

AUSTRIA - GENERAL TERMS AND CONDITIONS OF SALE OF hfsemi e.U.

1. APPLICATION, DEFINITIONS

(1) These General Terms and Conditions apply to all current and future Contracts between HFSEMI on the one hand and a customer (hereinafter: the Customer) on the other relating to the sale of Goods or the rendering of services by Herbert Fischer – HFSEMI (hereinafter: HFSEMI) to the Customer.
(2) These General Terms and Conditions only apply if Customer is either an Entrepreneur (as defined in subpara (3) below) or an entity of public law. In particular, they do not apply to Consumers (as defined in subpara (3) below).
(3) In these General Terms and Conditions the following terms have the meaning as set forth in this subsec. 3:
Entrepreneur: each individual, corporate entity or business partnership acting on behalf of his/her own commercial or professional business.
Consumer any individual not acting on behalf of his/her own commercial or professional business.
Contract any contract, agreement or other kind of business transaction, whether made in writing, orally or otherwise.
Goods each thing delivered by HFSEMI, including any accessories included in the sale such as, e.g., software and instruction manuals.
(4) Beside these General Terms and Conditions, only statutory law and individual agreements shall apply. Any other general terms and conditions, whether contrary or supplementary (e.g. purchase conditions of Customer), shall not become part of the contract unless their application is explicitly approved by HFSEMI in writing. This shall apply even if HFSEMI accepts a Customer's order while being aware of such Customer's contrary or supplementary general term and conditions.

2. CONTRACTUAL CONCLUSION, MODIFICATIONS

(1) Offers from HFSEMI shall not be binding unless the offer expressly states otherwise. Technical specifications, shape, color and/or weight are subject to reasonable modifications.

3. PRICES, PAYMENT

(1) All our prices are quoted ex works excluding packaging, save as otherwise stated in the offer or price list or agreed upon between the Customer and HFSEMI. If HFSEMI sends Goods to a different place upon Customer's request, the Customer shall bear any costs resulting therefrom, in particular for transport, package and insurance.
(2) HFSEMI's prices exclude any statutory VAT or sales tax, whether domestic or foreign, as well as any customs and similar charges. Such taxes, customs and charges shall be borne and paid by the Customer in addition to the purchase price.
(3) HFSEMI's invoices shall be payable free of any deduction within 14 days from the invoice date.
(4) Unless default occurs earlier under statutory law, the Customer shall be in default with any payments due on him if a period of one month has elapsed after complete delivery of the Goods.
(5) If it is agreed that the Customer will instruct his bank (or another bank acceptable to HFSEMI) to issue a letter of credit, such letter of credit shall be issued in accordance with the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (ICC) as amended from time to time.
(6) The Customer shall not be entitled to set off any counterclaims unless such counterclaims are either undisputed or have been accepted by HFSEMI or have been finally determined by a court of competent jurisdiction.
(7) The Customer shall not be entitled to exercise any right of retention against HFsemi's claims unless such right is based on a counterclaim resulting from the same contractual relationship and further provided that such counterclaim has been accepted by HFsemi or has been finally determined by a court of competent jurisdiction.

4. RETENTION OF TITLE

(1) HFSEMI retains full title in the Goods until Customer has fully paid all claims arising from the business relationship.
(2) The Customer shall be obliged to treat the Goods with adequate care. He shall notify HFSEMI without delay in the event of any seizure of the Goods by any third party, as well as in the event of any damage to or destruction of the Goods.
(3) The Customer shall have the right to manufacture or to process the Goods within the ordinary course of business. However, the following provisions shall apply in the event of such manufacture or processing, or in the event that the Goods are mixed with other goods, in each case until all claims of HFSEMI arising from the business relationship with the Customer have been fully paid:
a) The manufacture or processing of the Goods is performed in the name and on behalf of HFSEMI.
b) If the Goods are mixed or inseparably linked to or fitted into other goods or otherwise processed, then HFsemi shall acquire ownership in the results of such processing jointly with the other owners involved. The percentage of HFsemi's joint ownership shall correspond to the ratio between the invoice value of HFSEMI's Goods and the invoice value, or in the absence of an invoice, the fair market value of the other goods involved in the processing.
(4) The Customer shall be entitled to resell the Goods and the results of any processing of the Goods in the ordinary course of business.
(5) The Customer hereby assigns to HFSEMI all claims vis-à-vis third parties resulting from any resale of the Goods in the amount of the invoice value (including VAT). HFSEMI hereby accepts such assignment. The first and second sentence of this subsec. (5) shall apply, mutatis mutandis, in the event of any resale of results of any processing of the Goods; if, however, there arises a conflict with the assignment of such claims to other suppliers of goods involved in the processing, only such quota of the claim is assigned which corresponds to the ratio between the invoice value of our Goods and the invoice value, or in the absence of an invoice, of the fair market value of the other goods involved in the processing. The Customer shall be authorized to collect the claims so assigned to HFSEMI. If, however, the Customer is in default with any payments, HFSEMI reserves the right to withdraw such authorization and to collect the claims directly after prior notice to the Customer. In this event the Customer shall inform HFSEMI upon request of the claims and the debtors, and shall provide HFsemi with any other information and documentation that may be necessary for the collection, and shall disclose the assignment to the debtor.
(6) If the Customer is in default with any payments or in breach of obligations according to subsec. (2) of this Sec4, HFSEMI is entitled to rescind the contract and to demand that the Goods be returned to HFSEMI.

5. DEFECTIVE GOODS

(1) Where Goods are defective, HFSEMI shall at its own choice either repair the defects or replace the defective Goods. If within reasonable time the defective Goods are neither successfully repaired nor replaced, the Customer shall be entitled to claim at his choice a proportionate reduction of the purchase price or to rescind the Contract.
(2) If HFSEMI chooses to repair the defective Goods upon the Customer's request, the Customer shall bear any extra costs including, without limitation, travel costs and extra working time, resulting from the Goods having been transported by the Customer to a place other than the place of delivery. Such extra costs shall be charged according to HFSEMI's standard rates.
(3) Unless a longer period is granted in writing, any claims because of defective Goods stated in subsec. (1) of this Sec. 5 shall be time-barred within a period of limitation of one year as from delivery of such Goods. Any Customers' rights arising from obvious defects may only be claimed if HFSEMI is notified of the defect within a period of two weeks as from delivery of the Goods to the Customer; in case a defect becomes obvious later, any Customers' rights arising from such defect may only be claimed if HFSEMI is notified of the defect within a period of two weeks after the defect has become obvious.
(4) The provisions of this Sec. 5 shall neither restrict any statutory claims of Customer to damages (see, however, Sec. 6), nor any guarantee granted by HFSEMI (see, however, Sec. 7).

6. COMPENSATION FOR DAMAGE

(1) Any liability of HFsemi to damages arising from the negligent violation of non-essential contractual obligations shall be excluded.
(2) To the extent HFsemi's liability is not excluded, any such liability for damages arising from negligent breaches of contractual obligations shall be limited to such damage which was foreseeable for HFSEMI at the time the Contract was made. Furthermore, any such liability shall be limited to the aggregate amount of eur 100.000.
(3) If and to the extent that a breach of contractual obligations resulting from negligence attributable to HFsemi is due to defective Goods, any claims to damages resulting therefrom shall be time-barred within a period of limitation of one year as from delivery of such Goods.
(4) The provisions of this Sec. 6 shall neither apply to any of Customer's claims under the Austrian Product Liability Act ("Produkthaftungsgesetz"), nor to any breach of contractual obligations by managing directors or other members of the top management, nor to any damages arising from the violation of life, body or health of individuals, nor to any claims based on gross negligence attributable to HFsemi. The provisions of this Sec. 6 shall not restrict any rights of Customer under any guarantee granted by HFSEMI (see, however, Sec. 7).

7. Guarantee

(1) HFSEMI does not grant any guarantee save to the extent that a separate letter, invoice or other piece of writing or individual agreement contains a guarantee statement.

8. RIGHTS TO SOFTWARE

(1) As far as the Goods include Software, the Customer shall be entitled to load, display, run, transfer and save such software provided, however, that this serves the use which the software is intended for or is performed for the purpose of testing, examining or monitoring the software in order to ascertain the underlying ideas and principles.
(2) The Customer shall be entitled to make one (1) backup copy of the software.
(3) The Customer shall be entitled to pass the software on to a successor. The software may only be passed on together with the delivered hardware as a whole and in its original state. The right to use the software transfers to the successor, who replaces the Customer for the purpose of this Sec. 8, while at the same time the Customer's right to use the software ends; any copies made by the Customer must not be passed on to the successor but shall be erased immediately. The Customer shall be entitled to make the software accessible to another user for temporary use; in this case the provisions of this subsec. (3) shall apply mutatis mutandis.
(4) HFSEMI reserves all further rights to use and exploit the software. In particular, neither the Customer nor his successor nor any temporary user shall be entitled to use the software and/or any amended or processed version thereof without the hardware, or to disseminate or to decompile such software.

9. APPLICABLE LAW, VENUE

(1) The laws of Austria shall apply. The application of the UN Convention on the International Sale of Goods (CISG) is excluded.
(2) The courts of "Salzburg" (Austria) shall have exclusive jurisdiction over all disputes arising from these General Terms and Conditions or from any Contract governed by these General Terms and Conditions. HFSEMI shall, however, be entitled at its discretion to sue the Customer before the competent courts of the Customer's place of business.

Revisions Nr. 1.1 Austria