



RECOM Electronic GmbH & Co. KG - Carl-Ulrich-Str. 4 - 63263 Neu-Isenburg - GERMANY

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY of RECOM Electronic GmbH & Co. KG

### 1. Scope

Sales and deliveries by RECOM Electronic GmbH & Co. KG, based in Carl-Ulrich-Str. 4, 63263 Neu-Isenburg, Germany (hereinafter referred to as "RECOM ") shall be made exclusively in accordance with the following General Terms and Conditions of Sale and Delivery (hereinafter referred to as the "Terms of Delivery"), which shall be accepted by Customer by the placing of an order or the receipt of delivery. They shall also apply to all future transactions of RECOM with Customer. The application of Customer's conflicting or supplementary terms and conditions shall be excluded, unless RECOM has expressly agreed to their application in writing.

### 2. Conclusion of Contract

2.1 Offers by RECOM shall be non-binding. A contract shall not become effective until it has been confirmed by RECOM in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms of Delivery. Oral agreements or promises are only valid if they have been confirmed by RECOM in writing.

2.2 RECOM retains all rights in the sales documentation (in particular pictures, drawings, data on size and weight) and the samples. These items must not be made available to third parties and must be returned to RECOM without undue delay on demand.

2.3 The field staff of RECOM cannot conclude contracts and make binding promises concerning the object of delivery or other conditions.

2.4 The customer agrees to comply with the respective applicable national, European and international anti-terrorism regulations as well as the national (German Foreign Trade Act (AWG)/Foreign Trade Ordinance (AWV) and European (Dual-Use-VO 1334/2000 as applicable) export control regulations. In addition, the customer agrees to comply with US reexport laws (EAR) and sanctions (OFAC) for goods or technical data subject to these US regulations. If a permit has to be issued by the respective competent authorities on the basis of the aforementioned laws, the customer shall obtain such permit independently and at its own expense and notify RECOM thereof.

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### **3. Delivery Periods and Deadlines**

3.1 Delivery deadlines and delivery periods are only binding if they have been confirmed by RECOM in writing and Customer has provided RECOM in a timely manner with all of the information or documentation required for the performance of such delivery and Customer has paid any advance payments in the manner and amount as agreed upon by the parties. Delivery periods agreed upon by the parties shall begin on the date of the confirmation of the applicable order. In the event of additional or supplementary contracts, the delivery periods shall be extended accordingly.

3.2 Events which are unforeseeable, unavoidable and lie beyond the sphere of influence of RECOM and for which RECOM does not bear responsibility, such as Acts of God, war, natural disasters, plant disruptions, ancillary industries disruption, strikes and lock-outs shall release RECOM for the duration of such event from its obligation to make timely delivery or perform timely. Periods agreed upon between the parties shall be extended by the length of such disturbance, and Customer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable, or should it continue for more than two months, each party is entitled to rescind the contract.

3.3 With regard to objects of delivery which RECOM does not produce itself, the correct and timely self-supply shall be reserved.

3.4 If deliveries by RECOM are delayed, Customer shall only be entitled to rescind the contract if RECOM is responsible for the delay and after a reasonable grace period set by Customer has expired.

3.5 Should Customer be in default of the acceptance of delivery or should it be in breach of any other obligations to cooperate with RECOM, RECOM shall be entitled to reasonably store the object of delivery at Customer's risk and expense, without prejudice to its other rights.

3.6 RECOM may make partial delivery for good reason.

### **4. Shipment, Passage of Risk, Insurance**

4.1 In the absence of any other instruction by Customer, shipment shall be made using a reasonable method of shipment in the usual manner of packaging. 4.2 The risk shall pass to Customer upon delivery of the object of delivery to the shipment company or delivery of the object of delivery to Customer itself. Should the delivery or shipment be delayed on grounds



for which Customer bears responsibility, the risk shall pass to Customer on the date of the notification to Customer of the readiness of the object of delivery for shipment.

4.3 Insurance shall be taken out only upon request and at the expense of Customer.

## **5. Prices, Terms of Payment**

5.1 Unless otherwise and expressly agreed upon, deliveries shall be exclusively ex works (EXW Gmunden, Incoterms 2010). Unless the parties have agreed upon a certain price, the price shall be determined by the price list of RECOM as applicable at the date of the conclusion of the contract.

5.2 RECOM is entitled to adjust sales prices on condition that material and exchange rates differ by more than 5% within a three months period between receipt of order and delivery.

5.3 With regard to contracts for the performance of continuing obligations such as long term supply contracts RECOM shall be entitled to increase its prices reasonably as of January 1 of each calendar year in the same amount as RECOM had to bear increases in costs with regard to the object of delivery in the preceding year. RECOM shall inform Customer in writing about the intended price increases at the latest eight weeks prior to their coming into effect.

5.4 All prices of RECOM shall be ex warehouse Dreieich exclusive of statutory VAT in the respective applicable amount and do not include any shipment costs, which will be charged separately.

5.5 Each invoice of RECOM shall be due for payment without any deductions within 30 days of the date of invoice; if this period for payment lapses unsuccessfully Customer shall be in default.

5.6 RECOM is entitled to use payments made by the customer to redeem its older debts first. In the event that costs and interest have arisen, RECOM is entitled to apply the payment first to the costs, then to the interest and finally to the principal claim.

5.7 Bills of exchange and checks shall only be taken on account of performance upon special arrangement and without any bank charges or other costs for RECOM.

5.8 Customer is only entitled to a set off or to exercise a right to withhold if its counterclaim is uncontested or has been finally adjudicated. In case of a right to withhold the counterclaim has to be based on the same contract.



5.9 If the customer defaults in accepting contract performance or breaches any other duties of cooperation, then we will be entitled to demand any damage arising to us including any additional expenses. We are entitled to charge a lump-sum of 1 % of the invoice amount per month for storing and maintaining the delivered goods or, optionally, to demand the actual costs incurred.

5.10 If RECOM becomes aware of the risk of Customer's impossibility to perform ("mangelnde Leistungsfähigkeit") after the conclusion of the contract, in particular by initiation of insolvency proceedings, RECOM shall be entitled to only make any outstanding deliveries against prepayment or the provision of security. If such prepayments or security have not been rendered even after the expiration of a reasonable grace period granted by RECOM , RECOM may, notwithstanding any further rights, partially or totally rescind individual or all of the contracts. RECOM shall be entitled to assert any further rights.

## **6. Retention of Title**

6.1 The delivered goods shall remain the property of RECOM until any and all claims of RECOM arising under its business relationship with Customer have been fully paid.

6.2 In the case of open account this retention of title shall be deemed to be security of the claim for the -balance to which RECOM is entitled.

6.3 Customer shall only be allowed to sell the products subject to retention of title within normal and proper -business transactions. Customer is not entitled to pledge the products subject to retention of title, grant chattel mortgages on them or make other dispositions endangering RECOM 's title to such products. Customer hereby assigns its claim under the resale of the products to RECOM , and RECOM hereby accepts such assignment. Should Customer sell the products subject to retention of title after processing or transformation or joining of such products with other goods or together with other goods, this assignment of claim shall only be agreed to in the amount of the portion equivalent to the price agreed to between RECOM and Customer plus a safety margin of 10% of this price. Customer is granted the revocable authorization to collect in trust the claims assigned to RECOM in its own name. RECOM may revoke such authorization and the right to resell the products if Customer is in default of the performance of material obligations such as making payment to RECOM .

6.4 Any processing or transformation of the products subject to retention of title by Customer shall always be for RECOM . If products subject to retention of title are processed with other goods, RECOM shall acquire joint ownership of the new goods in the ratio of the value of the products subject to retention of title to the other processed goods at the time of processing.



The same regulations applying to the products subject to retention of title shall otherwise apply to the new goods created by processing.

6.5 Should the products subject to retention of title be joined with other goods, RECOM shall acquire joint ownership of the new goods in the ratio of the value of the products subject to retention of title to the other goods at the date of joining. Should the joining of the goods occur in such manner that Customer's goods are to be viewed as the main goods, it shall be deemed to have been agreed that Customer shall assign proportionate joint ownership to RECOM. Customer shall hold the joint ownership created in such manner in custody for RECOM. 6.6 Customer shall provide RECOM at all times with all desired information concerning the products subject to retention of title or claims assigned to RECOM under this contract. Attachments of or claims by third parties to the products subject to retention of title shall be immediately reported to RECOM by Customer and accompanied by the necessary documents. Customer shall at the same time advise the third party of RECOM's retention of title. The costs of a defence against attachments and claims shall be borne by Customer.

6.7 Customer is obliged to treat the products subject to retention of title with care for the duration of the retention of title.

6.8 Should the realizable value of the securities exceed all of RECOM's claims which are to be secured by more than 10%, Customer shall be entitled to demand a lease to such extent.

6.9 Should Customer be in default of material obligations such as payment to RECOM, RECOM may with the exclusion of all rights to withhold (unless the counterclaim is uncontested or has been finally adjudicated) demand back the products subject to retention of title and otherwise realize upon them for the purpose of satisfying its matured claims against Customer without prejudice to any other rights RECOM may have. In such case, Customer shall grant RECOM or RECOM's agents immediate access to the documents and products subject to retention of title, surrender the same and/or give information about the stay of the same. Should RECOM demand surrender under this clause, this shall not be deemed to be a rescission of the contract.

6.10 In the case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of title do not have the same security effect as in Germany, Customer shall do everything to create equivalent security rights for RECOM without undue delay. Customer shall cooperate in all measures such as registration, publication, etc. which are necessary and beneficial to the validity and enforceability of such security rights.



6.11 On RECOM 's demand, Customer is obliged to insure the products subject to the retention of title appropriately, to provide RECOM with the respective proof of such insurance and to assign the claims arising from such insurance to RECOM.

## **7. Characteristics, Warranty, Duty to Inspect the Goods**

7.1 RECOM warrants that the object of delivery has the agreed characteristics upon the passage of risk; these characteristics shall exclusively be determined by the specific agreements made by the parties in writing with regard to the characteristics and features of the object of delivery.

7.2 Statements in catalogues, price lists and other information material as well as good descriptions made available to Customer by RECOM shall not be understood as a specific guarantee for the characteristics of the object of delivery; such specific guarantees must be expressly agreed upon in writing.

7.3 RECOM reserves its right to change the object of delivery slightly with regard to its construction, material and/or its finish to the extent its agreed characteristics are not changed thereby. The foregoing shall also apply to modifications on the basis of technical advance.

7.4 Notwithstanding any warranty rights according to the subsequent provisions Customer shall be obliged to accept delivery of a good with minor defects.

7.5 Customer's warranty rights shall require that it inspects the goods upon delivery without undue delay and notifies RECOM thereof in writing and without undue delay, but no later than two weeks following delivery; hidden defects must be notified to RECOM in writing without undue delay upon their discovery.

7.6 In the event of any notification of a defect, RECOM shall have the right to inspect and test the goods to which objection was made. Customer will grant RECOM the required period of time and opportunity to exercise such right. RECOM may also demand from Customer that it returns the object of delivery to which objection was made to RECOM at RECOM 's expense.

7.7 In case the object of delivery contains a defect subject to warranty obligation the customer shall give RECOM the opportunity to remove the defect at its option by remedying the defect or delivery of a replacement -both free of charge to Customer first before it asserts any claims or rights (rescission, reduction of the purchase price, claims for compensation, reimbursement of expenditure and loss of profit). If substitute performance fails after at least two attempts, if substitute performance is impossible, if RECOM refuses substitute



performance or it is deemed unreasonable for the customer, the customer may rescind the contract or reduce the remuneration (reduction of the purchase price).Section 8ofhereofshall apply to claims for damages based on defects.

7.8 Customer shall give RECOM the necessary reasonable period of time and opportunity for remedying the defect or delivering are placement. Customer shall only have the right upon having notified RECOM without undue delay to remove the defect by itself or have the defect removed by a third party and demand compensation of its necessary expenses from RECOM in instances of emergency in which the safety of operations is endangered or in order to avert a disproportionately great damage or if RECOM is in default concerning removing the defect.

7.9 Items which have been replaced by RECOM must be returned to RECOM .

7.10 RECOM shall not assume any warranty for damages caused by inappropriate or improper use, faulty treatment or incorrect installation by Customer or unsuitable accessories or unsuitable spare parts or inappropriate repair works or by natural wear and tear, provided that RECOM does not bear the responsibility for such damages.

7.11 Should a defect not be removed or are placement not be delivered within a reasonable time period granted by Customer or should the removal of a defect by remedy or the delivery of are placement fail, should such remedy be unreasonable for Customer or has RECOM refused such remedy according to section 439 subsec. 3 of the German Civil Code, Customer may demand, at its option, the rescission of the contract, a reasonable reduction of the purchase price or it may claim damages pursuant to para. 8 or the reimbursement of its futile expenses.

7.12 The limitation period for the warranty claims shall be twelve months from the handover of the object of delivery to Customer.

## **8. Liability and Damage Compensation**

8.1 All RECOM products are designed for non-safety critical commercial and industrial applications. Customer is obliged to implement suitable, necessary and proportionate safeguards that anticipate the consequences of any failures that might cause harm, loss of life and/or damage property.

8.2 Subject to the provisions in para. 8.3 RECOM 's statutory liability for damages shall be limited as follows:

(i) RECOM shall only be liable up to the amount of the typically foreseeable damages at the time of entering into the contract for damages caused by a slightly negligent breach of a material contractual obligation up to an amount of max. 100% of the order total (connected partial orders are considered as total order) or a maximum of € 2 Mio. (if 100% of the order total exceeds € 2 Mio.).

(ii) RECOM shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.

8.3 The aforesaid limitation of liability shall not apply to any mandatory statutory liability (in particular to liability under the German Product Liability Act), liability for assuming a specific guarantee or liability for culpably caused personal injuries.

8.4 Customer shall take all reasonable measures to avert and reduce damages.

## **9. Product Liability**

Should Customer sell the object of delivery in an unchanged state or upon processing, transformation or joining it with other goods, it shall hold RECOM harmless within the internal relationship between the parties to this contract from product liability claims of third parties, provided that Customer is responsible for the defect causing such liability.

## **10. Duties under the German Electrical and Electronic Equipment Act (ElektroG)**

10.1 The customer shall have the duty to properly dispose of the delivered goods at its own expense in accordance with the statutory regulations after said goods are no longer in use. The customer shall release us from the obligations defined in Section 10 subsection 2 of the German Electrical and Electronic Equipment Act (Recovery obligation of the manufacturer) and from any third-party-claims related thereto.

10.2 The customer must contractually commit commercial third parties to whom the delivered goods are transferred, to properly dispose of said goods in accordance with the statutory provisions at their own costs when the goods are no longer in use. In the event of a repeated transfer of the goods, the customer must impose a corresponding commitment on the respective party. However, if the customer fails to correspondingly commit third parties to which it transfers the delivered goods, the customer shall be required to recover and dispose of the goods in accordance with the statutory regulations at its own cost after they are no longer in use.



10.3. The customer shall in no case transfer the delivered goods or parts of the delivered goods, which have been classified exclusively for commercial use according to the German Electrical and Electronic Equipment Act, to any private third parties.

10.4 The customer agrees to fully comply with its obligations under the German Electrical and Electronic Equipment Act.

## **11. General Provisions**

11.1 Neither party shall be entitled to assign its claims from the contractual relationship to third parties without the other party's approval. This shall not apply to payment claims.

11.2 Amendments of and supplements to this Contract and/or these Terms of Delivery and any side agreements must be in writing. The same shall apply to the amendment of this written form requirement.

11.3 If a provision of this Contract and/or these Terms of Delivery is fully or partially invalid, the validity of the remaining provisions shall remain thereby unaffected. In such case, the parties undertake to replace the invalid provision by a valid provision coming closest to the commercial purpose of the invalid provision.

11.4 Exclusive venue for all disputes arising under the contractual relationship shall be Frankfurt am Main. RECOM is entitled, however, to sue Customer at any other court having statutory jurisdiction.

11.5 The laws of the Federal Republic of Germany shall apply with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).

Neu-Isenburg, January 2015