

EMS Terms and Conditions of Sale, Delivery and Payment of GBS Electronic Solutions GmbH

I. Scope

1. These General Terms and Conditions (hereinafter referred to as "GTC") shall apply exclusively to all present and future business relations, including pre-contractual negotiations, between GBS Electronic Solutions GmbH (hereinafter referred to as "GBS") and companies within the meaning of § 14 BGB (hereinafter referred to as "Customer"). The scope of application of these Terms and Conditions covers the entire field of Electronic Manufacturing Services (EMS), in particular the sale and delivery of electronic assemblies, devices and systems, the equipping of printed circuit boards, the assembly of assemblies and devices, the testing of hardware and software requested by the Customer, development services in support of the Customer, as well as the repair and maintenance of the aforementioned electronic components, optionally on site at the Customer's premises.

2. General Terms and Conditions of the Customer which deviate from, contradict or supplement these GTC shall not become part of the contract unless GBS has expressly agreed to their application in writing or in text form (§ 126b BGB). These General Terms and Conditions shall also apply if GBS carries out the delivery or service to the Customer without reservation in the knowledge of such General Terms and Conditions of the Customer. By accepting the Order Confirmation, the Customer expressly acknowledges that it waives any legal objection that may be derived from its General Terms and Conditions.

II. Samples, documents provided

1. The characteristics of samples or specimens shall only become part of the contract if this has been expressly agreed in writing or in text form (§ 126b BGB).

2. GBS retains unrestricted title and copyright to all samples, illustrations, drawings, data, cost estimates and other documents (hereinafter referred to as "Documents") made known or provided to the Customer. The Customer undertakes not to make the Documents accessible to third parties without the prior consent of GBS. The Documents shall be returned to GBS immediately upon request, unless the Customer places an order with GBS based on the Documents. Sentences 1 to 3 shall apply mutatis mutandis to documents of the Customer made known or provided to GBS. However, these may be made accessible to third parties to whom GBS has transferred deliveries in accordance with the contract.

III. Offer, Contract, Scope of Supply and Services

1. Offers from GBS are subject to change without notice, unless the respective offer is expressly marked as binding or contains binding assurances. The offers of GBS are invitations to the Customer to place orders.

2. The order or placing of the order represents a binding offer of contract by the Customer. The contract is only concluded with the acceptance of this contract offer by GBS. Unless otherwise agreed, GBS can declare acceptance within 10 working days after receipt of the contractual offer by issuing an order confirmation or by delivering the goods to the Customer. After the expiry of this period, the Customer is no longer bound to his contractual offer. In the case of repair and maintenance orders, the acceptance period is a maximum of 5 working days, within which GBS can issue an order confirmation or carry out the ordered work.

3. Drawings, illustrations, dimensions, weights or other performance data are only binding if they have been expressly made part of the contract in accordance with the above clause 2 above. Necessary technical changes as well as customary deviations in quality, dimensions, shape, colour and/or weight are reserved.

4. GBS shall only assume a procurement risk within the meaning of § 276 BGB (German Civil Code) on the basis of a separate written agreement containing the phrase "... we assume the procurement risk...". In all other respects, the conclusion of the contract shall be subject to the reservation of correct and timely self-supply by the suppliers of GBS in accordance with clause VIII. This only applies in the event that the non-delivery is not attributable to GBS. The Customer will be informed immediately about the non-availability of the service. Any payment already made will be refunded immediately.

5. A guarantee shall only be deemed to have been given by GBS if GBS has designated a characteristic and/or a performance result as "legally guaranteed" in writing or in text form (§ 126b BGB).

6. If the Customer wishes to receive a binding price quotation before ordering repairs and maintenance work, GBS shall prepare a cost estimate in which the work and replacement parts are listed in detail and the respective prices are indicated. Contrary to the above clause 2 and 3 above, this cost estimate shall be regarded as a binding contractual offer by GBS, to which GBS shall be bound until the expiry of 10 working days after its submission. The services rendered by GBS for the preparation of the cost estimate will be invoiced to the Customer, unless otherwise agreed. If the Customer places an order with GBS on the basis of the cost estimate, the costs for the cost estimate will be invoiced to the Customer.

IV. Prices: due date, terms of payment, right to adjust prices

1. The prices valid on the day of conclusion of the contract (clause III.2 and III.6, sentence 2) shall apply. Unless otherwise agreed, all prices are quoted ex works or warehouse and in Euro netto plus the statutory value added tax applicable on the day of performance. Any costs for freight, postage, customs duties and any (separately agreed) transport insurance shall be borne by the Customer. The costs for simple packaging are included in the price. Special wishes of the Customer regarding packaging (railway shipping carton with fixed padding) or shipping method (express, express goods, railway container, post, etc.) will be fulfilled as far as possible; the additional costs for this will be charged to the Customer separately.

2. If GBS is commissioned with the delivery/assembly or repair/repair, and unless otherwise agreed, the Customer shall bear all necessary ancillary costs in addition to the agreed remuneration, in particular transport and travel costs as well as any expenses to be paid to employees. Prices for spare parts are ex works excluding packaging.

3. Unless otherwise agreed, invoices shall be payable immediately and without any deductions within 14 calendar days of the invoice date. Upon expiry of this payment period, the Customer shall automatically be in default of payment without the need for a separate reminder. Instalment payments will only be accepted based on a special written agreement.

4. Partial deliveries shall be invoiced immediately and shall each be due for payment irrespective of the completion of the entire delivery. In the absence of any agreement to the contrary, payments on account will be charged pro rata to the individual part deliveries. In the case of repair and maintenance orders, GBS is entitled, at its own discretion, to demand an advance payment of up to 50% of the agreed remuneration. The Customer is obliged to pay in advance.

5. GBS is entitled to increase the agreed prices and remunerations in the event of cost increases, e.g. for material, material production, product procurement, wages and social security contributions, energy, currency fluctuations, etc., if these have a direct or indirect influence on the production or procurement costs of the goods or the costs of the contractually agreed services and if more than 4 months have elapsed between the conclusion of the contract and the provision of the service.

An increase in the aforementioned sense is excluded if the cost increase for individual of the aforementioned factors is cancelled out by a cost reduction for other of the aforementioned factors with regard to the total cost burden of GBC for the entire performance. If one of the above-mentioned cost factors is reduced without the cost reduction being offset by an increase in another of the above-mentioned cost factors, the cost reduction shall be passed on to the Customer in the form of a price reduction.

If the newly adjusted price or the newly adjusted remuneration exceeds the original price or the original remuneration by 10% or more on the basis of this price adjustment clause, the Customer shall be entitled to withdraw from contracts that have not yet been fully performed. However, the Customer may

only exercise this right immediately after notification of the increased price or increased remuneration.

V. Retention, set-off and assignment, subcontractors

1. The Customer shall only have a right of retention or set-off with respect to such counterclaims which have been legally established or which have been recognised by GBS. Otherwise, the Customer can only exercise his right of retention if his counterclaim is based on the same contractual relationship.

2. The assignment of the Customer's claims against GBS requires the consent of GBS in order to be effective. 354a HGB shall remain unaffected by the assignment of monetary claims.

3. GBS is entitled to use third parties (subcontractors) to fulfil its contractual obligations.

VI. Reservation of ownership

1. GBS reserves ownership of all goods delivered by it (hereinafter referred to as "reserved goods") until all claims of GBS arising from the business relationship with the Customer, including future claims arising from contracts concluded later, have been settled. This also applies to a balance in favour of GBS if individual claims of GBS are included in a current account and the balance has been drawn.

2. The Customer is obliged to treat the goods with care. The Customer is obliged to insure the goods subject to retention of title against fire, water and theft at replacement value at his own expense. The Customer hereby assigns to GBS any claims against the insurance company arising from an insured event affecting the reserved goods to the amount of the value of the reserved goods. Insofar as maintenance and inspection work is required, the Customer shall carry this out regularly at his own expense.

3. The Customer is obliged to notify GBS immediately of any access by third parties to the reserved goods, for example in the case of seizure, as well as of any damage to or destruction of the goods, handing over the documents required by GBS to assert its ownership rights. The costs of any intervention by GBS shall be borne by the Customer unless the third party is in a position to replace them. The Customer must also notify GBS immediately of any change of ownership of the goods subject to retention of title as well as of any change of the Customer's registered office.

4. The Customer is entitled to resell the reserved goods in the ordinary course of business as long as he is not in default of payment to GBS. Other dispositions, in particular pledges or the granting of security interests, are not permitted. If the goods subject to retention of title are not paid for immediately by his Customers, the Customer is obliged to resell the goods subject to retention of title only.

5. The Customer hereby assigns to GBS for security purposes all claims, including value added tax, securities and ancillary rights, which accrue to him from the resale or processing against his Customers or third parties. GBS hereby accepts the assignment. The Customer remains authorised to collect the assigned claims until revoked by GBS. A revocation is only permissible in the case of a legitimate interest of GBS. Such a legitimate interest exists, for example, if the Customer does not properly meet his payment obligations, a significant deterioration in the Customer's creditworthiness has occurred or an application has been made for the opening of insolvency proceedings. In this case, the Customer is obliged to provide GBS with all information and documents required for the collection of the assigned claims and to notify his Customer of the assignment.

6. The treatment and processing of the reserved goods by the Customer is always carried out for GBS as the manufacturer, but without obliging GBS. If the goods are processed, inseparably combined or mixed with other objects not belonging to GBS, GBS acquires co-ownership of the new object in the ratio of the net invoice value of the goods of GBS to the net invoice values of the other processed, combined or mixed objects. The resulting co-ownership rights shall be deemed to be reserved goods. With the loss of the right of withdrawal according to clause VI 5, the Customer is also no longer entitled to install, inseparably mix or process the reserved goods. Sentences 2 and 3 of this clause VI 6 shall also apply to the installation of materials and spare parts in the case of repairs and maintenance.

7. If the value of the securities existing for GBS in accordance with the above provisions exceeds the claims to be secured by more than 20%, GBS shall be obliged to release securities to this extent at the request of the Customer. The choice of the securities to be released is at the discretion of GBS.

8. In the event of breach of contract by the Customer, in particular in the event of default in payment, GBS is entitled to take back the entire reserved goods after withdrawing from the contract. In this case, the Customer shall be obliged to surrender the goods without further ado and shall bear the transport costs necessary for taking back the goods. The taking back of the reserved goods by GBS constitutes a withdrawal from the contract. GBS is entitled to sell the reserved goods. The proceeds of the sale, less reasonable costs of sale, will be set off against the Customer's claims arising from the business relationship. GBS is entitled to enter the business premises of the Customer during normal business hours in order to determine the inventory of the goods delivered by GBS.

VII. Time of delivery/performance, delay, compensation for delay

1. Delivery dates and deadlines as well as performance dates and deadlines are only binding if they have been expressly agreed as binding in writing or in text form (§ 126b BGB).

2. The observance of time limits by GBS presupposes the timely receipt of all documents to be supplied by the Customer, necessary permits and releases, in particular of plans, as well as the observance of the agreed terms of payment and other obligations by the Customer. If these prerequisites are not fulfilled in time, the deadlines shall be extended accordingly, unless GBS is responsible for the delay. If the Customer requests changes after the order has been placed, a new reasonable delivery or completion period shall commence.

3. If GBS is in default with a delivery or service, the Customer must first set a reasonable grace period of at least - unless unreasonable - 14 working days. If this period expires without result, the Customer may withdraw from the contract. Claims for damages due to a breach of duty - for whatever reason - shall only exist in accordance with the provisions of clause XI.

4. If the Customer suffers damage as a result of a delay in delivery or performance for which GBS is responsible, the Customer is entitled to demand compensation for the delay to the exclusion of any further claims. It shall amount to 0.5% of the net price or the net remuneration for the delayed (part) delivery and/or work performance for each commenced week of the delay, but not more than 5% of the net price or the net remuneration for the entire delivery and/or work performance which is not performed by GBS on time or in accordance with the contract as a result of the delay.

Any further compensation for damages caused by delay is excluded. This shall not apply in the case of willful, grossly negligent or fraudulent conduct on the part of GBS, in the case of claims arising from injury to life, limb or health, in the case of default as well as in the case of an agreed fixed delivery date in the legal sense and the assumption of a performance guarantee or a procurement risk in accordance with § 276 BGB (see clause III.4) and in the case of mandatory statutory liability.

5. The Customer may not refuse to accept deliveries due to minor defects.

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VIII. Force Majeure, Self-Delivery, Contract Adjustment

1. If, for reasons for which GBS is not responsible, GBS is not supplied by its sub-supplier in the quantity and quality agreed with the Customer, or not supplied correctly or not supplied in good time, although GBS had ordered the material required for the fulfilment of the contract in good time and in sufficient quantity from its supplier immediately after the conclusion of the contract (congruent covering transaction), and if this delays the performance of the contractually owed delivery or service, GBS will first inform the Customer in good time in writing or in text form. The same shall apply in the event of force majeure of not inconsiderable duration. The following shall be deemed equivalent to force majeure strike, lockout, official intervention, shortage of energy and raw materials, unforeseeable transport obstacles or hindrances, unforeseeable operational disruptions - e.g. due to fire, water and machinery damage - and all other hindrances which, when viewed objectively, are not caused by GBS.

In the cases mentioned in sentence 1 and 2 of this clause VIII.1, the periods for delivery or completion shall be extended appropriately by the duration of the hindrance, provided that GBS has complied with the duty to inform and has not assumed the procurement risk or a delivery guarantee.

2. In the event of unforeseen circumstances, as defined in clause VIII.1 In the event that the economic significance or content of the delivery or work performance is significantly altered or has a notable impact on the operation of GBS, the contract shall be duly amended in accordance with the principles of good faith. In instances where such an adjustment is deemed unfeasible from a financial standpoint, or where one party's continued participation in the contract is deemed objectively untenable, the respective party shall be entitled to withdraw from the contract in its entirety or in part, with respect to the unfulfilled obligations.

3. In the event that a delivery date or completion deadline has been agreed upon and is subsequently exceeded due to circumstances outlined in clause VIII.1, the Customer is entitled to terminate the contract without penalty if the unfulfilled portion has not been delivered within a reasonable period of time. This right is independent of the conditions set forth in clause VIII.2.

4. Any further claims by the Customer, in particular claims for damages, are excluded.

IX. Transfer of risk and acceptance

1. In the absence of a written or text-based agreement to the contrary (as set out in § 126b BGB), the delivery will be made from the warehouse or storage facility. The risk of accidental loss or deterioration thus passes to the Customer upon the departure of the goods from the premises of GBS, whether to the carrier, the freight forwarder or any other party duly appointed for the purpose of executing the delivery. This also applies in the event of partial deliveries. Upon request and at the Customer's expense, GBS will insure deliveries against the usual transport risks. In the case of deliveries requiring assembly or installation, the transfer of risk will occur upon acceptance by the Customer in accordance with the stipulations of clause IX.3.

2. Should the retrieval, dispatch, installation or assembly of the item in question be delayed as a consequence of GBS exercising its right of retention in the event of a Customer's failure to make payment, the customer will be deemed to have accepted the item in question. In the event of a delay in the delivery of the goods or services, or in the performance of any other obligation on the part of the Customer, the risk of loss or damage shall pass to the customer as soon as the customer is informed by GBS that the goods or services are ready for delivery or that the Customer is able to accept delivery.

3. The repair and maintenance services provided by GBS are to be accepted by the Customer. Formal acceptance shall be deemed to have taken place if the customer has put the components, equipment or systems affected by the repair or replacement back into operation, if necessary after completion of an agreed test phase. If the Customer does not accept the services for reasons for which GBS is not responsible within a period of 10 working days from receipt by the Customer of the notification of completion, the repair and maintenance Services shall be deemed to have been accepted.

X. Complaints, breach of duty, warranty

1. It is the responsibility of the Customer to identify any apparent defects in the goods within 10 working days of collection from the point of delivery, whether this be from the factory or warehouse. If the Customer fails to identify any apparent defects within this period, they must notify the supplier of any hidden defects as soon as they become apparent. In the case of hidden defects, the Customer must notify the supplier without delay and in any case within the warranty period set out in clause X.2 of the GBS. Any failure to lodge a timely complaint will result in the Customer being barred from claiming compensation for breach of contract due to a lack of conformity with the agreed specifications. This does not apply in the event of intentional, grossly negligent, or fraudulent conduct on the part of GBS, in the case of injury to person or property, or in the event of a warranty of defect-free goods or a purchase risk under § 276 BGB (see clause III.4) or other legally binding liability.

2. For material defects, GBS provides a warranty - unless expressly agreed otherwise in writing or in text form (§ 126b BGB) - for a period of 12 months, calculated from the date of the passing of risk (see clause IX.1 and 2), from the date of acceptance (see clause IX.3, sentence 1 and 2) and, in the case of refusal to accept on the part of the Customer, from the date of receipt by the Customer of notification of readiness for dispatch and/or performance or notification of completion. This shall not apply to claims for damages arising from a guarantee, the assumption of a procurement risk within the meaning of § 276 of the German Civil Code (BGB) (see clause III.4), claims arising from injury to life, limb or health, fraudulent, willful or grossly negligent conduct on the part of GBS or in the cases of §§ 445a, 445b, 478 of the German Civil Code (recourse in the supply chain), § 438 para. 1 no. 2 of the German Civil Code (construction of buildings and delivery of goods for buildings) and § 634a para. 1 No. 2 BGB (construction defects) or where a longer limitation period is otherwise prescribed by law. §305b of the German Civil Code (priority of individual agreements made orally or in writing) shall remain unaffected. A reversal of the burden of proof is not connected with the above provision.

3. The warranty of GBS (claims for breach of duty due to defective performance in the case of material defects) and the liability resulting therefrom shall be excluded to the extent that defects and the damage associated therewith are not demonstrably due to defective material, defective design, defective workmanship, defective production materials or, if culpable, to defective instructions for use. In particular, the warranty and the resulting liability for breach of duty due to defective performance shall be excluded for the consequences of defective use, unsuitable storage conditions at the Customer's and for the consequences of chemical, electromagnetic, mechanical or electrolytic influences which do not correspond to the average standard influences provided for by GBS in the product description or a deviating agreed product specification or the respective product-specific data sheet of GBS or the manufacturer. The foregoing shall not apply in the event of willful, grossly negligent or intentional conduct on the part of GBS, or in the event of injury to life, limb or health, the assumption of a guarantee, a procurement risk under § 276 BGB (see clause III.4) and liability under a mandatory statutory liability provision.

4. The acknowledgment of obligatory infractions in the form of material defects is contingent upon the use of written or textual communication (§ 126b BGB).

5. Regarding claims for compensation, please refer to the following clause, XI (Liability Exclusion and Limitation). Any further or different claims by the Customer against GBS and their agents in respect of a product defect are excluded.

XI. Disclaimer/Limitation

1. GBS shall not be liable, subject to the following exceptions, in particular for the Customer's claims for damages or reimbursement of expenses - regardless of the legal basis - in the event of a breach of obligations arising from the contractual relationship.

2. The foregoing disclaimer pursuant to clause XI.1 shall not apply to the extent that liability is mandatory by law:

- (1) for intentional or grossly negligent breaches of duty by GBS;
- (2) In the case of GBS, the breach of "essential contractual obligations" is defined as the failure to fulfil those obligations that are of the essence of the contract those that protect the Customer's essential legal rights, which the contract is obliged to provide in accordance with its terms and purpose. Furthermore, those obligations are considered to be of the essence that enable the contract to be properly executed. In addition, the Customer is entitled to rely on the fulfilment of those obligations and to trust that they will be carried out.
- (3) in the event of injury to life, limb or health;
- (4) in the event of default, where a fixed time for delivery and/or performance has been agreed has been agreed;
- (5) With regard to the guarantee of the quality of the goods or the performance of the service, or the risk of obtaining the goods, as set out in § 276 BGB (see clause III.4);
- (6) In the event of liability in accordance with the product liability act or other legally binding liability criteria.

3. If GBS is only guilty of slight negligence and none of the cases mentioned in clause XI.2, (4), (5) or (6), GBS shall also be liable for the breach of material contractual obligations only for the contractually typical and foreseeable damage.

4. The exclusions or limitations of liability pursuant to the foregoing clause XI.1 to XI.3 apply to the same extent in favor of the organs (statutory representatives), executive and non-executive employees, vicarious agents and subcontractors of GBS.

5. Claims of the Customer for damages arising from this contractual relationship can only be asserted within a limitation period of one year from the start of the statutory period of limitation. This shall not apply if GBS is guilty of intent or gross negligence, for claims arising from injury to life, limb or health, as well as in the case of a claim based on a tortious act or an expressly assumed guarantee or the assumption of a procurement risk pursuant to § 276 BGB (see clause III.4), or in the case that a longer limitation period is prescribed by law.

6. The preceding provisions do not entail any alteration to the burden of proof in favor of the Customer.

XII. Place of performance, jurisdiction, applicable law

1. The place of performance for all contractual obligations shall be the registered office of GBS, except in the case of assumption of a debt or other agreement on the place of performance.

2. The exclusive place of jurisdiction for all disputes shall be the registered office of GBS, provided that the Customer is a merchant within the meaning of the German Commercial Code. For the sake of clarity, this place of jurisdiction also applies to matters between the Customer and GBS which may give rise to extra-contractual claims within the meaning of Regulation (EC) No. 864/2007. However, GBS is also entitled to sue the Customer at his general place of jurisdiction.

3. All legal relationships between the Customer and GBS shall be governed exclusively by the laws of the Federal Republic of Germany, in particular to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). It is expressly clarified that this choice of law also applies as a choice of law within the meaning of Art. 14 paragraph 1 b) of Regulation (EC) No. 864/2007 and shall therefore also apply to non-contractual claims within the meaning of this Regulation. If, in a particular case, foreign law must be applied, these general terms and conditions are to be interpreted in such a way that the economic purpose pursued with them is maintained as far as possible.

XIII. Amendment of the General Terms and Conditions / Subject to change:

GBS is entitled to unilaterally modify these general terms and conditions if a subsequent disruption in the relationship between the service provided and the compensation received, or in the event of a necessity to adapt to altered legal, regulatory, or technical frameworks, is identified. In such instances, GBS shall inform the Customer of the pertinent modification, including the revised terms and conditions, and the rationale behind it. The amendment will become part of the contract if the Customer does not object within a period of one month following receipt of the notification of the amendment from GBS. The objection must be made in writing or by text message in accordance with § 126 b BGB.

XIV. Written form, salvatorian clause

1. All agreements, ancillary agreements, assurances and amendments to the contract must be made in writing. This also applies to the waiver of the written form requirement itself. The priority of individual agreements in written, textual or oral form (§ 305b BGB) remains unaffected.

2. Should any provision of this agreement be or become wholly or partially invalid, void or unenforceable for reasons of the law of general terms and conditions under §§ 305 to 310 of the German Civil Code (BGB), the statutory provisions shall apply. Should a present or future provision of this agreement be or become wholly or partially invalid, void or unenforceable for reasons other than the statutory provisions of the law of general business practices pursuant to §§ 305 to 310 BGB, the validity of the remaining provisions of this agreement shall not be affected thereby, unless the implementation of the agreement - also in consideration of the following provisions - would constitute an unreasonable hardship for one of the parties. The same shall apply if, after the conclusion of the contract, a gap requiring supplementation arises. Contrary to any principle according to which a salvage clause in principle only reverses the burden of proof, the effectiveness of the remaining contractual provisions shall remain unaffected under all circumstances and § 139 BGB shall thus be dispensed with altogether.

3. The parties shall replace any provision which is invalid, void or unenforceable for any reason other than the statutory provisions relating to the law of general terms and conditions in accordance with §§ 305 to 310 of the German Civil Code (BGB), or any gap which requires filling, with a valid provision which corresponds in its legal and economic content to the invalid, void or unenforceable provision and to the overall purpose of the contract. § 139 BGB (partial invalidity) is expressly excluded. If the invalidity of a provision is based on a measure of performance or time (deadline or date) specified therein, the provision shall be replaced by a legally permissible measure that comes closest to the original measure.