

General Purchasing Terms – For International Transactions

Scanfil Electronics GmbH



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1. General – scope

- 1.1 The order process and the contractual relationship between Scanfil Electronics GmbH ('SCANFIL') and its suppliers are based exclusively on these general purchasing terms. Terms of the supplier's that contradict or deviate from these purchasing terms shall not become part of the contract unless SCANFIL has agreed expressly to their applicability. These purchasing terms also apply if SCANFIL unconditionally accepts delivery while aware of terms of the suppliers, which contradict or deviate from them. To that extent, Article 19 (2) of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 1.2 These purchasing terms shall apply to all future transactions between the parties without its being necessary to draw attention to them anew.
- 1.3 These purchasing terms apply only in respect of suppliers outside the Federal Republic of Germany.
- 1.4 All agreements made between SCANFIL and the supplier for the purpose of implementing the contract are to be set down in writing. The same applies to any unilateral declarations made in connection with the contract.

2. Conclusion of contract – orders

- 2.1 The contract is established by an order issued by SCANFIL and the receipt of a written order confirmation issued by the supplier.
- 2.2 The written order confirmation could be applied via FAX, e-mail and/or electronic data interchange / EDI.
- 2.3 Orders are deemed to have been accepted by the supplier if the supplier does not object within one week of having received them.
- 2.4 SCANFIL has the right to revoke the order informally at any time provided that the revocation is received by the supplier before the latter has despatched the order confirmation or before the order is deemed to have been accepted.
- 2.5 The order number, article number, delivery quantity and delivery address are to be quoted in all order confirmations, delivery documents, invoices and other documentation issued in connection with the order.

3. Prices – terms of payment

- 3.1 The price quoted in the order is binding.
- 3.2 The agreed prices are fix prices and include every kind of additional costs (e.g. packaging and delivery costs).
- 3.3 Payment is to be made within 30 days with 3% prompt-payment discount or 60 days net. These periods begin on the day when both the goods and a proper and auditable invoice have been delivered.
- 3.4 SCANFIL is entitled to offset rights and rights of retention to the extent provided for by the law.
- 3.5 Without prior written agreement, the supplier does not have the right to assign its claims against SCANFIL or have them collected by third parties.

4. Terms of delivery, delay – passage of risk

- 4.1 Delivery will be made DDP (Incoterms 2010) to the place designated in the order.
- 4.2 The times and places of delivery and the delivery quantities quoted in the order are binding. Deliveries shall be accepted at the following times only: Monday to Friday 7 a.m. – 5 p.m.
- 4.3 In particular, deliveries must correspond to that which is stated in the order in terms of quantity and time. Premature deliveries and part deliveries are only permissible with prior written agreement from SCANFIL. The agreed periods for payment and liability for defects shall not be affected in the event of premature delivery in any case.
- 4.4 The supplier is aware that SCANFIL is dependent on goods' being delivered reliably and on time by its suppliers in order to be able to meet its own contractual obligations; these obligations of the supplier's to deliver goods reliably and on time are material contractual obligations within the meaning of Article 25 of the CISG.
- 4.5 The supplier is under obligation to inform SCANFIL without delay in writing if circumstances arise, or can be foreseen by the supplier, which affect the situation in such a way that the agreed delivery terms will not be able to be adhered to. This shall not affect the onset of default in delivery. In the case of a debt by the supplier delayed performance, the supplier will pay per working day of delay (Monday to Friday) at SCANFIL a penalty amounting to 0.2% of the contract value; overall, the penalty shall be limited to 5% of the total order amount. Moreover SCANFIL can make further claims for damages; in this case, the penalty shall be credited accordingly.
- 4.6 If SCANFIL uses abbreviated trading clauses in its orders, said clauses are to be interpreted in accordance with the 'International Rules for the Interpretation of Trade Terms' (Incoterms) and their supplements in the amendment valid at the time when the contract was concluded.

5. Requirement to give notice of defects – warranty – indemnification

- 5.1 Any confirmation of receipt handed over to the carrier on delivery is to be regarded only as confirmation of transport, not of acceptance of the delivery in the sense of performance.
- 5.2 SCANFIL shall inspect the goods on delivery, or have them inspected, within a period as short as the circumstances permit only on obvious damage, identity and quantity. For the rest, Article 38 of the CISG shall apply.
- 5.3 SCANFIL shall as a rule give notice of apparent defects within seven days of delivery and other defects within two weeks.
- 5.4 The supplier shall deliver goods which correspond to the specifications, drawings, samples and / or descriptions agreed with and supplied to or by SCANFIL. Furthermore, the goods are to be functional, serviceable, and free of faults, material defects, legal imperfections and third-party industrial property rights.
- 5.5 The obligations of the supplier listed in 5.5. are material contractual obligations.
- 5.6 In particular, the supplier vouches that the goods supplied do not infringe any industrial property rights within the European Union.
- 5.7 Deviating from § 438 para. 1 no. 3 of the German Civil Code (BGB), the warranty period shall be three years as from the passage of risk. To that extent, Article 39 (2) of the CISG is excluded until the beginning of the period of limitation as provided for in the BGB.
- 5.8 If any claims are made against SCANFIL in connection with the supply for infringement of patent or trademark rights or copyright, the supplier shall – supplementary to the other obligations arising from his liability for defects – indemnify SCANFIL against such claims at the first request and reimburse all loss or damage thus incurred, inclusive of judicial and extrajudicial costs, to the extent to which he is at fault.
- 5.9 Deviating from Article 46 (2) of the CISG, the supplier is also under obligation to supply replacement goods if the way in which the articles delivered fail to conform to the contract does not constitute a breach of a material contractual obligation.
- 5.10 For the rest, SCANFIL shall be entitled to the usual rights in accordance with the CISG and – if applicable – the BGB.

6. Product liability – indemnification – third-party liability insurance

- 6.1 If a claim is made against SCANFIL by a third party or parties on account of the defectiveness of its products, the supplier shall be under obligation to indemnify SCANFIL against claims for damages at the first request, to the extent to which the cause of said defectiveness lies in the sphere of control and organisational domain of the supplier, and to the extent to which the supplier himself would be liable toward third parties.
- 6.2 In the context of his liability for cases of loss or damage as in 6.1, the supplier is also under obligation to reimburse any expenditure which arises from or in connection with a field or recall campaign carried out by SCANFIL. SCANFIL shall inform the supplier – in as much as this is possible and reasonable – as to the nature and scope of the measures to be carried out and give him the opportunity to comment. This shall not affect any other statutory entitlements.
- 6.3 The supplier undertakes to maintain product liability insurance with an insured sum of at least 2,500,000 euros per case of damage to property and at least 5,000,000 euros per case of personal injury; if SCANFIL is entitled to any further claims for damages, said entitlement shall remain unaffected.
- 6.4 Articles 39 (2) and 79 of the CISG shall not be applicable to claims within the meaning of 6.1.

7. Property rights – copyright

- 7.1 The goods shall become the property of SCANFIL as soon as they are handed over to SCANFIL by the supplier.
- 7.2 SCANFIL reserves its property rights and copyright in respect of orders and assignments issued and drawings, illustrations, calculations, descriptions and other documents made available to the supplier. Without the express prior approval of SCANFIL, the supplier may not make these accessible to third parties, use or copy them himself, or allow them to be used or copied by third parties. He shall return these documents in their entirety if requested to do so by SCANFIL, if they are no longer required by him in the normal course of his business, or if the negotiations do not lead to the conclusion of a contract. Any copies of such documents made by the supplier are to be destroyed in such a case, the only exceptions being preservation in the context of statutory obligations to preserve business records and the storage of data for backup purposes in the context of normal data security.

8. Force majeure

- 8.1 Any delay or failure on the part of either party in the fulfilment of its obligations as stated herein shall be excused if the supplier is not in a position to manufacture, sell or supply the goods and services covered by this contract, or if SCANFIL is not in a position to receive said supplies or to purchase or use them, and this is the consequence of an event that is beyond the reasonable control of the party concerned and occurs without said party's having acted culpably or negligently. Such events include – though this list makes no claim to being exhaustive – cases of force majeure, government measures (regardless of their validity), fire, flooding, storm, explosion, uprising, natural disaster, war and sabotage, but only on the condition that the party affected informs the other party in writing of said delay (stating its likely duration) as soon as possible after the occurrence of the event concerned.
- 8.2 For the duration of such delay or failure in the fulfilment of his contractual obligations by the supplier, SCANFIL has the right to obtain the goods concerned from a third party at its own discretion and to cut down the quantity of goods ordered from the supplier by that amount without becoming liable to the supplier for doing so, or to request the supplier to obtain the goods concerned from other sources in the quantity and by the deadline required by SCANFIL, and to do so at the prices quoted in this contract.
- 8.3 If requested to do so by SCANFIL, the supplier shall within a period of ten (10) days give reasonable assurance that such delay will not persist for longer than thirty (30) days. If it does, SCANFIL shall have the right to terminate the contract without delay and without incurring any liability.

9. Legal domicile – place of performance – applicable law

- 9.1 If the supplier is a merchant, legal domicile is the place of business of SCANFIL. SCANFIL shall however also have the right to take legal proceedings against the supplier at the court that has jurisdiction over the latter's place of residence.
- 9.2 Unless anything else is indicated in the order, place of performance shall be the place of business of SCANFIL.
- 9.3 Applicable law shall be that of the Federal Republic of Germany, including the CISG but excluding collision law.