

# General Terms and Conditions of Delivery of Swisstronics Contract Manufacturing AG (Translation of our original German General Terms: issue: SWT 31.08.04)

## 1. Scope of application and general provisions

These general terms and conditions of delivery are based on Swiss law and are applicable within Switzerland, provided that the parties acknowledge them either expressly or tacitly. Amendments and secondary agreements are valid only if they have been confirmed by us in writing.

- 1.1 Offers which do not stipulate a time limit for acceptance (binding deadline) and offers based on documents which are inaccurate, incomplete or missing shall be considered as a price guide quoted without obligation.
- 1.2 The following terms and conditions of delivery apply to all our deliveries and services, save where otherwise agreed by us in writing. If the terms of business of the customer differ from our own, only our terms shall apply unless the customer objects in writing when our offer is received. In such a case, any differences must be resolved in writing. Where orders are placed without reservation by the customer, our general terms and conditions of delivery shall be deemed to have been accepted. In the event of any contradiction, the following shall apply in the order listed below: mutual written agreements, our general terms and conditions of supply, the customer's terms of business.
- 1.3 Specific orders must be agreed individually in writing; the nature and scope of all the services to be provided by us and the test concept to be applied must be stated expressly and in full.
- 1.4 Orders which are received without a prior offer having been made by us or which contain amendments to the offer submitted by us, shall require our confirmation of acceptance.
- 1.5 The customer must make written requests for any changes to the order. We will check these changes without delay and inform him of any implications for the delivery lead-time and prices. The customer must inform us at the earliest opportunity of any follow-up orders for processing/manufacture of contractual goods.
- 1.6 We are entitled to arrange for some tasks to be performed and necessary auxiliary devices to be supplied by sub-contractors pursuant to Section 1.7 below.
- 1.7 The manufacture of auxiliary devices specifically required for the performance of an order and the procurement of manufacturing and testing equipment must be settled under a special agreement. In addition to the relevant costs to be paid by the customer (including maintenance and care costs), the rights of ownership and use and the place of storage must be stipulated in the special agreement. Save where otherwise agreed, the customer must refund to us all costs incurred for this purpose. When two years have expired since performance of the last order, we are entitled to return these auxiliary devices or manufacturing and testing equipment to the customer at his own expense, or, if the customer declines this solution, to dispose of them.
- 1.8 If our delivery also includes standard commercial software programs with all the accompanying documentation, the conditions of delivery and the licence conditions of the relevant subcontractors shall apply exclusively.
- 1.9 The products to be processed or manufactured to order by us are designated below as the "contractual goods."

## 2. Items supplied by the customer

- 2.1 The customer must make available to us the components, circuit boards, materials, data carriers, documents, aids etc. stipulated in the order.
- 2.2 Save where expressly agreed otherwise in the order, the customer shall supply suitable packaging for the contractual goods, which can also be used for the return transport, so as to prevent damage during transport.

## 3. Procurement

We organize the procurement of components on the basis of the order. Having regard to the automated manufacturing process, packaging units, excess deliveries and unfavourable purchasing prices for small quantities, we are authorized to order larger quantities. If the customer makes changes to the ordered goods, cancels his order or no longer orders from us he must take back the surplus manufacturing material and compensate us for any work already done. Inventories which have no longer shown any movement for a period of 3 months must be taken back immediately by the customer. After the expiry of this time limit, interest on late performance may be charged on the value of the goods held in stock at the rate of 12% per year.

## 4. Prices

- 4.1 Save where otherwise agreed, our prices are quoted as net prices in Swiss francs (CHF) excluding value added tax, ex-works (warehouse in Schaffhausen) on INCOTERMS 2000.
- 4.2 If the circumstances on which the price is based change between the date of the offer and the agreed delivery date (in particular currency parities), we are entitled to adjust our prices and terms to such changed conditions.
- 4.3 Save where expressly agreed otherwise in the order, the remuneration to be paid by the customer does not include any supporting services provided by us or the costs of travel, board or fault repair pursuant to Section 10.6, sentence 2 below.
- 4.4 If circumstances for which the customer is responsible result in unforeseeable additional costs, we will inform him in good time and reserve the right to impose an appropriate increase in the remuneration stipulated in the relevant order.

## 5. Payment terms

- 5.1 Save where otherwise agreed, our invoices fall due for payment immediately and are payable without discount or any other deduction at the latest by the 30th day after the date of the invoice. Payments shall be made to the account designated in the invoice. The payment is deemed to have been made when the amount due has been credited to this account in Swiss francs and is at our free disposal. Offsetting with counter-claims is prohibited.
- 5.2 If the customer fails to respect the agreed payment dates, he shall be required to pay interest on the arrears without special warning from the 31st day after the date of the invoice at 4% per annum above the current interest rate for advances on securities of the Swiss National Bank. Agreed payments must be made on the due dates, even if delivery of the goods is delayed for any reason. Complaints or faults do not constitute grounds for the retention of payments.

## 6. Reservation of ownership

Until the agreed payments have been received in full, we remain the owners of all the goods delivered by us. Upon conclusion of the contract, the customer authorizes us to arrange for the reservation of ownership to be entered in the official registers in compliance with the relevant national legislation and to perform all the necessary formalities for this purpose. The customer shall keep the delivered objects in good repair at his own expense throughout the period of reservation of ownership and shall insure them in our favour against theft, breakage, fire, water and other risks and likewise take all necessary measures to ensure that our claim to ownership is neither impaired nor cancelled.

## 7. Delivery lead-time

- 7.1 The agreed delivery lead-time begins on receipt of a written order as soon as all the technical and commercial provisions have been clarified, all the official formalities have been completed or performed, and we have at our disposal all the resources to be provided by the customer pursuant to Section 2.1 above. The delivery lead-time shall be deemed respected if delivery is made before its expiry, or readiness for dispatch has been notified to the customer.
- 7.2 The delivery lead-time shall be suitably extended:
  - if we do not receive the information which we require for performance of the order in good time, or if the customer requires subsequent amendments or additions, thereby causing deliveries or services to be delayed;
  - if obstacles occur which we cannot avert despite exercising appropriate care, regardless of whether the problems are experienced by us, by the customer or by a third party, e.g. actions or omissions by the authorities, riots, mobilization, war, industrial conflicts, lockouts, strikes, accidents and other significant interruptions of operation, epidemics and natural events. In such cases, the contracting parties must arrange for a suitable amendment to be made to the contract;
  - if the customer or third parties called in by him are late in the performance of the work to be done by them or in the performance of their contractual obligations, or if the customer fails to respect the payment terms.

- 7.3 Where we are demonstrably responsible for late delivery and the customer can provide credible evidence of having suffered damage as a consequence of such late delivery, he is entitled to claim flat-rate compensation for late performance. However, the claim to compensation for late performance shall lapse if a replacement delivery is made in good time. Compensation for late performance amounts to a maximum of 0.5% for each full week's delay, subject to an overall maximum of 5%, calculated on the contractual price of the late part of the delivery. No entitlement to compensation for late performance shall arise during the first two weeks' delay. When the maximum compensation for late performance has been reached, the customer must set us an appropriate period of grace in writing. If that period of grace is not respected for reasons for which we are responsible, the customer is entitled to decline acceptance of the late part of the delivery. If a partial acceptance is not appropriate for him for economic reasons, he is entitled to withdraw from the contract and to seek a refund of payments already effected against return of any deliveries already made.

- 7.4 The customer shall have no rights and claims other than those specifically mentioned in this Section 7 on the grounds of late delivery or services. More extensive claims to compensation shall exist only in cases of gross negligence or unlawful intent.

## 8. Transfer of benefit and risk

Benefit and risk shall be transferred to the customer when the consignment leaves our works. If dispatch is delayed at the request of the customer or for other reasons beyond our control, the risk shall be transferred to the customer at the time originally scheduled for delivery from our works. From that point in time, the consignment shall be stored and insured for the account and at the risk of the customer.

## 9. Verification and acceptance

- 9.1 The delivery shall be verified by us in the normal manner before consignment. More extensive tests must be agreed separately and paid for by the customer. Performance of a special acceptance test and definition of the applicable conditions must be the subject of a separate agreement.
- 9.2 The customer must check the delivery and services within 7 days of receipt and report any defects to us immediately in writing. If he fails to do so, the delivery and services shall be deemed approved, subject to the existence of any hidden defects.
- 9.3 We shall remedy any defects reported to us pursuant to Section 9.2 at the earliest opportunity, either by repair or by replacement, at our own discretion. The customer must allow us the necessary time and opportunity for that purpose. Defective parts which have been replaced shall become our property.
- 9.4 The customer shall have no rights and claims on account of defects of any nature whatsoever in deliveries or services other than those specifically indicated in this Section 9 and in Sections 10 and 11.

## 10. Warranty

- 10.1 The warranty period (guarantee period) for the delivered goods shall be 12 months from notification of readiness for dispatch. In respect of parts of the delivered object which have been repaired or replaced, the warranty period shall be 6 months from their replacement or from completion of the repair if the warranty period for the delivered goods pursuant to the previous sentence expires earlier.
- 10.2 The warranty shall expire prematurely if the customer or third parties make changes or perform repairs without our prior written consent or if the customer fails to immediately take all appropriate measures to minimise the damage and fails to give us an opportunity to remedy the defect.
- 10.3 At the written request of the customer, we shall repair or replace, at our own discretion and at the earliest opportunity, all parts of the delivered goods which become demonstrably defective or unusable owing to poor workmanship before the expiry of the warranty period. The parts which are the subject of the complaint shall be forwarded to us at our request. Defective parts which have been replaced shall become our property. On the expiry of the warranty period pursuant to Section 10.1 sentence 1, the warranty shall be confined to any parts which have been replaced or repaired (Section 10.1, sentence 2). The costs of dismantling, transporting and reassembling such parts shall be paid by the customer.
- 10.4 Assured properties are only those which are expressly designated as such in the specifications. The assurance shall apply only until the end of the warranty period at the latest. If the assurances have not been satisfied at all or only in part, the customer shall be entitled in the first instance to an immediate repair by us. The customer must allow us the necessary time and opportunity for this purpose. If the repair proves unsuccessful or only partially successful, the customer shall be entitled to a suitable price reduction. If the defect is so serious that it cannot be remedied within a reasonable period, and if the delivery or services are not usable or only usable to a significantly diminished extent for the known purpose, the customer shall be entitled to decline to accept the defective part of the delivery or, if a partial acceptance is not economically viable for him, to withdraw from the contract. We may only be required to refund the amounts which have been paid to us for the parts affected by the withdrawal.
- 10.5 The warranty and liability do not extend to damage which has not demonstrably been caused by poor workmanship, e.g. as a result of natural wear and tear, defective maintenance, failure to comply with operating instructions, excessive loading, unsuitable operating means, chemical or electrolytic influences, construction or assembly work not performed by us and as a result of other reasons beyond our control.
- 10.6 We will only bear the costs of repair or replacement if the fault/defect concerned could have been ascertained within the framework of the agreed testing concept and is attributable to production defects in the contractual goods for which we are responsible or could not be ascertained because of defective auxiliary devices used by us (test adapters, test software programs). In all other cases, the customer shall bear the cost of repair and related further testing on the basis of the expenditure effectively incurred; in particular, if the relevant defect/fault is attributable to means supplied or released by him or to development errors, defective manufacturing documents and instructions for which he is responsible or faults/defects in the circuit boards of the contractual goods.
- 10.7 A warranty in respect of defective software programs is conditional on the defect being reproducible and documented in the fullest possible detail in the unchanged original release of the relevant software program. In the event of loss or damage of data and/or data carrier material, the warranty does not include the cost of restoring lost data.
- 10.8 In respect of defects or the absence of assured properties, the customer shall have no rights and claims other than those expressly stated in Sections 10.1 to 10.4.

## 11. Limitation of liability

We are liable only for direct personal injury and material damage suffered by the customer to the extent that we or our agents are to blame because of deliberate intent or gross negligence. Save where expressly stipulated otherwise in these terms and conditions or required by binding statutory provisions, we shall be liable, within the framework of the statutory provisions, for personal injury and material damage amounting to not more than CHF 100,000 in each case. More extensive or other types of liability on our part, or on the part of our agents for damage, in particular for damage to assets, loss of production and loss of profit, is excluded.

## 12. Quality assurance

- 12.1 We have a quality assurance system certified according to EN29001.
- 12.2 Save where expressly agreed otherwise in the order:
  - we will not perform any incoming tests on items supplied by the customer pursuant to Section 2.1;
  - if the component types and, where appropriate, any substitute types are specified by the customer he shall bear responsibility for their correct choice.Components to be procured by the supplier need not be made by a specific manufacturer, unless the customer calls express attention to this requirement in writing.
- 12.3 If components and materials specified by the customer are to be procured by us and it has not been expressly agreed that we must undertake a test on receipt of these components and materials, they shall be deemed cleared by the customer.
- 12.4 In respect of test software programs to be produced by us pursuant to Section 1.7 above, the testing depth, i.e. the scope of the functions covered by the testing procedure, must be defined no later than when series processing within the framework of the test concept to be agreed begins.
- 12.5 Special quality criteria of the customer must be expressly agreed in each case.

## 13. Secrecy

- 13.1 Each contracting party retains all rights to documents, software programs and other auxiliary devices made available by him to the other contracting party. The receiving party acknowledges these rights and shall use the documents, software programs and aids of the other contracting party solely for the purpose for which they were made available to him.
- 13.2 We undertake to treat in confidence all documents and information received by us from the customer in connection with an order, including copies and records made thereof, together with the subject and content of the tasks entrusted to us, even after completion of the order, and not to disclose such material to third parties either in full or by way of extracts. The same obligation shall be imposed on any sub-contractors employed by us.

## 14. Applicable law

The contractual relationship shall be governed by Swiss substantive law, in particular the commercial provisions of the Swiss Code of Obligations, to the exclusion of the United Nations Convention on contracts for the internal purchase of goods (Vienna purchasing law) of 11.4.1960.

## 15. The place of jurisdiction for the customer and for us is BRONSCHHOFEN.

16. In the event of any conflict or contradiction between the German and the English language version, only the German language version (AGB, Stand/issue: SWT 31.08.04) shall be decisive/legally valid.