

# Kruse Electronic Components International Conditions for Supplies and Service

Version October – 2015

## I. GENERAL CONDITIONS

1. The scope, quality and all terms and conditions for the provision of any parts, equipment, documentation, works or services (collectively referred to as "Work" or "the Work") shall be exclusively defined by the written provisions of these conditions (hereinafter referred to as "Contract"). Terms and conditions of Customer including general terms and conditions shall apply only where expressly accepted in writing by the provider of the Work (hereinafter referred to as "Supplier"). The Contract shall be deemed to have been concluded upon receipt of Supplier's written acknowledgement stating its acceptance of Customer's order on the basis solely of such terms.
2. Supplier may provide partial deliveries of Work, unless the acceptance of partial Work cannot be reasonably expected from Customer taking into consideration the interests of both Supplier and Customer.
3. The obligation to deliver and/or otherwise perform the Work shall be subject to the condition that the required export licenses are issued and that no other restrictions exist, arising from German, United States of America or any other applicable export control regulations, which are to be observed.

## II. PRICES AND TERMS OF PAYMENT

1. Prices shall be "ex works" (Incoterms 2000) and shall exclude packing and any indirect tax, including but not limited to: property, license, sales, use, value added or similar taxes or duties applicable to the transaction or related work.
2. Customer agrees to pay or reimburse Supplier for any such taxes, which Supplier or its subcontractors or sub-suppliers are required to pay.
3. Notwithstanding Clause II paragraph 1, taxes, fees, duties, social security contributions and other charges which are levied on Supplier or its employees (including Supplier's subcontractors and their personnel) in connection with the performance of the Contract in the country of destination of the Work, if any, shall be borne by Customer.
4. Payments shall be made to the bank account or payment office notified by Supplier free and clear of, and without any deduction, including but not limited to deductions of withholding tax unless Customer is required to make a payment subject to such deduction. In this case the sum payable by Customer in respect of which such deduction is required to be made, shall be increased to the extent necessary to ensure that, after the making of the required deduction, Supplier receives and retains (free from any liability in respect of such deduction) a net sum equal to the amount it would have received had no such deduction been made. Customer shall hand over tax receipts of withholding tax paid to Supplier within four weeks after payment of an invoice, which was subject to withholding tax.
5. In the event Supplier does not receive payment from Customer when such payment has become due and payable Supplier shall be entitled to charge interest at the annual rate of 8 (eight) percentage points above the Base Lending Rate of the European Central Bank.
6. Solely with respect to this Contract, Customer may set off only those claims that are undisputed or have been finally determined in accordance with Clause XVI. Aforementioned rule shall apply mutatis mutandis in any right of retention of the Customer.

## III. SECURITY INTEREST

1. Title to the Work shall remain with Supplier until each and every claim against Customer to which Supplier is entitled under this business relationship has been duly satisfied. In the event Supplier does not retain title to a Work or any portion thereof, due to whatever reasons, including but not limited to the applicable law, Customer grants Supplier a security interest in the Work sold to secure the payment of the price by Customer as well as performance of all other obligation of Customer arising under this Contract. Customer herewith authorises Supplier to enter or notify the retention of title or, as the case may be, the security interest with public registers, books or similar records, all in accordance with relevant laws, and shall fulfill all required formalities, at Customer's costs and expense.
2. For the duration of the retention of title or, as the case may be, the existence of a security interest in the Work or any portion thereof, Customer shall be prohibited from giving the Work in pledge or as security, and resale shall be permissible only in the ordinary course of business and subject to the condition that Customer receives payment from its customer or retains title or, as the case may be, security interest for as long as all payment claims of Customer against its customers or clients have not been fulfilled.
3. In case of possession through legal right or process of the Work or similar acts or interventions by third parties which may result in Supplier losing title to or a security interest in the Work, Customer shall inform Supplier immediately thereof in writing.

## IV. TIME FOR DELIVERY AND DELAY

1. Performance of the stipulated time for delivery is subject to the timely receipt by Supplier of all required documentation, necessary permits and releases, especially of plans to be provided by Customer, as well as fulfillment of the agreed terms of payment and all other obligations by

Customer stated herein. To the extent said conditions are not fulfilled on time, the time for delivery shall be extended accordingly.

2. If non-performance of any obligation of Supplier is due to "Force Majeure", defined as impediments or other circumstances beyond Supplier's reasonable control, then Supplier's performance is excused and the time for delivery and/or completion is extended for the duration of the Force Majeure event and its consequences. Force Majeure events include, but are not limited to: natural disasters or catastrophic events such as epidemics, nuclear accidents, fire, flood, typhoons or earthquakes; acts or omissions by civil or military government authorities, such as foreign currency restrictions, revocation or suspension of export or import licenses, governmental priority orders, allocations or restrictions upon the use of materials or manpower; war (whether governmentally declared or otherwise), riots, sabotage or revolutions; terrorist acts, strikes or lockouts.
3. In case of delay in delivery or completion culpably caused by Supplier, Customer shall be entitled to claim a lump sum in the amount of 0.5 % of the respective delivery/service value for each full week up to a maximum of 5 % of the respective contractual delivery/service value calculated in relation to the delayed part of the works, provided however, that the Customer can prove that he has suffered losses caused by the delay at all.
4. Subject to Art. XV Nr.2 and the explicit exceptions set forth in Art. XII Nr.4, payment of such lump sums pursuant to Art. IV Nr.3 shall constitute the sole and exclusive remedy of customer for delay and under no circumstances shall the total aggregate liability of supplier exceed the lesser of 5% (five per cent) of the respective value of the delayed part of the work or € 100.000.
5. If dispatch or delivery is delayed at Customer's request by more than one month after notice was given of the readiness for dispatch by Supplier, Supplier may charge Customer storage costs for each commenced month thereafter of 0.5 % of the price of the respective Work. In the event Customer suspends the provision of the Work, Customer shall reimburse Supplier all additional costs and expenses incurred due to such suspension.
6. Cancellation of orders by customer

1 week before delivery, cancellation charge 80% of order value  
4 week before delivery, cancellation charge 50% of order value  
2 week after placing order, cancellation charge 30% of order value  
1 week after placing order, cancellation charge 10% of order value  
Cancellation conditions only apply to products which are ordered based on standard lead-time. All other variations to be agreed individually.

## V. TRANSFER OF RISK

1. In the event the Works delivered by Supplier are erected by Customer or Customer's subcontractors, and irrespective whether such erection is supervised by Supplier or whether Supplier advises on the erection of the Work, and/or whether the commissioning or performance tests are carried out by Supplier or with the assistance of Supplier, the risk of accidental loss and damage to the Works shall transfer in accordance with the applicable law and the latest upon delivery of the Work or any portion thereof pursuant to Clause VII or their acceptance pursuant to Clause VIII.
2. If the performance of the Work including but not limited to the dispatch, the delivery, the beginning or completion of assembly or erection, the commissioning, the trial run or the taking over by Customer is delayed for reasons within Customer's responsibility, or if Customer has failed for other reasons to accept delivery, the risk of accidental loss or damage to the Work shall transfer to Customer on the date when it would have passed but for such events or failure of Customer.

## VI. ASSEMBLY AND ERECTION

Unless otherwise agreed, Supplier does not have an obligation to assemble and/or erect.

## VII. TAKING DELIVERY OF HARDWARE

1. Notwithstanding Clauses VIII and IX, Customer shall be obliged to accept delivery unless the Work is visibly and substantially defective, and Customer provides Supplier specific written notice thereof within three (3) days of delivery of such Work.
2. Upon taking delivery or receipt of shipping documents, Customer shall check the Work and shall notify the last carrier with a copy to the Supplier of any damage caused to the Work by the transport or objections regarding forwarding or transport.

## VIII. RECEIVING WORK

The Customer shall not refuse to receive the work due to minor deficiencies.

## IX. DEFECTS LIABILITY

Supplier shall be liable to Customer for defects including any non-conformity with express warranties or the failure to meet guarantees as follows:

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- Supplier shall, at its option, repair any defect or reperform or replace any Work or any portion thereof that are defective provided the defect is due to circumstances that existed before the transfer of risk occurred.
- Supplier's warranty does not apply to defects a) which are not due to reasons beyond Supplier's control, b) defects in expendable and/or consumable parts regularly replaced due to normal wear and tear arising after the transfer of risk, c) nonconformities caused by faulty or negligent handling, excessive strain, or other abuse by Customer or any third party, d) non-compliance with the instructions contained in the operation and maintenance manuals of the original equipment manufacturer, or e) non-reproducible software errors.
- Except for the express warranties stated in the Contract, Supplier disclaims any other express or implied warranties, including but not limited to implied warranties of merchantability and fitness for a particular purpose, or otherwise.
- Supplier shall not be liable a) if Customer or a third party carries out modifications or repairs to the Work, b) if Customer does not notify Supplier during the defect liability period in writing of a defect without undue delay after Customer's discovery or after Customer should have discovered the respective defect if Customer had exercised due care, c) if Customer has not immediately taken all appropriate steps to mitigate a damage caused by a defect, or d) if Customer prevents Supplier from remedying a defect.
- Supplier shall be given adequate time and opportunity to remedy the defect. Customer is obliged to provide Supplier with an independent and complete technical data report about the asserted defect without cost to Supplier. Customer is obliged to cooperate to the remedy of the defect. In order to clarify the necessary remedial actions, including any intended returns of the defective Work, Customer shall contact Supplier. If required by Supplier, Customer shall grant Supplier also working access to the non-conforming Work, including disassembly and reassembly. In case of returns by Customer, Customer shall note the RMA-Number (Return Material Authorization Number) he has been told by Supplier as a clearly visible label on the outside of the package and on any transport documents. It shall not constitute any acknowledgement of a defect if Supplier gives Customer a RMA-Number or consents to any return by Customer. Supplier reserves the right to check the asserted defect after receipt of the returned material. Customer is kindly asked to not return defective material on a "carriage forward" basis. If a defect at the time of the passage of risk existed, Supplier will reimburse Customer any shipping costs. Costs for any technical data report are not reimbursed.
- To the extent Supplier has incurred cost or expenses, Supplier shall be entitled to compensation in the event the defect notified by Customer to Supplier is subsequently determined to (a) not exist or (b) if Supplier is not responsible for the notified defect.
- The defects liability period including but not limited to the defects liability period for repairs or replacement of Work under warranty shall be 12 months from the date the transfer of risk to Customer occurred.
- The liability of Supplier in relation to any damages caused by defective supplies or services or related remedial work shall be limited to 30% of the respective value of the deliveries concerned. The aforementioned restriction of liability shall be subject to the exceptions set forth within Art. XII. Nr. 4.
- Except as expressly provided in this Clause IX and subject to the exceptions set forth within Art. XII. Nr. 4, any other defects liability remedies or claims of Customer including any right to terminate or rescind from the Contract or to obtain restitution because of a material error/mistake concerning the Work, shall be excluded. In particular, Customer shall not be entitled to challenge the Contract for material error, including any challenge of the Contract for an error related to defects of the Work. Clause XII shall remain unaffected.

## X. INTELLECTUAL PROPERTY

- For cost estimates, drawings and all other documents (hereinafter referred to as "Documents"), Supplier reserves all rights, title and interest in all intellectual property rights including but not limited to patents or copyright (hereinafter in general referred to as "Intellectual Property Rights").
- In the event a third party, because of an infringement of an Intellectual Property Right by the Work asserts legitimate claims against Customer, Supplier's liability towards Customer shall be as follows:
  - Supplier shall, at its own option and expense, either: (i) obtain a right to use the Work, (ii) modify the Work so as not to infringe the Intellectual Property Rights, or (iii) replace the relevant Work. If none of the foregoing is reasonably determined by Supplier to be possible to accomplish, Supplier shall take back the relevant Work and refund the price received for such Work.
  - Supplier's obligations in Clause X paragraph 2 a) are subject to the following conditions: (i) Customer has immediately notified Supplier in writing of the claims asserted by the third party and has furnished Supplier with a copy of each communication, notice or other action relating to the alleged infringement, (ii) Customer has not acknowledged an infringement and has provided Supplier with authority, information and assistance necessary to defend or settle such claim as Supplier shall determine, and

- (iii) Supplier is given sole control of the defence (including the right to select counsel), and the sole right to compromise and settle such claims. If Customer stops using the Work or any relevant portion thereof to reduce the damage or for other important reasons, it shall be obliged to make it clear (in writing) to the third party that the suspended use does not mean acknowledgment of an infringement of Intellectual Property Rights.
- Claims of Customer shall be excluded if Customer (including its agents, employees or contractors) is responsible for an infringement of Intellectual Property Rights.
- Claims of Customer shall also be excluded if the infringement of Intellectual Property Rights was caused by specific demands of Customer, by a use of the Work not foreseeable by Supplier or by the Work (or any portion thereof) being altered by Customer or being used together with products not provided by Supplier.
- This Clause X sets forth Supplier's entire liability for infringement of third party Intellectual Property Rights. Any further rights and remedies of Customer (including Customer's right to claim damages) shall be excluded.
- Customer may use any Document or other information which contains Intellectual Property Rights and which has been provided by Supplier only for the purpose of operation and maintenance of the Work. Customer shall not disclose such Documents or information to third parties and shall not use them for other purposes, including but not limited to the reproduction of the Work (or any portion thereof) or the engineering including but not limited to reverse engineering and/or manufacturing of any components, equipment or parts. Customer's obligation shall survive the expiration or termination of this Contract.

## XI. IMPOSSIBILITY OF PERFORMANCE

- In case it is impossible for Supplier to carry out the Work for reasons for which he is responsible, Customer shall be entitled to terminate the contract in relation to the portion of the Work, which, owing to such impossibility, cannot be put to the intended use. The liability of the Supplier to pay damages shall in such case be limited to the amount of 10% of the contractual value of the portion of the work that can not be carried out. Claims for lump sums in relation to such portion of the works pursuant to Art. IV. 3 shall be fully deducted from any such damages claim.
- Without prejudice to Clause IV, in case of changes of the applicable law or other relevant laws or changes of the engineering standards having a substantial impact on the content of the Work or its performance or considerably affect Supplier's business or in case of Force Majeure as defined in Clause IV paragraph 2, the Contract shall be equitably adapted in order to account for the changed circumstances, including but not limited to an increase of the total price agreed for the provision of the Work under this Contract as at the date of this Contract (hereinafter referred to as "Contract Price"). Where in the reasonable opinion of the Supplier this is not economically reasonable, Supplier shall have the right to terminate the Contract. Notwithstanding any other provision in this Contract, Supplier shall be entitled to terminate the Contract when a Force Majeure event has continued for more than 180 days. Any such termination shall be without liability to Supplier.
- If Supplier exercises the right of termination set forth in Clause XI Nr. 2, Supplier shall notify Customer in writing without undue delay after having become aware of the significance of the event. This notification requirement shall apply even where at first an extension of the time for delivery has been agreed between the Parties.

## XII. LIMITATION OF LIABILITY

- Without prejudice to any other provisions of this Contract, the following provisions shall exclusively govern the liability of Supplier, regardless of the legal theory upon which it is based including but not limited to liability in Contract, in tort (including wilful misconduct, negligence or strict liability), under warranty or otherwise:
- Supplier shall under no circumstances be liable for: a) indirect, consequential, incidental, punitive or special damages; b) loss of production, loss of profit or revenue, payment of interest and other financing expenses, loss of information and data, loss of use of equipment power system, cost of purchase or replacement power; c) subject to Clause IX paragraph 8, loss of or damage to property or d) for claims by Customer for damages of Customer's purchasers or clients.
  - Under no circumstances shall Supplier's total aggregate liability towards Customer exceed the Contract Price or the amount of € 1 million, whichever is lower.
  - If Work is to be performed at or delivered to any location owned or operated by a third party, and in the event such third party or property owner adjacent to such location claims damages from Supplier for damage caused to its plant or property, Customer shall indemnify and hold harmless Supplier against and from any liability to said third party in excess of the limitation of liability of Supplier under this Clause XII.
  - The limitations of liability set forth in Clause XII 1, 2 and 3 above shall not apply a) in cases of wilful misconduct and gross negligence of Supplier's board of directors, but they do apply in the case of wilful misconduct and gross negligence of any other party acting for Supplier, including without

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limitation Supplier's subcontractors, suppliers, agents and employees; or  
b) if liability is mandatory.

5. Claims for damages are subject to a limitation period of one year from the date on which the claim accrued.
6. Any and all liability of Supplier under this Contract shall cease with the expiry of the defects liability period specified in Clause IX.
7. These limitations of liability shall also apply for the benefit of Supplier's subcontractors, suppliers, agents, advisors, directors and employees.

## XIII. TRANSFER

1. Prior to the transfer to a third party of the Work or of any part of the Work, Customer shall obtain written assurances from its contracting party or, as the case may be, the transferee with respect to the limitation of and protection against liability in favour of Supplier, at least equivalent to the limitation afforded to Supplier in Clause XII under this Contract. Customer shall indemnify and hold harmless Supplier against any liabilities incurred by Supplier in excess of those that would have been incurred had Customer fulfilled its obligation arising out of this paragraph.
2. Supplier may terminate this Contract in the event that after the conclusion of this Contract Customer at any time shall come under the direct or indirect control or direction of any other person or entity than the one that exercised this control at the time of the conclusion of this Contract.

## XIV. CONFIDENTIALITY

1. Customer having received Documents, know-how, data or information (hereinafter "Information") agrees not to reproduce or disclose such Information to any third party, without the Supplier's prior written consent, and not to use Information for any purpose not authorized by Supplier. Customer also agrees to appropriately instruct its employees having access to such Information of Customer's confidentiality obligations and to duly restrict access of such Information to employees who have a need to know it in their scope of employment. Customer agrees to carefully protect Supplier's Information, and at least with the same degree of care used in protecting its similar information. In the event Supplier has consented to the disclosure of Information to a third party by Customer, Customer shall procure that such third party undertakes to be bound by the confidentiality obligations imposed on Customer by this Contract and shall indemnify and hold harmless Supplier from any damage incurred through the breach of said confidentiality obligation by the third party.
2. This confidentiality obligation shall not apply to Information which: a) is or becomes part of the public domain through no fault of the Customer; b) is disclosed to Customer in good faith by a third party who has a right to make such disclosure; or c) as evidenced by Customer's written records, is or becomes developed independently by Customer without reliance on the Information or is or has been known to the Customer prior to its disclosure by Supplier; or d) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order and subject to the Customer's obligation to notify the Supplier of the requirement in a timely manner.
3. Customer's confidentiality obligation shall survive the expiration or termination of this Contract.

## XV. TERMINATION / SUSPENSION

1. A party shall be entitled to terminate this Contract by written notice, a) if any proceeding is instituted against the other party seeking to adjudicate such party as bankrupt or insolvent, or if the other party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of the other party, and, in the case of any such proceeding instituted against the other party (but not by the other party itself), if such proceeding is not dismissed within forty-five (45) days of such filing, or b) if the other party is insolvent or itself files a petition seeking to take advantage of any law relating to bankruptcy, insolvency, winding up or composition or readjustment of debts.
2. Without prejudice to Art. XV. Nr. 1 and Art. XI. Nr. 1, customer shall only be entitled to terminate the contract if the Purchaser - after being entitled to the maximum amount of lump sums pursuant to Art. XV Nr. 3,4 - has demanded delivery/completion of services within a reasonable final period and the final period has not resulted in delivery/completion of the respective services.
3. In the event any of the following occurs Supplier may at its option suspend the provision of its obligations under this Contract:
  - a) Customer fails to make payment of any amount within 30 days after it has become due and payable, or
  - b) Customer fails to perform its obligations necessary for the Supplier to deliver or complete the Work, or
  - c) Delivery and/or completion of the Work is prevented by export or other legally mandated restrictions for more than 6 months; or
  - d) Customer is insolvent or any proceeding as referred to in Clause XV paragraph 1 is instituted against Customer.
4. In the event Supplier suspends the provision of its obligations Customer shall pay Supplier all additional cost incurred due to such suspension.

Supplier shall be entitled to take back the Work and Customer shall be obliged to return the Work. The taking back, the assertion of the retention of title or of a security interest or the taking possession through legal right or process of the Work by Supplier shall not mean termination of the Contract and restitution, unless expressly stated by Supplier.

## XVI. DISPUTE SETTLEMENT / APPLICABLE LAW

1. Without limiting the right of a party to terminate this Contract, either party may give the other party prior written notice of any dispute arising out of or in connection with this Contract and not resolved in the normal course of business. The parties shall attempt in good faith to resolve such dispute promptly: a) by negotiations between executives who have authority to settle the dispute, or b) in accordance with the ICC ADR Rules of the International Chamber of Commerce ("ICC"). If the matter has not been resolved within thirty (30) days of the notice, then either party shall have the right to submit the dispute to arbitration as set forth below.
2. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said rules. The language to be used in arbitration shall be English. The seat of arbitration shall be Zurich, Switzerland. The procedural law of this place shall apply where the Rules are silent.
3. This Contract, or its subject matter, shall be subject to the substantive laws of Switzerland. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

## XVII. MISCELLANEOUS PROVISIONS

1. Mistakes, unintended gaps and contradictions in the Contract are to be treated and construed in accordance with the spirit of this Contract on the basis of mutual trust and of the mutual interests of both parties.
2. In the event of any inconsistency between the English version of this Contract and any signed version or translation in another language, the English version shall be controlling.
3. Customer and Supplier shall each, at their own expense in their respective countries, take such steps as may be required to satisfy any laws or requirements with respect to declaring, filing, recording or otherwise rendering this Contract valid.

## XVIII. Export

The seller points out that goods that are marked with a dual -use number are subject to export control. Their export is permissible only with the approval of the competent European authorities, the German Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle), Eschborn/Taunus and the Bureau of Export Administration, Washington. In addition, on the export of all goods, account must be taken of the national export control provisions and international embargo provisions. The seller points out that a violation of these provisions constitutes a criminal offence.