to result in an injury to life, body or health or to unusually high pecuniary losses. In the event that the customer nevertheless uses or sells on any goods purchased from and/or programmed by AVNET for such purposes, the customer shall do so at its own risk and sole responsibility. The customer herewith indemnifies AVNET and the respective manufacturer in full and at first demand against all claims, and against all legal actions, in connection with the use of goods for such purposes, including the costs incurred for adequate legal representation.

§ 13 Intellectual Property

If an order includes software or other intellectual property, such software or other intellectual property is provided by AVNET to the customer subject to the copyright and user license, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement.

§ 14 Resale/Export Control

All goods supplied by AVNET are destined to be retained in the country of delivery agreed with the customer. The resale or other use of the goods and the related technology and documentation are subject to the export control provisions (statutes, ordinances, directives, decisions, administrative acts) of the United States of America, the countries of domicile of the contracting parties and the European Union; they may, in addition, be subject to the export or import provisions of other countries. It is upon the customer to inform itself about those provisions, to comply with them and, if necessary, to apply for and obtain the relevant export, re-export or import licences itself.

§ 15 Rescission

AVNET shall be entitled to rescind the contract by notice in writing, without prejudice to any claim or right AVNET may otherwise make or exercise, if:

- (a) the customer is in breach of any term, condition or provision of the contract and/or the Terms, or as set out in law;
- (b) a declaration of bankruptcy, bankruptcy or opening of composition proceeding is filed in respect of the customer or compulsory management referred to in Article 1062 of the Civil Proceedings Code or a receiver referred to Article 27 of the Law on Registered Pledge and the Registry of Pledges is established in respect of the business of the customer;
- (c) any distress is levied upon any of the customer's property.

§16 Confidentiality

Unless otherwise agreed by AVNET and the customer, all information obtained in relation to the subject of the contract and the Terms shall be kept confidential and shall not be disclosed to any third party, except as may be required by the law.

§ 17 Governing law, Disputes resolution, Miscellaneous

1. The contract between AVNET and the customer, including provisions of the Terms, shall be governed by and construed in accordance with Polish law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.
2. All disputes arising out of or in connection with the contract between AVNET and the customer, including provisions of the Terms, shall be settled by public courts competent for the seat of AVNET.
3. Should any provision of the Terms or any provision made in the context of other agreements with the customer be or become invalid, this shall not affect the validity of the remaining provisions or agreements. The contracting parties undertake to replace any invalid contractual provision by an arrangement the content of which comes as close as possible to the intended economic purpose of the invalid provision.
4. Personal data used in connection with the business relationship are stored and processed by AVNET, to the extent necessary for business purposes, in accordance with the statutory provisions.