

Komplettsysteme aus einer Hand

Systemkonzeption – Entwicklung – Fertigung
Industrie Elektronik – Mobile Anwendungen

Elektronisch-Hydraulische Regelungssysteme
Fahrzeugtechnik – Sensorik – Anlagentechnik – Hydraulik



MOBIL ELEKTRONIK GMBH • Bössingerstraße 33 • D-74243 Langenbeutingen

General Terms and Conditions for Deliveries and Services of MOBIL ELEKTRONIK GMBH

I. General provisions

1. The following business terms and conditions shall apply to all contracts concluded between the customer and MOBIL ELEKTRONIK GMBH concerning deliveries and/or services MOBIL ELEKTRONIK GMBH insofar as the customer concerns an entrepreneur, a legal entity under public law or special assets under public law. It shall only apply towards contractual partners in Europe. The contractual language is German. Insofar as these General Business Terms are translated the German version shall remain the basis for the contract in cases of doubt or with deviations due to translations.
2. Orders shall exclusively be carried out based on the following terms and conditions. All terms and conditions or provisions of the customer which change the contract are hereby objected to. **These terms and conditions have precedence in any case, even if opposing terms and conditions of the customer have not explicitly been rejected by us.**
3. Deviating oral collateral agreements shall not exist at the time when the contract is concluded. The validity of oral agreements agreed by individual contracts after conclusion of the contract remains unaffected.
4. The General Business Terms shall also apply to all future business relationships, even if reference is not explicitly made hereto. Insofar as the parties have reached a framework agreement these General Business Terms shall apply both to the framework agreement as well as to the individual supply or purchase contract.

II. Offer and conclusion of contract

1. We can accept an order of the customer, which is to be qualified as legally binding offer for the conclusion of a contract within two weeks at our choice by sending of an order confirmation or by the provision of the ordered deliveries or services without reservation. In the event of an order confirmation the text of the order confirmation is decisive for the type and the contexts of the thus concluded contract. The customer undertakes to examine these in all parts and to complain about possible deviations immediately in writing.
2. Our offers are without obligation and non-binding unless we have explicitly described these as binding. Details about our goods (in particular technical data, dimensions, interface and function descriptions as well as the descriptions in the respective product information or advertising materials etc.) are only approximate and customary for the industry; they are no guaranteed condition unless the guarantee is explicitly carried out explicitly and in writing.
3. We charge requested samples according to the required work.
4. The details contained in catalogues, brochures and other written documents are to be checked by the customer before the take over and application for the suitability for the planned application. This shall also apply to the selection of suitable materials. It is the task of the customer to inform us about special statutory stipulations in its country with the order already insofar as these stipulations could relate to our goods.

The right is reserved to technical improvements as well as other changes and deviations from models or types shown in our catalogues and brochures, which are deemed reasonable for the customer. This shall also apply to all technical details. Faults by mistake in sales brochures, price lists, offer documents or other documents may be corrected by us without us being able to be held responsible for damages from these faults.
5. We shall only assume an obligation for the execution in line with the design with regard to such products, which are to be developed and/or produced according to drawings or specifications of the customer. We are not obliged to examine details and/or stipulations of the customer for their conformity and/or functionality; the customer exclusively assumes the warranty for these details.
6. Drawings, drafts and discussion contributions, which are provided within the framework of the contractual negotiations, are non-binding. The customer cannot assert claims no matter for which kind against us from such documents or services unless we or our vicarious agents have acted wilfully or gross negligently. Section XI applies accordingly.
7. We reserve property rights and sales rights under copyright law to cost estimates, drawings and other documents (hereinafter: Documents) to an unlimited extent. The documents may only be made accessible to third parties with our prior consent and are, if the order is not placed with us, to be returned immediately upon request.

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III. Prices and terms of payment

1. Our price shall apply, insofar as not otherwise stipulated, ex works Langenbeutingen plus shipping costs, packaging, customs duties, insurance and other incurred duties. Our prices do not include the statutory value added tax. We shall disclose this separately in the applicable statutory amount on the day of the invoicing.
2. Insofar as not otherwise agreed invoices are due and payable without deduction within 30 days from the invoice date or, if this is carried out later, from the provision of the services. In the event of cheque payments the payment shall only be deemed as carried out when the cheque is encashed.
3. If the customer does not pay within the afore-mentioned deadline he shall be deemed in default of payment without this requiring a renewed payment request. In the event of the default of payment we are entitled to request interest on default in the amount of eight percentage points above the base lending rate. The right is reserved to assert further claims. If the customer does not pay following a renewed payment request either we are entitled to deem all liabilities existing towards the customer due immediately, in particular also deferred amounts or amounts which are to be paid in instalments, and to refuse possible further deliveries.
4. The customer is only entitled to offset and/or retention if the counter-claims ensue from the same contractual relationship. If it concerns a delivery as part of a framework agreement relationship or any other permanent contractual relationship then the possibility for offsetting merely exists with regard to claims from the concrete legal relationship, from which the main and counter-claims result. If the counter-claim is not based on the same contractual relationship then the customer can merely offset if the counter-claims have been declared final and binding, were recognised by us or are undisputed.
5. Price changes are permitted if more than 4 months have passed between the conclusion of the contract and the agreed delivery date and the price change is a result of an actual increase in costs, for which we are not responsible. We shall inform the buyer in time and before delivery of the goods. An increase in prices is possible insofar as wage, material, transport or insurance costs increase substantially before the delivery, this means by 10% or more. The same applies in case of fluctuations in exchange rates, currency regulations and customs changes. In these cases we are entitled to increase the price by a reasonable extent.

IV. Reservation of title

1. The goods delivered by us shall remain our property until the satisfaction of all claims, to which we are entitled for any legal grounds from the current business relationship and/or the concrete contract towards the customer. In the event of the conduct of the customer in breach of the contract, e.g. default of payment, we are entitled after previously setting a reasonable deadline to take the reserved goods back. If we take the reserved goods back or attach these, this shall not represent any cancellation of the contract unless we have explicitly declared the cancellation. We are entitled to sell the reserved goods after taking these back. After deduction of a reasonable amount for the sales costs the sales proceeds are to be offset against the amounts owed to us by the customer.
2. The customer has to treat the reserved goods with due care and attention and to sufficiently insure these at its costs against fire, water and theft damages at the value as new. The customer is additionally obliged to provide us information about the condition of the goods upon request and to inform us of the storage location of the goods.
3. The customer is entitled to sell and/or use the reserved goods in the proper course of business as long as he is not in default of payment. Pledges or assignments as collateral are not permitted. The customer hereby now already assigns claims established from the resale or any other legal grounds (e.g. insurance, illicit act) with regard to the reserved goods (including all balance claims from current account) to us in full as a precautionary measure; we hereby accept the assignment. We revocably authorize the customer to collect the claims assigned to us in our name. The direct debit authorization can be revoked by us at all times if the customer does not properly satisfy his payment obligations. The customer is not authorized to assign this claim either for the purpose of collection of the claim by way of the factoring, unless the obligation of the factoring is established at the same time to directly effect the consideration in the amount of the claims to us as long as claims still exist from us against the customer.
4. A processing of the reserved goods by the buyer is carried out for us in any case. Insofar as the reserved goods are connected with other objects which do not belong to us, we shall acquire the co-ownership to the new object in the ratio of the value of the reserved goods (final invoice amount including the value added tax) to the other processed objects at the time of the processing. If the object of the customer is to be seen as the main object as a result of the processing the customer and we agree that the customer assigns us the co-ownership to this object pro rata; we hereby accept the assignment. The customer shall store our thus produced sole or co-ownership to the object on our behalf. The same shall apply to the new object produced by processing or conversion as for the reserved goods, however with the restriction that

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the customer merely assigns claims of third parties to us in the amount that we acquired co-ownership in line with the aforementioned.

5. In case of accesses of third parties to the reserved goods, in particular attachments, the buyer shall point out our property and inform us immediately so that we can assert our property rights. The customer shall be liable in this respect insofar as the third party is not in the position to reimburse us the in court or out-of-court costs incurred in this context.

6. We undertake to insofar release the collateral to which we are entitled to the extent that the realisable value of our collateral exceeds the claims which are to be secured by more than 10 % we shall be responsible hereby for selecting the collateral items which are to be released.

V. Delivery and service time, liability in case of delay with delivery

1. Delivery dates or deadlines, which have not been explicitly agreed as binding, are non-binding details. They shall only apply approximately and describe the expected delivery date. Agreements deviating from this concerning a binding delivery time must be explicitly carried out in writing. The delivery time shall only begin to apply if the customer has provided the assistance acts which are owed on its part properly and in full.

2. If we do not receive, not correctly or not in time deliveries or services of our sub-supplies or from sub-contractors for reasons for which we are not responsible despite a proper coverage or if events of force majeure occur we shall inform our customers in time in writing. In this case we are entitled to postpone the delivery or service by the duration of the impediment or to cancel the contract in full or in part owing to the not yet satisfied part insofar as we have satisfied our afore-mentioned information obligation and have not taken over the procurement risk or production risk. The following is deemed equivalent to the force majeure: Strikes, lock-out, official interventions, shortage of energy and raw materials, transport bottlenecks without a fault, impediments to operation without a fault for example by fire, water and machine damages and all other impediments, which with an objective analysis have not been culpably caused by us. If the delivery or service is delayed by more than one month then both we as well as the customer – under the exclusion of all claims for damages – are entitled to cancel the contract with regard to the quantity affected by the interferences to delivery. The customer is entitled to cancel the whole contract if the acceptance of a partial delivery is deemed unreasonable for him.

3. We shall only be deemed in delay in delivery after the expiry of a reasonable final deadline set by the customer unless it concerns a fixed term business within the meaning of § 286 Par. 2 No. 4 BGB [Civil Code] or of § 376 HGB [Commercial Code].

4. Claims for damages from delay in delivery are excluded insofar as they are not due to a wilful or grossly negligent act on our part or our vicarious agents or due to the culpable breach of essential contractual duties. Those contractual duties are essential, which protect the essential contractual legal positions of the customer, which the contract particularly has to grant him according to its contents and purpose; further essential are such contractual duties, the satisfaction of which only makes the proper execution of the contract possible at all and on the compliance with which the contractual partner relies and may rely as a rule. Section XI shall apply accordingly.

5. We are entitled to make partial deliveries and partial services at all times insofar as this is deemed reasonable for the customer.

6. If the customer is in default of acceptance we are entitled to request compensation of the suffered damages and possible additional expenses. The same shall apply if the customer culpably breaches duties to provide assistance.

VI. Place of performance, passing of risk, shipment, packaging

1. Insofar as not deviating agreement is reached in writing the place of performance is our registered seat in Langenbeutingen.

2. We make goods deliveries within Germany “ex works” (Bössingerstr., 74243 Langenbeutingen, Germany - Incoterms® 2010). This shall apply irrespective of who bears possible shipment costs.

3. We make goods deliveries, which are delivered to European overseas countries, “free freight forwarder” (FCA Bössingerstr., 74243 Langenbeutingen, Germany - Incoterms® 2010).

4. The customer is only entitled to refuse the acceptance of the goods if these obviously deviate from the order.

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5. We shall make an effort to take the wishes and interests of the customer into consideration with regard to the type of shipment and shipping route; additional costs incurred hereby – also with agreed carriage paid delivery – shall be for the expense of the customer.
6. We shall not take transport and all other packaging back according to the packaging regulations; excluded are pallets. The customer has to ensure the disposal of the packaging, which passes to his ownership, at his own costs.
7. If the shipment is delayed at request or due to the fault of the customer then we shall store the goods at the costs and risk of the customer. In this case the report that the goods are ready for shipment is deemed equivalent to the making available of the goods.
8. At the request and costs of the customer we shall protect the delivery by transport insurance. An explicit and written instruction of the customer is required in this respect.

VII. Support with the commissioning, testing, adjustment costs

1. After the delivery of the objects of purchase and the documents which are necessary for the installation (wiring and hydraulic plans, installation guidelines etc.) it is the responsibility of the customer to carry out the installation, the wiring and the laying of the pipes for the delivered objects of purchase.
2. At the explicit request of the customer we shall support him with the commissioning of the vehicle (end product), in which the object of purchase was installed in full by the customer. The customer shall inform us in time about the date for the intended commissioning of the vehicle and coordinate the date with us if required. If we reach an agreement with the customer an engineer from our house will travel to the commissioning date. Section 3 Subclause 1 of these General Business Terms shall apply With regard to the costs. The costs incurred for the support in the commissioning shall also be borne by the customer if the commissioning cannot be carried out on the agreed date for reasons, for which we are not responsible unless the customer has informed in plenty of time so that actually no additional costs (e.g. travelling expenses) have been incurred. If the commissioning is delayed by reasons for which we are not responsible then the customer has to bear the additional costs incurred hereby (travelling expenses, accommodation costs, compensation for waiting time etc.).
3. As we merely support the customer with the commissioning the afore-mentioned acts are always carried out in the presence of at least one employee of the customer.
4. The customer is aware that with individually adjusted productions and prototypes there may be need for adjustment subsequently despite a proper commissioning and the developments or adjustments, which are made individually according to the wishes of the customer, therefore must be tested in a detailed testing. The tests carried out by us under laboratory conditions are not sufficient. All functions can only be finally tested installed in the target vehicle. The customer therefore undertakes to test the system in detail in the practice-related operation after the commissioning and to report the need for optimisation immediately.
5. Should a need for adjustment and/or further development be determined as a result of the testing then we shall carry out the adjustment and/or further development after coordination with the customer. It hereby concerns an additional service which is to be remunerated separately unless we have reached a deviating agreement with the customer.
6. If the customer breaches its obligation from Subclause 4 (field testing) we shall not be liable for (follow-up) damages suffered by the customer or third party owing to the breach of duty. Section XI applies accordingly.
7. If the customer wishes support with the installation of the object of purchase beyond the help with the commissioning he shall reach a separate agreement with us in this respect. Corresponding additional services are to be remunerated separately.

VIII. Warranty / limitation to liability / reimbursement of fruitless expenses

1. Claims for defects of the customer shall only exist if the customer has properly satisfied its obligations for inspection and reporting of defects as owed by law. Recognisable defects are to be reported to us in writing within 5 workdays after the receipt of the goods or provision of the service. If this is not carried out the goods / service shall be deemed as approved. Hidden defects are to be notified to us in writing immediately after they have been discovered.
2. Claims for defects shall not exist with an only insignificant deviation from the agreed condition or with an only insignificant impairment to the usability.

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3. Insofar as a defect exists to the goods with the passing of risk we are initially entitled to subsequent satisfaction under the exclusion of the rights of the customer to cancel the contract or to reduce the purchase price (reduction). The customer has to grant us a reasonable deadline for the subsequent satisfaction. The subsequent satisfaction can, at our choice, be carried out by the remedy of the defect (subsequent improvement) or the delivery of a faultless object. The subsequent satisfaction shall not comprise the dismantling of the faulty object and the installation of the subsequent object or the costs thereof.

If the faulty goods are located at another location than the place of performance then they are to be returned to us properly packed, issued with return, invoice or delivery note number and free of charge. In this case we shall only accept returns free of costs. We shall not take over expenses, which are incurred, because the object of contract is located at another location than the place of performance (travelling expenses, transport costs) within the framework of the subsequent satisfaction.

4. If the final satisfaction has finally failed or if further attempts at subsequent satisfaction are deemed unreasonable for the customer or if the subsequent satisfaction has been refused according to § 439 Par. 3 BGB [German Civil Code] or if circumstances exist, which by weighing up the interests of both parties require the immediate assertion of the damages or cancellation, the customer can at its choice request the reduction in the purchase price or declare the cancellation of the contract.

5. Claims from § 478 BGB (recourse of the company) of the customer against us shall only exist insofar as the customer has not reached any agreements with its buyer, which go beyond those of the regulation contents concerning the statutory claims for defects. The claim is excluded if the buyer has not properly satisfied its obligations for inspection and to report defects as owed by law.

The claim is also excluded insofar as it concerns a defect owing to advertising statements or other contractual agreements, which do not stem from us, or if the customer has submitted a special guarantee towards the end consumer. The obligation is further excluded if the customer itself was not obliged to exercise the warranty rights towards the end consumer owing to the statutory regulations or did not carry out this report of a complaint compared with a claim filed against it. This shall also apply if the customer assumed warranties towards the end consumer which go beyond the statutory extent.

6. Claims for damages owing to defects of title and quality are excluded insofar as they are not due to a wilful or grossly negligent act on our part or our vicarious agents or to the culpable breach of essential contractual duties (Section V Subclause 4). Section XI applies accordingly.

IX. Special custom-made products

1. If a special custom-made product is carried out according to customer specifications by templates supplied by the customer the customer declares that it is the holder of the corresponding reproduction rights. The customer indemnifies us from all claims of third parties, which refer to an infringement of rights in this respect. We are not obliged to examine the entitlement of the customer.

2. With special custom-made products in the event of missing quantities, which remain in a reasonable framework, there is no entitlement to a subsequent delivery. Required low additional quantities shall also be delivered in the event of special custom-made products and also be invoiced insofar as the supply tolerances remain in a reasonable framework. Supply tolerances shall remain within a reasonable framework insofar as they do not exceed 5% of the ordered goods and they are caused by conditions with production technology.

3. Incidentally Section VII. Subclauses. 4 to 7 shall apply accordingly.

X. Liability

1. Claims for damages owing to the breach of a non-contractual duty (liability from tort) or owing to the fault upon or in advance of the conclusion of the contract (culpa in contrahendo) as well as for other legal grounds, in particular the breach of general duties to show consideration (§ 241 Par. 2 BGB) or other contractual duties (§ 280 Par. 1 BGB), insofar as it does not already concern warranty claims, are excluded, insofar as they are not due to a wilful act or grossly negligent act on our part or our vicarious agents or due to the culpable breach of essential contractual duties (Section V Subclause 4).

2. If the customer on its part provides material for the production of the products ordered by it then this is only insured against theft in our company. A liability for the loss or the deterioration to this material shall only exist with wilful intent or gross negligence.

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XI. Limitation to the liability exclusion and limitation to liability with slight negligence

1. The liability exclusion standardised under the sections II. Subclause 6, V. Subclause 4, VII. Subclause 6, VIII. Subclause 6 and X for slight negligence shall not apply to damages, which result from the injury to life, the body or the health as well as the breach of essential contractual duties (Section V Subclause 4) or guarantees as well as relate to claims from the Product Liability Act. In the event of a slightly negligent breach of an essential contractual duty we shall however only be liable for the foreseeable direct average damages according to the type of the conclusion of the contract which are typical for the contract.

2. A change to the burden of proof for the disadvantage of the customer is not associated with the afore-mentioned regulation.

XII. Reimbursement of futile expenses

The claim for reimbursement of futile expenses within the meaning of § 284 BGB is excluded to the extent that a claim does not exist for compensation of the damages instead of the performance or was effectively excluded.

XIII. Statute-of-limitations / forfeiture

1. Claims of the customer for warranty and damages shall become statute-barred one year from delivery of the goods. This shall not apply insofar as we are liable for damages which result from the culpable injury to life, the body or the health as well as the culpable breach of essential contractual duties (Section V Subclause 4), which are due to maliciously non-disclosed defects or guarantees as well as claims from the Product Liability Act. The reduction in the statute-of-limitations shall not apply either if it concerns a case of the supplier recourse (§§ 478, 479 BGB) or the object of purchase is a building or however the object of purchase has been used for a building in line with its customary manner of use and caused its faulty nature (§ 438 Par. 1 No. 2 BGB).

2. If claims for damages are asserted they must be asserted within four months after the written rejection by the customer by way of action. A subsequent assertion is excluded unless proceedings have been initiated for securing evidence.

XIV. Place of jurisdiction, applicable law

1. The place of jurisdiction for deliveries and payments (including cheque and bill of exchange actions) as well as all disputes ensuing between us and the customer from the contracts concluded between us and it is our registered seat. We are however entitled to also file action at the court of jurisdiction for the customer or at any other court, which may have jurisdiction according to national or international law.

2. The legal relationship between us and our customers is subject to the law applicable in the Federal Republic of Germany.

XV. Miscellaneous

1. Should individual provisions of the contract with the customer including these General Business Terms be or become invalid in full or in part or a loophole be determined in the agreements this shall have no affect on the validity of the other provisions. The parties undertake in these cases to replace the full or partial invalid provision by a valid regulation the financial success of which shall as far as possible correspond with that of the invalid provision.

2. We would like to point out that we store data of our customers within the framework of our reciprocal business relationships according to the Federal Data Protection Act.