

## Terms and Conditions of Delivery – Unipoint Electric Mfg. Co., Ltd.

For use in legal transactions with entrepreneurs, public law legal entities and public law special funds.

### 1. General Provisions

- 1.1 Only the following Terms and Conditions shall govern our deliveries. Terms and conditions opposing or deviating from our Terms and Conditions shall not apply unless we have expressly approved the application thereof. The following conditions shall also apply if, notwithstanding our knowledge of terms and conditions of the customer opposing or deviating from our Terms and Conditions, we unconditionally perform delivery to the customer.
- 1.2 Oral agreements before or at the time when the contract was concluded shall require written confirmation by us to be effective.
- 1.3 If the customer fails to accept our quotation within two weeks of receipt thereof, we shall be entitled to cancel.
- 1.4 Cost estimates are not binding and subject to charge except as otherwise expressly agreed.
- 1.5 Our previous Terms and Conditions are herewith replaced by these Terms and Conditions. These Terms and Conditions shall also govern all future deliveries to the customer.

### 2. Prices

- 2.1 Invoices shall be net prices in effect on the date of delivery plus value-added tax. Value-added tax will not be charged only in those cases where the conditions have been met for export shipments to be exempted from such tax.
- 2.2 In the absence of any special agreement, prices shall be deemed to be “FOB” (Incoterms 2000) excluding packaging.
- 2.3 Products which have been repaired shall be shipped against a reasonable flat rate charge for shipping and packaging plus the charge for the service rendered by us, except where this is covered by liability for defects.

### 3. Delivery, Delivery Dates, Default

- 3.1 The precondition for the commencement of and compliance with delivery dates agreed upon is that the collaboration duties shall have been performed by the customer, in particular the



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- timely delivery of the entire materials, documentation, approvals, examinations and clearances to be provided by the customer and the compliance with payment terms agreed upon. If these preconditions are not duly met in good time, the delivery dates shall be reasonably extended; this shall not apply if the supplier is solely responsible for the delay.
- 3.2 If non-compliance with the delivery date is due to force majeure or to other disturbances beyond our control e.g. war, terrorist attacks, import or export restrictions, labour disputes, including such disturbances affecting subcontractors, the delivery dates agreed upon shall be extended appropriately.
- 3.3 If we are in default with our delivery, the customer shall declare upon our request and within a reasonable period of time whether it will rescind the contract on account of the delayed delivery and/or whether the customer is claiming damages instead of performance or whether it insists upon performance of delivery.
- 3.4 The customer shall only be entitled to rescind the contract within the limits imposed by law insofar as the supplier is responsible for the delay.
- 3.5 Part shipments and corresponding invoices are admissible unless this is an unreasonable hardship for the customer.

#### **4. Transfer of Risk**

- 4.1 Delivery is effected FOB (Incoterms 2000) except as expressly otherwise agreed.
- 4.2 At the customer's request and cost we shall insure shipments against customary transport risks.

#### **5. Complaints and Notification of Defects**

- 5.1 The customer must notify us in writing immediately, no later than 15 days after receipt of the goods, of any recognisable defects. Adhesive labels on the boxes, labels showing the contents and the control slips enclosed with the shipment shall be submitted to us together with the notification of the defect. Any other defects must be notified by the customer in writing immediately after discovery thereof. The date of receipt by us of notification of a defect shall determine whether or not notification is in good time.
- 5.2 If the notification of a defect is unjustified we shall be entitled to demand compensation from the customer for any expenses we have incurred.
- 5.3 Claims on account of defects shall be excluded if the notification of the defect is not received in good time.

## 6. Taking Delivery

The customer may not refuse to take delivery on account of minor defects.

## 7. Defects/Defects of Title

- 7.1 Claims on account of defects shall become time-barred after a period of 12 months. The foregoing provision shall not apply insofar as longer time bar periods are prescribed by statute pursuant to the applicable laws of Taiwan.
- 7.2 The time bar period for defects commences as follows:
- on the date on which the product is put into use, i.e. of upon installation
  - in all other cases upon delivery of the product to ultimate buyer.
- 7.3 If a defect arises during the time bar period the cause of which already existed on the date of transfer of risk, we may effect subsequent performance at our discretion either by remedying the defect or delivering a defect-free product.
- 7.4 The time bar does not start to run again as a result of the subsequent performance.
- 7.5 If subsequent performance should be abortive, the customer may – without prejudice to any claims to damages – rescind the contract or reduce the amount of payment.
- 7.6 Claims by the customer on account of expenditure required for the purpose of subsequent performance, in particular costs of transport, transportation, labour and materials, shall be excluded insofar as such expenditure is increased due to the fact that the product delivered was subsequently taken to a place other than the branch operation of the customer unless such removal is in accordance with the designated use of the product.
- 7.7 Claims on account of defects do not exist in case of merely inconsiderable deviation from the quality agreed upon or in case of only minor impairment to the use of the product.
- 7.8 The following are not deemed to be defects:
- ordinary wear and tear;
  - characteristics of the product and damage caused after the date of transfer of risk due to improper handling, storage or erection, non-compliance with installation or handling regulations or to excessive strain or use;
  - characteristics of the product or damage caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to the use of the product beyond normal use or the use provided for under the terms of the contract;
  - non-reproducible software errors.



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Claims on account of defects do not exist if the product is modified by third parties or due to the installation of parts manufactured by third parties unless the defect has no causal connection with the modification.

We assume no liability for the quality of the product based on the design or choice of material insofar as the customer stipulated the design or material.

- 7.9 Claims to recourse against us by the customer shall only exist insofar as the customer has not reached any agreements with its customer which are more far-reaching than statutory claims on account of defects, for instance accommodation agreements.
- 7.10 Clauses 7.3, 7.6, 7.7 shall not apply insofar as our product was proved to be sold by the customer or customer of the customer to a consumer without being processed or installed into another product.
- 7.11 Our obligation to pay damages and to compensate for abortive expenditure on account of defects shall be governed by clause 9 in all other respects. Any further-reaching claims or claims by the customer on account of defects other than those covered by this clause 7 are excluded.
- 7.12 The provisions of this clause 7 shall apply mutatis mutandis to defects of title which are not constituted by the infringement of third party industrial property rights.

## **8. Industrial Property Rights and Copyright**

- 8.1 We shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.
- 8.2 We shall not be liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.
- 8.3 The customer must notify us immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at our request – insofar as possible – allow us to conduct the litigation (including non-judicial proceedings).
- 8.4 We are entitled, at our discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to replace it by an equivalent substitute product

which no longer infringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall – insofar as the customer allowed us to carry out a modification – be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions we too shall have a right of rescission. The ruling set forth in clause 7.9 shall apply accordingly. We reserve the right to carry out the action at our discretion under the terms of sentence one of this clause 8.4 even if the infringement of the industrial property right has not been ruled on by a court of law with res judicata effect or recognised by us.

- 8.5 Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported us to a reasonable extent in the defence against claims by third parties.
- 8.6 Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not stemming from us or if the products are used in a manner which we were unable to foresee.
- 8.7 Our obligation to pay damages in case of infringements of industrial property rights is governed by clause 9 in all other respects.
- 8.8 Clauses 7.1 and 7.2 apply mutatis mutandis to the time bar for claims based on infringements of industrial property rights.
- 8.9 Further-reaching claims or claims other than those claims of the customer governed by this clause 8 on account of an infringement of third party industrial property rights are excluded.

## **9. Claims to Damages**

- 9.1 We are liable to pay damages and compensation of abortive expenditure on account of a violation of contractual and legal obligations only in case of
- a) intent or gross negligence,
  - b) in case of negligent or deliberate fatal injury, physical injury or injury to health,
  - c) on account of assuming a quality guarantee,
  - d) in case of negligent or deliberate breach of material contractual duties,
  - e) on account of compulsory liability pursuant to the applicable product liability act of Taiwan or
  - f) on account of any other compulsory statutory liability.



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9.2 The damages for a breach of material contractual duties are, however, limited to foreseeable damage, typical for the type of contract, except in the event of intent or gross negligence or on account of fatal injury, physical injury or injury to health or on account of assuming a quality guarantee.

9.3 No change to the burden of proof to the detriment of the customer is connected with the aforementioned rulings.

## **10. Retention of Title**

10.1 We retain title to the products delivered pending full performance of all claims to which we are entitled on the basis of the business relationship now and in future.

10.2 The customer is entitled to process our products or connect them with other products within the due course of the customer's business. By way of security for our claims set forth in clause 10.1 above we shall acquire joint ownership in the products created as a result of such processing or connection. The customer hereby transfers such joint ownership to us now already. As an ancillary contractual obligation the customer shall store free of charge the goods to which we have retained title. The amount of our joint ownership share shall be determined by the ratio between the value of our product and the value of the product created by processing or connection at the time of such processing or connection.

10.3 The customer shall be entitled to sell the products in the normal course of business against cash payment or subject to retention of title. The customer assigns to us now already all claims in full together with all ancillary rights to which the customer is entitled from the further sale of our product, irrespective of whether our product has been further processed or not. The assigned claims act as security for our claims set forth in clause 10.1 above. The customer is entitled to collect the claims assigned. We may revoke the rights of the customer as set forth in this clause 10.3 if the customer fails to duly comply with its contractual duties with respect to us, in particular if the customer is in default in payment. These rights shall also lapse without any express revocation if the customer suspends payments for more than a merely temporary period.

10.4 At our request the customer shall advise us immediately in writing of the parties to whom the products to which we have retained title or joint title have been sold and of the claims to which the customer is entitled on the basis of such sale and shall issue to us deeds officially authenticated at the customer's expense relating to the assignment of the claims.



- 10.5 The customer is not entitled to effect any other disposals of the products to which we have retained title or joint title or of the claims assigned to us. The customer must notify us immediately of any attachments of or other impairments to the rights of products or claims belonging to us either in whole or in part. The customer shall bear the entire costs which have to be expended in order to cancel the attachment of our retained property or security by third parties and to re-create the product insofar as it is impossible to retrieve it from the third parties.
- 10.6 In case of default in payment or any other culpable violation of material contractual obligations by the customer we have the right to demand the return of products to which we have retained title or in which we hold an equitable lien. If we make use of such right, this shall only constitute rescission of the contract if we expressly declare that the contract is being rescinded.
- 10.7 If the customer files a petition for insolvency proceedings to be commenced we are entitled to rescind the contract and demand the immediate return of the goods delivered.
- 10.8 If the value of the security existing for us exceeds the amount of our claims by a total of over 10 %, we shall release security to this extent at our discretion at the customer's request.

## **11. Confidentiality**

- 11.1 All of the business and technical information stemming from us (including characteristics which can be deduced from goods or software delivered and other knowledge or experience) shall be kept secret with respect to third parties if and as long as such information is not proven to be public knowledge or determined by us to be resold by the customer and it may only be made available to those persons within the customer's own operation who necessarily have to be included in the use thereof and who are also committed to secrecy; the information shall remain our exclusive property. Without our prior written consent such information may not be duplicated or commercially used. At our request all information stemming from us (including, if applicable, any copies or duplicates prepared) and goods made available on loan must be returned to us immediately in full or destroyed.
- 11.2 We reserve all rights to the information mentioned in clause 11.1 above (including copyright and the right to file applications for industrial property rights such as patents, utility models, semiconductor protection etc.).

## **12. Payment Terms**



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- 12.1 Except as otherwise agreed in writing, payment shall be effected before shipment date without any deductions whatsoever. We may also, however, make delivery conditional upon pre-payment.
- 12.2 We are entitled to offset payments made against the oldest claim due.
- 12.3 In case of delayed payment we are entitled to charge default interest amounting to 8 % above the base interest rate of 1.5%. The right to assert a claim on account of further damage is not excluded.
- 12.4 Payment by bill of exchange is only admissible following prior agreement with us. We only accept bills of exchange and cheques on account of performance and they shall not be deemed to constitute payment until honoured.
- 12.5 If the customer is in arrears in payment we shall be entitled to demand immediate cash payment of all claims arising from the business relationship which are due and against which there is no defence. This right shall not be barred by a deferral of payment or by the acceptance of bills of exchange or cheques.
- 12.6 The customer shall only have the right to withhold payments or to offset counter claims insofar as the customer's counter claims are undisputed or ruled with res judicata effect by a court of law.