

# General Terms & Conditions

(English – August 22nd 2022)

## Article 1. Applicability

- 1.1** All offers, order confirmations, and deliveries of products offered for sale by TBS Electronics BV (hereinafter: “TBS”) are subject to these general terms and conditions of sale. The applicability of any other terms and conditions (such as the customer’s general terms of purchase) is expressly excluded. Deviating stipulations and any general purchase conditions of the customer apply only to the extent that such deviating stipulation or purchase conditions have been expressly accepted by TBS in writing, and only for the agreement with regard to which they have been accepted. Any other general terms and conditions are explicitly excluded by TBS.
- 1.2** Accepting an offer and/or placing an order implies that the customer accepts the applicability of these general terms and conditions of sale.
- 1.3** Orders and changes thereto shall be binding for TBS only if they have been accepted and confirmed by TBS in writing. TBS reserves the right to refuse to carry out an order, without stating the reasons. TBS cannot be held liable for any direct or indirect damage arising from such refusal.

## Article 2. Offers/Agreements

- 2.1** All offers of TBS and the prices and conditions stated in those offers are always non-binding offers. TBS expressly reserves the right to revoke the offer or to change the prices at any given time, particularly when required to do so pursuant to statutory provisions or pursuant to price increased by its suppliers.
- 2.2** Illustrations, drawings, specifications of dimensions, and weight which forms the basis of the offer or order confirmation, shall as a rule only be seen as approximate values, insofar as they are not exclusively designated to be binding.
- 2.3** All offers of TBS are subject to subsequent correction in case of any errors, including typographical and clerical errors and errors in engineering.
- 2.4** An agreement between the customer and TBS is concluded subject to the acceptance of the customer’s order by TBS. TBS is entitled to refuse orders and/or to attach certain conditions to the delivery. If an order is not accepted, TBS shall use reasonable efforts to notify the customer within five (5) working days of receiving the order and TBS shall immediately refund any amounts paid. TBS reserves the right to also refuse orders after five (5) working days of receiving the order.

## Article 3. Prices and payment

- 3.1** The prices quoted by TBS are exclusive of VAT. The prices are on an EXW Zwaag basis and exclusive of handling and dispatch costs and exclusive of possible taxes or other levies imposed by the Dutch government and/or the customer’s government, such as taxes or import duties, unless stated otherwise in writing.
- 3.2** Payment will be made in full before delivery of products unless explicitly agreed differently in writing by TBS for a specific order.
- 3.3** If no payment has been made by the customer by the payment date mentioned on the invoice, the customer will be automatically in default and TBS will have the right to charge a late payment fine of 5% of the outstanding amount, plus statutory interest for every day that such late payment continues. All legal fees for collecting the outstanding amount shall be for the account of the customer.
- 3.4** If the customer is in default of any payment, TBS shall also be entitled to suspend its performance of that agreement and related agreements. The customer shall not be entitled to set off any amounts owed by TBS.
- 3.5** If the cost price or the prices at which TBS purchases parts, products, and/or services offered by third parties are subject to change between the day on which the agreement with the customer was entered into and the day of delivery, TBS shall be entitled (at its option) to increase the price accordingly or to cancel the order. TBS cannot be held liable for damage arising directly or indirectly from such amendment and/or cancellation. In the event of such a price increase, the customer is entitled to cancel the order free of charge within three (3) days after TBS has announced the price increase.
- 3.6** Disputes between the customer and TBS regarding quality, delivery, or any other complaint submitted by the customer shall not entitle the customer to suspend payment.

## Article 4. Delivery

- 4.1** Delivery will be EXW Zwaag (Incoterm 2020) unless agreed differently for a specific order. Any delivery time frames communicated by TBS are for indicative purposes only. If TBS exceeds the delivery term, this does not give the customer any right to claim any compensation, nor does it give the customer the right to cancel the customer’s order or to terminate the agreement, unless the delivery term has been demonstrably exceeded to such extent that the customer cannot reasonably be expected to honor the agreement. In that event, the customer is entitled to cancel the order and/or terminate the agreement by means of a written notice. Such cancellation or termination is subject to the customer returning any products already delivered to the customer to TBS at the customer’s cost.
- 4.2** The cancellation of orders is subject to the written confirmation of TBS. In the event of cancellation, TBS shall be entitled to claim compensation of costs it had to make related to the order, such as but not limited to dispatch costs if the order was already dispatched but not collected or purchase of raw material or components that cannot be used for other customers. Any such costs shall be charged to the customer or set off from any amount already paid by the customer.
- 4.3** The ordered products are delivered to the address as indicated by the customer when ordering. If the customer wants to change the delivery address before the moment of dispatch, the customer must notify TBS of such a new address in writing. A change of address may be subject to administration costs and/or a higher handling fee and dispatch costs.

## Article 5. Retention of ownership

- 5.1** Ownership of the products that have been delivered to the customer shall not pass to the customer until the customer has paid the entire purchase price to TBS as stipulated in the agreement. Any risk in respect of the products shall pass to the customer at the time of delivery in accordance with the applicable Incoterm.

## Article 6. Warranty and liability

- 6.1** Upon delivery the customer is obliged to immediately verify whether the products have been damaged during transport. In the event that any such damage has arisen, the customer must notify TBS thereof as soon as possible, in any event no later than six (6) days after delivery, by means of an accurate, written statement, stating the damage and where possible a photograph. Failure to inspect the products and inform TBS within the stated time or the use of the products at any time shall be conclusive evidence that TBS has satisfactorily tendered delivery.
- 6.2** In the event that the customer demonstrates that any of the delivered products do not conform to the agreement, TBS (at its option, upon having received those products returned by the customer) has the option to either repair or replace such products by new products, or to refund the invoice value, exclusive of any dispatch costs.
- 6.3** TBS warrants that the products will be free from manufacturing defects. TBS grants a two (2) year limited warranty for damages caused by manufacturing defects starting at the time of delivery or unless explicitly agreed differently. This warranty excludes any defect to the products resulting from (a) normal wear and tear, (b) exposure to too high voltages, (c) reverse connection of battery polarity, (d) mechanical stressed enclosure or internals due to harsh handling and/or incorrect packaging, (e) overheating of TBS product(s), (f) applying external signals to outputs of TBS product(s), (g) contact with any liquids or oxidation caused by condensation, (h) installation or maintenance of the TBS product(s) by persons unskilled to work with electro-technical devices or components, (i) any other wrongful use contrary to the TBS’s operation or maintenance manual or the safety instruction, (j) any use contrary to the specification of the product(s), (k) disassembly, modification or repairs not done by TBS, (l) any

acts of force majeure or otherwise caused from the outside. TBS's sole and exclusive obligation under this warranty is the modification, repair, or replacement of the (defective part of) the products, at the sole discretion of TBS, and is limited to the territory of the Netherlands. Any costs incurred outside the modification, repair, or replacement will be charged separately to the Customer (if applicable: travel costs, man hours, transport, installation, removal, etc). The warranty period for parts of the products that have been modified, repaired, or replaced under the warranty, shall be limited to twelve (12) months from the date thereof unless the remaining part of the period mentioned in sub (a) is longer. The length of the warranty for such parts of the products shall, however, under no circumstances extend beyond two years after the completion of the first warranty work.

**6.4** Except as specified in clause 6.3 TBS makes no warranty, whether express or implied, including without limitation any implied warranty of merchantability and fitness for a particular purpose or any warranty arising from any course of dealing, course of performance, or usage of trade and specifically disclaims any representation or warranty that the product will meet customer's requirements, perform any specific function or achieve the desired result other than expressly stated by TBS in writing.

**6.5** Any liability to the customer, in any case, ceases to apply in the event that the customer fails to notify TBS of the existence of the defect within ten (10) days of having discovered the defect, in writing, in order to enable TBS to investigate the damage. Some TBS products electronically store usage history data, in order to enable TBS to analyze such data retroactively when investigating the damage.

**6.6** Any liability of TBS for damage suffered by the customer is, in any case, limited to the invoice amount of the relevant products, unless such damage has been caused by gross negligence or willful misconduct of TBS. TBS can never be held liable for (a) damage caused by any of the circumstances mentioned in clause 6.3, leading to damage to the TBS products or to any other device connected to, or located near those products, or (b) any indirect and/or consequential damages of whatever nature, including but not limited to claims of third parties and loss of production, revenue, profits, goodwill, and/or business opportunity.

#### **Article 7. Returned goods**

**7.1** Goods of current manufacture can only be returned with prior approval from TBS. Returns not arranged at time of purchase, will be subject to handling charge and restocking fee of 25% of the invoice value. Acceptance of returns, not arranged at time of order, is at TBS's discretion.

**7.2** Returns must be received within 30 days of delivery and include a reference to the original invoice. All goods returned must be received in unused saleable original condition and packaging. Any costs incurred by TBS to put the returned goods in a saleable condition will be charged to the customer.

#### **Article 8. Liability**

**8.1** Irrespective of any other conditions in this agreement, TBS's liability under this agreement on whatever grounds is limited to the sales price paid for the goods concerned, and TBS is not liable for any indirect or consequential damages, including but not limited to loss of profit, revenue, business, production, opportunity, penalties, or resulting from third party claims.

#### **Article 9. Disposal**

**9.1** The customer is aware of the (local) rules and regulations relating to the proper disposal of the products and materials supplied by TBS and confirms to take full responsibility for compliance with such rules and regulations.

#### **Article 10. Export control**

**10.1** The customer shall not export, directly or indirectly, any technical information acquired from TBS under the agreement or any TBS products using such technical information to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate governmental entity in accordance with applicable law.

**10.2** TBS's products are inherently destined for civilian (i.e. non-military) purposes. The customer shall not apply the products in any military device unless specifically agreed with TBS in writing.

**10.3** TBS shall be entitled to cancel an order at any time if it has reason to believe (in its sole opinion) that any applicable export control or trade laws might be violated if it was to fulfill such order, without being liable to pay any compensation for damages or otherwise to the customer.

#### **Article 11. Force majeure**

**11.1** In the event of force majeure, without prejudice to any of its other rights, TBS, at its discretion, has the right to suspend execution of the customer's order and/or to terminate the agreement out of court by notifying the customer of such suspension and/or termination in writing, without TBS being obliged to pay the customer any compensation.

**11.2** Force majeure is understood to mean, but not limited to, any failure in the performance which cannot be attributed to TBS, or to intermediaries and third parties engaged by TBS. Force majeure on the part of TBS is, in any event, understood to mean, but is not limited to, strikes among the workforce of TBS and strikes among third parties involved by TBS, as well as natural disasters and other unexpected events beyond TBS's control.

#### **Article 12. General provisions**

**12.1** The customer shall observe confidentiality in respect of all information, specifications, business information, and know-how concerning and provided by TBS. Upon request of TBS the customer shall return the same to TBS, carriage paid, in sound condition within fourteen (14) days.

**12.2** Irrespective of the existence of legal protection rights, all ideas, inventions, designs, and samples, works protected by copyright, patents, design rights, trademarks, copyrights, and trade secrets, and all know-how or other intellectual property related to goods manufactured by TBS or generated within the execution of an order, and all techniques applied by TBS to manufacture and design the products, preliminary to or upon processing of an order, shall always remain or become as the case may be the sole intellectual property of TBS.

**12.3** If one or more of the provisions of these terms and conditions or any other agreement with TBS should conflict with any applicable statutory provisions, the relevant provision shall become void and be replaced by a legally permissible and comparable provision to be formulated by TBS. The remaining provisions of these general terms and conditions shall continue to apply in full.

#### **Article 13. Applicable Law and Disputes**

**13.1** All rights, obligations, offers, orders, and agreements to which these general terms and conditions apply are governed solely by Dutch law with the exclusion of the rules of international conflict of laws. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is also excluded.

**13.2** All disputes between the parties arising as a result of the agreement to which these terms and conditions apply, or any other agreement derived from that shall be exclusively submitted to the competent court in the district of Alkmaar, the Netherlands unless TBS chooses to submit the dispute to any other competent court.