

# ADZ NAGANO GmbH Gesellschaft für Sensortechnik

## - Terms and Conditions of Sales and Delivery -

### 1. Scope

1.1 Any deliveries and performance rendered by ADZ NAGANO GmbH Gesellschaft für Sensortechnik (hereinafter “the Supplier”), are supplied in accordance with the following terms of sales and delivery exclusively. Any customer’s terms and conditions deviating therefrom shall not apply, not even in any case when they have not expressly been objected to.

By placing an order and by accepting goods delivered by us, the customer acknowledges his agreement to these terms and conditions.

These terms and conditions shall also apply to all subsequent business transactions with the customer. Any repair and assembly work is subject to special conditions.

The order confirmation is considered as accepted, if this is not contradicted within 3 working days after receipt. A corresponding contradiction requires the text form.

1.2 These Terms and Conditions shall apply only to business organizations pursuant to Section 310 I, German Civil Code (BGB).

1.3 Verbal arrangements shall be deemed to be binding on our part if we have acknowledged them in writing.

### 2. Quotations, Sales Documentation and Industrial Property Rights

2.1 Quotations, unless stated otherwise in any offer, are subject to change and are valid for a period of 4 weeks and as long as stocks last. The Supplier shall only be obliged to supply after having issued an express acknowledgment of the order.

2.2 Unless stated otherwise in the offer to be expressly binding, approximate values that are usual in the branch shall apply to all technical data, material used etc. In any case of variation, notification shall be made only if product integrity warranty is affected.

2.3 All documentation provided to the customer by the Supplier remains the property of the Supplier. It must not be made available to third parties without the prior written permission of the Supplier. If an order is not placed with the Supplier, any documentation, including any copies that may have been made thereof, must be returned upon customer’s request without delay.

2.4 Prior to our products’ application and use in any intended application, it is within the purchaser’s responsibility to check whether all data contained in catalogues, sales brochures and published documentation are suitable for such application. This also applies to the choice of suitable materials. The purchaser must inform himself about the appropriateness of use of the product.

2.5 The Supplier shall not be held liable for checking the correctness and/or legal conformity of the requirements and/or assumptions of the purchaser, as this is the sole responsibility of the purchaser. This applies in particular with regard to liability in the event of violating industrial property rights.

2.6 The purchaser guarantees that, by having the order executed, no industrial property law is violated by components, drawings or samples provided by the purchaser or third parties. The purchaser will conduct any possible injunction proceedings at his own expense and will compensate the supplier for any expenses resulting from such action.

2.7 Drawings, developments and discussion papers, which are generated in the course of contractual negotiations as an advisory service, are not binding. The purchaser cannot derive any claims from such documents or services provided by the supplier or his agents, except in the case of culpable intent or gross negligence.

2.8 Requested samples shall be charged for by the Supplier according to expenses incurred.

### **3. Purchase Order**

Orders constitute a valid contract only after written acknowledgment by the Supplier. The extent of the contract, thus concluded, is determined by the actual text of the acknowledgment. The purchaser is obliged to check these in all parts and to reprimand any deviations within 3 working days of receipt. Order confirmations of the supplier and possible contradictions of the purchaser require the text form.

### **4. Delivery Period and Extension of Delivery Periods**

4.1 The delivery period starts upon the acceptance of the order, provided all technical and commercial questions have been resolved. It terminates upon the dispatch or the notification of dispatch. Keeping to delivery schedules requires the purchaser to keep his obligations, particularly with respect to payments.

4.2 Any variations to the supply contract initiated by the purchaser cause the delivery schedule to recommence upon the date of the revised acknowledgment of the order.

4.3 The supplier does not accept responsibility for any delivery delays with respect to Acts of God or events not caused or foreseeable by the Supplier, such as the refusal of permits to be issued by state authorities, industrial action, etc. Delivery schedules are extended by the extent of such hindrance.

4.4 The Supplier accepts liability for not maintaining the delivery schedule or for delayed delivery, including delivery scheduled by the Supplier, only in the case of willful intent, gross negligence or breach of an essential contractual duty. However, this implies no reversal of the burden of proof at the disadvantage of the purchaser.

4.5 The right of the purchaser to cancel an order after an appropriate delivery deadline agreed to by the Supplier has lapsed shall not be affected.

4.6 Partial deliveries are deemed acceptable to the extent that they are reasonable to the purchaser.

## **5. Point of Delivery, Passing of Risk**

5.1 Delivery is made EX WORKS (Supplier) at the purchaser's expense and risk (EXW acc. to INCOTERMS 2000). The mode of dispatch is chosen at the supplier's discretion in accordance with usual practice, unless the purchaser has made a particular request.

5.2 In the case of delivery, excluding on-site installation or assembly, the risk regarding the delivered items, even if franco domicile delivery had been agreed upon, shall pass upon their handover to the purchaser, shipping company or forwarding agent, or at the point of leaving the factory or store at the latest. If acceptance by the purchaser is delayed, the risk passes at the point of readiness for shipment, even if the delay of acceptance occurs after readiness for shipment. At the purchaser's request and cost, the Supplier may insure the delivery against breakage, damage in transit or fire damage.

5.3 In the case of delivery, including on-site installation or assembly, the risk regarding the delivery passes onto the purchaser on the day of acceptance.

## **6. Prices**

6.1 All prices are EX WORKS (EXW), plus freight/postage, packaging, insurance and VAT applicable on the respective date of invoicing. Expenses for commissioning, installation, adjustment and similar services are charged for separately.

6.2 Pursuant to the Packaging Regulations, packaging material for transport and any other purposes is not taken back. It is within the customer's responsibility to dispose of any packaging material at their own cost.

6.3 If commercial transactions are separately shown on invoices, the official stock exchange day trading rate applicable on the day of delivery will be invoiced.

## **7. Settlement of Accounts**

7.1 Payment of our "net prices plus VAT" shall principally be made within our required periods of payment of 30 days net, without any discounts, in EURO.

Unjustified deductions, such as discounts, any deduction for packaging, deductions for postage charges or other deductions, which we have not approved, shall remain to be outstanding payments and will continue to be claimed.

7.2 Unless agreed otherwise, the agreed price shall be paid in EURO within 30 days after receipt of the invoice or similar request to pay, without any deduction and free of any expense. Risk and costs of the payment transaction shall be borne by the client.

7.3 Advance payments are admissible and will be stipulated as per country and company.

7.4 Deliveries to new clients shall principally be made as Cash On Delivery (C.O.D.) (through the forwarding service of UPS) or against prepayment.

7.5 In the event of delayed payment, a dunning charge of EURO 5.00/reminder, except for the first reminder, plus postage as well as interest on arrears in accordance with legal regulations, shall be charged.

7.6 Upon receipt of the third reminder our claim may be handed over to a collection agency. At the same time, further supplies shall exclusively be delivered as C.O.D., including the C.O.D. charge.

7.7 Should, in the event of delayed payment, collection of payment be assigned to a collecting agency, the costs arising out of such assignment for collection shall be borne by the client.

7.8 In the event of delayed payment, the Supplier shall be entitled to interest on arrears of 8 percent points above the basic interest rate as stipulated by the European Central Bank. Should the Supplier be able to produce evidence of higher damages of delay, the Supplier shall be entitled to make a respective claim towards the client. The client may reserve the right to provide proof of lower damages.

7.9 The client shall have the right of counter-balancing only if their counter-claims have been legally established, are undisputed or been acknowledged by the Supplier. Furthermore, the client is entitled to exercising their right of retention only insofar as their counter-claim is based on the same contractual relationship.

7.10 Costs for providing collateral, Letters of Credit in foreign business transactions or similar instruments shall be borne by the client.

## **8. Warranty for Material Defects**

8.1 The purchaser shall check the goods immediately after receipt for possible defects. Obvious defects are to be reported to the supplier within 5 working days in writing, hidden defects within 5 days after detection. If the client waives such notification, the goods are deemed as accepted and approved, unless there is a deficiency that could not be detected. Products with hidden defects that are notified beyond the notification period are deemed as accepted, also with view of the defect.

8.2 It shall be at the Supplier's discretion to repair or replace defective items which are reported to the supplier within 24 months after passing of risk (acc. to Item 5), whereas such supplier's discretion is not waived even after repeated unsatisfactory repairs. The supplier must be given appropriate time and access to effect repairs.

8.3 The purchaser has the right to rescind the purchase order or demand a price reduction (decrease in the order value), if the defect cannot be repaired within an appropriate period of time. Rescission is precluded if the defect is insignificant acc. to Section 325 para. 5 sent. 2 German Civil Code (BGB), possibly in conjunction with Section 326 para. 5 German Civil Code (BGB).

8.4 In the case of items with defects, which could have been detected by the purchaser at reasonable effort before installing or incorporating them, all warranty claims for defective materials are voided as soon as the product has been installed or incorporated. This does not apply in the case of culpable intent, gross negligence or injury to life, body or health on the Supplier's part, or their managing agents', consultants' or contractors', or in the event of liability for the breach of a major contractual duty or where liability pursuant to product liability law is mandatory.

8.5 No warranty claims will be accepted for a predetermined lifetime of products, especially under extreme or unknown operating conditions. Claims for the premature failure of the product are precluded.

8.6 In the case of products, which have been manufactured in accordance with customers' drawings and specifications, supplier warranty for materials defects only extends to include compliance with the specification. Statutory liability pursuant to product liability law as well as liability for intentional and gross negligence is not affected.

8.7 The warranty for material defects does not cover normal wear and tear or damage caused by faulty or negligent maintenance or inappropriate use outside the specifications or contract.

8.8 Liability is also precluded for material defects which reduce the value or the usability only minimally or not at all.

8.9 Rights of recourse pursuant to Sections 478, 479, German Civil Code (BGB) only allow the consumer to make claims within the scope of legislation and do not regulate the understanding of good will provisions with the Supplier. They assume that any party entitled to rights of recourse will duly observe their duty, in particular the duty to report defects.

## **9. Liability**

9.1 All purchaser's claims for damages and compensation shall be precluded, whatever the legal base, including claims deriving from illegal action or for material defect or consequential material damage, or due to culpable neglect of associated contractual duties or the loss of profit. This does not apply in the case of culpable intent,

gross negligence or injury to life, body or health on the Supplier's part, or their managing agents', consultants' or contractors', or in the event of liability for the breach of a major contractual duty or where liability pursuant to product liability law is mandatory.

9.2 In the case of any breach of substantial contractual duties, which do not arise from intent or gross negligence and which do not result from injuries to life, body or health or which are linked to product integrity warranty, liability shall be limited to compensation to the extent of foreseeable damage that is typical in such contractual context.

9.3 Materials, which the purchaser supplies to the Supplier for the manufacture of products ordered by the purchaser, are only insured against theft. The supplier is liable for the loss or deterioration of such goods only in the case of intent or gross negligence.

9.4 Advice given to the purchaser by the Supplier, particularly as to the usage of products, is binding only if given or confirmed in writing.

9.5 Legal requirements regarding the burden of proof shall remain unaffected.

## **10. Reservation of Ownership**

10.1 The finished product (hereinafter "the joint product") shall remain the property of the Supplier until paid in full and all due demands, which the supplier derives from the business relationship with the purchaser, have been met. Reservation of ownership shall apply in the event of further processing and resale. During this period of reserved ownership, the purchaser must neither pledge nor assign, nor put the product up as a chattel without the Supplier's express permission. The supplier is to be notified without delay in case of seizure by a third party.

10.2 If the purchaser processes the joint product into a new product, the processing is deemed to have been made for the Supplier. The transfer of ownership shall be precluded pursuant to Section 950, German Civil Code (BGB). By processing, mixing or reconstructing the joint product with other products that do not belong to the Supplier, the Supplier will gain shared ownership in the resultant product proportionally to the monetary value of the joint product and other component products at the time of processing. It is the purchaser's duty to store and keep control of the resultant product with appropriate commercial care.

10.3 Therefore, in the sense of these terms, the new resultant product is deemed as a joint product. In the case of any sale of the resultant joint product, the purchaser assigns at this point in time his claim in the product value to the Supplier to the amount proportional to the invoice value of the joint product with respect to all other products contained in the resultant product. In the case of any sale of the resultant product, together with other components not owned by the Supplier at a total all-inclusive price, the purchaser shall pay to the Supplier the proportion of the total price that represents the Supplier's share in it.

10.4 The purchaser also assigns to the Supplier all claims as collateral, which arise out of joining the joint product with real estate property towards a third party.

10.5 The purchaser is irrevocably entitled to enforce claims resulting from any resale within the framework of a usual business transaction. Regardless of that, the purchaser shall be entitled to collect the claims by himself if the purchaser has violated his contractual duty, particularly in the event of delayed payment. Upon the Supplier's request, the purchaser must name the debtors of such outstanding claim and notify such assignment to the debtors. Making a claim with view of the goods under reserved ownership and the demand for surrender of the same, in particular, constitute a rescission from the contract.

10.6 Upon the purchaser's request, the Supplier undertakes to release collateral, at the Supplier's discretion, to such extent, as the material value of such collateral does not exceed the claims to be secured by more than 10 %.

## **11. Place of Jurisdiction**

11.1 The laws of the Federal Republic of Germany shall apply exclusively, excluding the UN Commission on International Trade Law (UNCITRAL). The contract language is German.

11.2 If the purchaser is a chartered merchant, a legal entity under public law or a federal special fund, the place of jurisdiction shall be the Supplier's place of jurisdiction for both parties, also for any disputes involving documents, bills-of-exchange and cheque proceedings. The Supplier has the right to take legal action against the purchaser under any other legal jurisdiction.

## **12. General clause**

The ineffectiveness of any individual provision in these Terms and Conditions does not affect the validity of the remaining paragraphs. Should a clause be or become ineffective, the contractual parties to this contract shall endeavor to replace the ineffective clause by such an effective clause that will come closest to its commercial and legal purpose.

The Managers, Dietmar Arndt & Wolfgang Dürfeld