

General Terms and Conditions (AGB) of Würth Elektronik ICS GmbH & Co. KG applicable to the Original Powerelement Online Shop area



As of November 2013

1. Area of applicability

1.1 Würth Elektronik ICS GmbH & Co. KG (hereinafter "WE ICS") provides all deliveries and services based solely on the following General Terms and Conditions. Additional and differing terms and conditions of the customer are valid only if WE ICS has expressly agreed to them in writing.

1.2 The following terms and conditions apply only to companies.

1.3 All information on this website represents an invitation to the customer to submit a binding purchase order. The purchase order is accepted by a written order confirmation. Objections to the order confirmation must be asserted immediately by the customer in writing.

1.4 The customer can place orders exclusively within the technical specifications framework specified by WE ICS. If the customer's needs are not satisfied here, the sales force and in-house staff of Würth Elektronik ICS GmbH & Co. KG will be glad to provide further assistance.

1.5 The processing of purchase orders based on customer documentation assumes release of this documentation by WE ICS.

2. Quotation and closing of contract

2.1 Figures, drawings, information on weight, dimensions, performance and use, as well as other descriptions of the goods based on the documentation associated with the quotation are only approximately binding unless expressly designated as binding. They do not represent an agreement or guarantee of a corresponding condition of the goods.

2.2 WE ICS reserves all property rights and copyright rights for all quotation documentation. Such documentation may not be made accessible to third parties.

2.3 Customer purchase orders are binding. Würth Elektronik can accept purchase orders by means of written order confirmation, delivery or performance of services, whereby in such cases the customer foregoes receipt of a declaration of acceptance.

2.4 Concluded contracts require the customer to purchase and pay for the deliveries and services ordered.

2.5 Call orders

WE ICS offers the customer the option of acquiring products using a „call order.“ A call order gives a customer the option of purchasing a product in large quantities at a single price and dividing the order into partial quantities that are delivered at different times. The following criteria apply for call orders:

- Term is maximum of 1 year
 - The call order must be divided into a minimum of 2 partial deliveries up to a maximum of 10 partial deliveries
 - Initial delivery date is possible after 15 workdays
 - Final delivery date after a maximum of 365 days
 - No restrictions on scheduling even during term of contract (customer account)
 - Total quantity and term can no longer be modified after scheduling
 - Call order cannot be combined with other products in the shopping cart
- All products requested in the call order are manufactured upon acceptance of the quotation. The order represents a binding purchase order with a purchase commitment for the entire quantity.

3. Prices, payment, set-off

3.1 Determinative in each case is the price that was stipulated. In particular, this price does not include costs for packaging, freight, insurance, customs, VAT and other taxes. VAT tax is listed separately in the invoice in the amount applicable on the day the invoice was issued.

3.2 Payment is made with credit card or by invoice. Accompanying the delivery the customer receives an invoice that is payable within 14 days after receipt without deductions. Payment is considered to be paid on the day on which WE ICS has access to the payment that is owed.

3.3 In default of payment, WE ICS is authorized to require default interest of 8 percent above the base rate. It reserves the right to assert further damages.

3.4 If the customer's financial circumstances should deteriorate significantly after concluding the contract, or if such a deterioration of financial circumstances becomes foreseeable after concluding the contract and thus jeopardizes WE ICS's claims for payment, WE ICS is authorized to refuse performance of contract until the customer performs this obligation or provides a guarantee for this performance. If the customer defaults in payments, all claims against the customer, regardless of whether they have already been invoiced or not, shall immediately become due unless the default was not caused by negligence.

3.5 Customer payments according to §§ 366 par. 2, 367 BGB are always allowable against claims already due, provided the customer does not stipulate any other provision. The customer is not authorized to set payment off against any claims that are uncontested or confirmed by declaratory judgment.

4. Deliveries

4.1 Delivery deadlines and dates are binding for WE ICS only if they were expressly designated or confirmed as binding. The company is considered to be compliant with stipulated delivery times if the goods by the expiration of the period of delivery were transferred to the person in charge of transport at the WE ICS place of business, to a WE ICS warehouse, or WE ICS has advised the customer that the goods are ready for shipment but have not left the place of business or warehouse because the customer has announced a refusal to accept the goods.

4.2 If customer cooperation is required for WE ICS to perform the stipulated deliveries or services, the customer must ensure that WE ICS is provided all necessary and appropriate information and data in a timely fashion and of the required quality.

4.3 The delivery deadline does not begin until the customer has provided complete documentation, information, authorizations and releases, has clarified all technical issues, and WE ICS has received any stipulated advance payments. Adherence to the delivery deadline or delivery date presupposes the timely and orderly fulfillment of the remaining obligations of the customer. Adherence to the stipulated delivery deadlines and dates is subject to the timely and orderly delivery of goods to WE ICS. Any subsequent desired changes or additions agreed upon with WE ICS result in a reasonable extension of the stipulated delivery dates.

4.4 WE ICS is permitted to make reasonable partial deliveries and perform partial services. Deliveries or services provided ahead of schedule are permitted unless something else has expressly been stipulated.

4.5 If the customer is in default of acceptance or violates other duties to cooperate, WE ICS can require compensation for the resulting damages including any additional expenditure and warehouse costs. Other claims remain unaffected. WE ICS is authorized after ineffectual expiration of a reasonable deadline to otherwise dispose of the goods and to supply the customer with the goods based on a reasonably extended deadline.

4.6 Products requiring an export license

The customer shall inform WE ICS unsolicited and without delay, if it should appear that a product ordered by the customer could be subject to foreign-trade restrictions. The customer must bear all costs and damages arising from the infringement of this obligation if the customer is responsible for the infringement. Supplying the customer may require authorizations by the appropriate authorities, e.g. Federal Office of Economics and Export Control (BAFA).

5. Transfer of risk / shipment

5.1 The risk of accidental perishing and accidental deterioration of the goods passes to the customer at the latest with the transfer of the goods to the carrier, freight carrier or person assigned to carrying out the shipment. This even applies if partial deliveries are made or freight or cost-free shipping has been stipulated. Selection of the carrier and transport route is made by WE ICS based on its due assessment of the circumstances, provided no written purchaser guidelines are available to WE ICS. WE ICS will insure the goods against risks designated by the customer through a transportation insurance policy at the request and expense of the customer.

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5.2 If there is a delay in transfer or shipment due to circumstances for which the customer is responsible, the risk transfers to the customer as of the day on which the goods are ready for shipment and WE ICS has notified the customer.

5.3 If WE ICS selects the type of shipment, route and / or the person in charge of the shipment, WE ICS is to be held liable for making this selection only in case of malice or gross negligence.

6. Retention of title

6.1 The delivered goods remain the property of WE ICS until the customer has paid all the amounts due in full to which WE ICS is entitled. These amounts include check and claims based on bills of exchange, as well as claims from current accounts. The customer shall handle with care the goods that are subject to retention of title. In particular, the customer shall sufficiently insure the goods at its own expense against fire and water damages and theft for their replacement value. The customer now assigns to WE ICS all damages from this insurance. WE ICS hereby accepts this assignment. Should this assignment prove to be inadmissible, the customer hereby directs its insurer irrevocably to make any payments only to WE ICS. Further claims by WE ICS remain unaffected. The customer must document purchase of an insurance policy for WE ICS at its request.

6.2 The customer is permitted to sell the goods that are subject to retention of title only during the orderly course of business. The customer is not authorized to pledge the goods that are subject to retention of title, to transfer ownership for security purposes, or to dispose of them in any way that jeopardizes the property of WE ICS. In cases of seizure or other interference by third parties, the customer must notify WE ICS immediately in writing and provide all necessary information, inform the third party about the proprietary rights of WE ICS, and cooperate in measures taken by WE ICS to protect goods that are subject to retention of title. The customer bears all costs for which it is responsible that must be incurred to avoid seizure and to replace the goods insofar as the costs cannot be collected from the third party.

6.3 The customer now assigns claims from resale of the goods along with all ancillary rights to WE ICS, independently of whether the goods that are subject to retention of title are resold without processing or after processing. WE ICS accepts already this assignment. Should an assignment not be permissible, the customer hereby directs the third party debtor irrevocably to make any payments only to WE ICS. The customer has revocable authorization to collect the claims assigned to WE ICS in trust for WE ICS. The monies collected must be paid immediately to WE ICS. WE ICS can cancel the direct debit authorization of the customer as well as the authorization of the customer to resale, if the customer does not perform its payment obligations to WE ICS in an orderly fashion, defaults in payment, suspends payments or if a request is made to open insolvency proceedings on the customer's property. A resale of the claims requires previous approval by WE ICS. Notification of the assignment to a third party debtor terminates the customer's direct debit authorization. In case the direct debit authorization is canceled, WE ICS can require that the customer discloses the assigned claims and their debtor, provides all information about the debit authorization, surrenders the associated documentation, and informs the debtors about the assignment.

6.4 In case the customer defaults in payment, WE ICS is authorized notwithstanding its other rights to withdraw from the contract. The customer must immediately provide WE ICS or a third party authorized by WE ICS access to the goods that are subject to retention of title, surrender them and provide information about their location. After an appropriate timely warning, WE ICS can make other use of the goods that are subject to retention of title in order to satisfy its claims against the customer that are due.

6.5 The processing or alteration of the goods that are subject to retention of title by the customer is always done on behalf of WE ICS. The customer's expectant right to the goods that are subject to retention of title continues with the processed or altered item. If the goods are processed or connected to or combined with other items that are not the property of WE ICS, WE ICS acquires co-ownership of the new items based on the value of the delivered goods in relation to the other processed items at the time of processing. The customer holds the new items in safe custody for WE ICS. Moreover, the same provisions that apply to items manufactured through processing or alteration also apply to the goods that are subject to the retention of title.

6.6 At the request of the customer, WE ICS shall release the securities to which it is entitled if the realizable value of the securities, allowing for downward valuation adjustments that are common in banks, exceeds the claims of WE ICS from the business connection with the customer by more than 20%. The valuation is based on the invoice value of the goods that are subject to retention of title and on the face amount of claims.

6.7 In the case of deliveries to other jurisdictions in which the retention of title regulation according to the foregoing 6.1 to 6.6 does not have the same collateralization effect as in the Federal Republic of Germany, the customer grants hereby to WE ICS a corresponding collateralization right. If other explanations or actions are required, the customer will submit these explanations and take action. The customer will cooperate in all measures that are necessary and beneficial for the effectiveness and enforceability of such collateralization rights.

7. Claims based on material defects and liability

7.1 WE ICS manufactures its products according to the best technology that was available at the conclusion of the contract. Intended uses that go beyond the customary use of the products or require properties that are different from the usual ones, in particular applications that are relevant for safety, e.g. use in the aerospace industry or nuclear facilities, and must previously be stipulated in writing.

7.2 The customer's rights arising from product defects assume that the customer has met the legal obligation to examine the product and give notice of defects (§§ 377, 381 German Commercial Code), in particular to examine the delivered goods upon receipt and immediately notify WE ICS in writing about conspicuous defects that were identifiable upon examination. The notification is considered to be conveyed immediately if it is sent within two weeks for conspicuous defects, for defects that were identifiable upon examination, and for latent defects upon their discovery, whereby to observe the deadline it is sufficient to send the notification or complaint. If the customer neglects to examine the product properly and / or to make notification of the defect, the liability of WE ICS for the defect is excluded. The customer must describe the defects in writing and in detail in its notification to WE ICS.

7.3 Unless another agreement is reached, the customer shall ship the goods to WE ICS at its own expense for examination and testing for defects. WE ICS bears the necessary costs incurred for testing and supplementary performance, in particular transport, route, work and material costs in keeping with § 439 par. 2 BGB only if the test results show that a defect in fact exists and inasmuch these expenses do not increase because the customer took them to a location other than the delivery address. Labor and material costs that the customer asserts in this connection are calculated based on cost price.

7.4 In case of product defects, WE ICS is authorized at its own option to supplementary performance by removal of the defect or delivery of a product free of defects.

7.5 If WE ICS is not willing or able to provide supplementary performance after a reasonable period of time, the customer can at its own option withdraw from the contract or reduce the delivery price. The same applies if the supplementary performance is unsuccessful, it is unreasonable for the customer, or for reasons for which WE ICS is responsible is delayed beyond reasonable periods of time.

7.6 The right of rescission of the customer is excluded if the customer is incapable of returning the received performance and this is not based on the fact that the return is impossible due to the nature of the received performance, is the responsibility of WE ICS or the defect doesn't reveal itself until the product is processed or altered. The right of rescission is also excluded if WE ICS is not responsible for the defect and if WE ICS has to reimburse the customer for the value of the product.

7.7 No claims can be made for defects resulting from natural wear and tear, improper handling or improperly made changes or repairs of the goods by the customer or third parties. The same applies to defects attributed to the customer or which are due to a technical cause other than the original defect. In particular, the customer must follow the operating, warehousing and / or maintenance recommendations of WE ICS or the manufacturer.

7.8 Claims of the customer to reimbursement of expenses instead of damages or of performance are excluded if another reasonable third party would not have made them.

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7.9 WE ICS is not liable for damages for which WE ICS is not responsible, in particular not for damages arising out of improper application or handling of the product. The customer shall follow the operating, warehousing and maintenance recommendations of WE ICS or of the manufacturer, make only authorized modifications, professionally exchange replacement parts and use expendable materials that meet the required specifications. Both prior to as well as regularly following the provision of deliveries and performance by WE ICS, the customer must backup data in its IT systems in sufficiently regular intervals. WE ICS is not liable for damages that arise out of the violation of the above obligations of the customer or that can be attributed to them.

7.10 WE ICS is fully liable for damages arising out of the violation of a warranty or from the loss of life, personal injury or injury to health. The same applies for malice and gross negligence, for mandatory statutory liability for product defects (in particular according to the product liability law) and for liability due to fraudulent non-disclosure of defects. WE ICS is liable for ordinary negligence only if essential obligations are being violated that result from the nature of the contract and are especially significant for achieving the purpose of the contract. If such obligations, default and impossibility of performance are violated, the liability of WE ICS is limited to damages that would typically be expected to occur under the contract.

7.11 The period of limitation for claims of the customer based on defects is one year, provided the defective goods have not been used in keeping with their usual manner of use for an edifice and caused its defectiveness. It also applies to claims from a tortious act based on a defect of the goods. The period of limitation begins when the goods are delivered. The unlimited liability of WE ICS for damages from the violation of a warranty or from the loss of life, personal injury or injury to health, for malice and gross negligence and product defects remains unaffected. A comment offered by WE ICS about a claim that is based on a defect asserted by the customer should not be viewed as WE ICS entering into negotiations about the claim or about the circumstances leading to the claim, provided the claim based on defects is rejected by WE ICS in its entirety.

8. Intellectual property and rights of use to software and other protected products, information and cooperation obligations

8.1 All rights to software and other protected products delivered to or created for the customer, in particular copyright, industrial property rights such as patents, trademarks and design patents, ancillary copyrights and related protected privileges, remain with WE ICS or the respective holders of rights insofar as nothing else is provided by contract or statute. This also applies if software or other protected products were created in accordance with the guidelines or cooperation of the customer.

8.2 If WE ICS uses the customer's software, WE ICS will only do so for purposes provided for in the contract. If WE ICS requires the source code of this software for modifications or removal of defects that are provided for in the contract, the customer will make them available to WE ICS at no charge.

9. Product liability

9.1 The customer will not modify the goods, in particular will not modify or remove existing warnings about risks arising out of the improper use of the goods. By violating this obligation, the customer releases WE ICS internally from product liability claims of third parties if the customer is responsible for the defect that gave rise to the liability.

9.2 If a product defect causes WE ICS to recall the product or issue a product alert, the customer will support WE ICS and undertake all reasonable measures as directed by WE ICS. The customer shall bear the costs of product recall or product alert if it is responsible for the product defect and the resulting damages. Further claims remain unaffected.

9.3 The customer will inform WE ICS immediately in writing about risks that become known in using the goods and about possible product defects.

10. Force majeure

10.1 If WE ICS is prevented from fulfilling its contractual obligations by force majeure, in particular from delivering the goods, WE ICS will be released from the obligation to perform the contract and a reasonable initial period for the duration of the impediment to performance without being obligated to the customer for damages. The same applies if WE ICS is unreasonably impeded or temporarily unable in fulfilling its obligations by unforeseeable circumstances that are not the responsibility of WE ICS, in particular by industrial disputes, governmental measures taken, energy scarcity, impediments to delivery by a supplier or significant operational malfunctions.

10.2 WE ICS is authorized to withdraw from the contract if such an impediment continues for more than three months and performance of the contract due to the impediment is no longer of interest for WE ICS. At the customer's request and after expiration of this period, WE ICS will state if it will make use of its right of withdrawal or deliver the goods within a reasonable period of time.

11. Data protection, confidentiality

11.1 WE ICS makes the customer aware that the data collected under the contract and in compliance with the regulations of the Federal Data Protection Act (BDSG) are collected, processed and used by WE ICS in performance of the obligations from the contracts concluded with the customer. These data can also be transmitted to associated companies of WE ICS or representatives authorized for performance for the purpose of contract performance and credit checks.

11.2 The contractual partners shall handle all business and technical details that they receive from the other contractual partner or that become known to them during performance of contract as trade secrets as long as the other contractual partner has not made them publicly accessible.

12. Concluding provisions

12.1 The assignment of rights and obligations of the customer to third parties is possible only with the written approval of WE ICS.

12.2 The law of the Federal Republic of Germany applies for the legal relations of the customer to WE ICS under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

12.3 Exclusive place of jurisdiction for all legal disputes arising from the business relationship between WE ICS and the customer is the headquarters of WE ICS. WE ICS is also authorized to sue at the headquarters of the customer as well as at other permissible places of jurisdiction.

12.4 Place of performance for all performances of the customer and WE ICS is the headquarters of WE ICS.

12.5 Should any of the provisions of this contract be found to be or become invalid or unenforceable in whole or in part or should a loophole be in this contract, this will not affect the validity of the remaining provisions.

Environmental statement

Man and the environment have priority for WE ICS. We are therefore committed to a resource conserving production of our goods and systematically gather information about energy-saving potential in the manufacturing procedures and transportation. We deal intensively with ecological alternatives in selecting our sources of energy and raw materials and with consistent approaches to avoid waste and to product recycling.