

General Terms and Conditions valid from 01.11.2021

General

1. These General Terms and Conditions apply to all transactions between Tridonic Malaysia Sdn Bhd (hereinafter "Seller") and its business partners and customers (hereinafter "Buyer"), for deliveries of goods and (as applicable, analogously) for the provision of services (hereinafter "services"). All offers made by the Seller are based upon these General Terms and Conditions.
2. Should any of the provisions in these General Terms and Conditions directly contradict those contained in the Seller's offer or order confirmation, the provisions of the Seller's offer and order confirmation shall apply. In this event only those provisions of these General Terms and Conditions, or parts thereof, that are not in direct conflict with the provisions of the Seller's offer or order confirmation shall remain valid and be deemed incorporated by reference in the order confirmation, and shall apply *mutatis mutandis* to any agreement concluded between the Buyer and the Seller under an order confirmation.
3. The Buyer expressly acknowledges that the Seller already objects to all provisions deviating from those conditions contained in points 1 and 2 resulting from an order or other commercial documents of the Buyer. Unless explicitly agreed to by the Seller in writing, the Seller does not acknowledge differing General Terms and Conditions of the Buyer even where the Seller does not explicitly contradict those individual provisions.
4. These General Terms and Conditions shall apply – unless a newer version of the General Terms and Conditions are applied – as the framework agreement for all transactions between the Seller and the Buyer. Should any of these individual General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions.
5. The Seller provides products and services to commercial customers and public authorities only, not however to consumers.

Offer

6. Offers by the Seller are non-binding, save for the confidentiality obligations of the Buyer under point 62.
7. Offer, implementation and project documentation may not be reproduced or made accessible to third parties without the Seller's consent. These may be reclaimed and are to be returned to the Seller should the order be placed elsewhere.

Conclusion of agreement

8. An agreement is considered concluded as soon as the Seller has sent a written order confirmation.
9. Information contained in catalogues, brochures and the like, as well as other written or verbal statements are only relevant if explicitly referred to in the order confirmation.
10. Subsequent amendments and additions to the agreement or additional agreements are valid only when confirmed by the Seller in writing. The Seller may at any time correct clerical mistakes and/or calculation errors in offers, order confirmations or invoices.

Prices

11. Unless otherwise noted, prices apply DAP (Delivered At Place; ICC Incoterms 2020) Seller's premises or dispatch warehouse including packaging and loading, however, excluding sales and services tax ("SST"), and are binding only up to the delivery date specified in the order confirmation. The Buyer is responsible for all fees, taxes or other charges arising from deliveries.
12. In the case of service and/or repair engagements (e.g. planning, commissioning and/or reviewing installations, training), services deemed appropriate by the Seller shall be performed and invoiced to the Buyer on the basis of expenses incurred plus any additional travel and transportation costs. This also applies to services and additional services the necessity of which becomes apparent only during performance of the engagement; these additional services do not require special notification to the Buyer. Unless otherwise agreed in writing, the Buyer shall be invoiced for the preparation of service and/or repair offers and/or assessments.

Transfer of risk

13. Use and risk are transferred to the Buyer upon the goods leaving the works or warehouse of the Seller independent of the written pricing terms agreed to for the delivery. This also applies when the delivery forms part of an assembly or if the transportation is performed or organised and implemented by the Seller.
14. The place of performance for services is the location where the service is performed. The risks of a service or agreed to partial service are transferred to the Buyer upon performance.

Delivery / services

15. The Seller's delivery obligations are controlled solely by the Seller's written order confirmation.
16. Without a written agreement to the contrary, a specified delivery date (e.g. as contained in the order confirmation) serves only as an indication for the Buyer and is not binding.
17. The Buyer shall obtain all necessary official third-party permits. Should these permits not be obtained on time, the delivery period is extended accordingly. The delivery period is also extended in the event of delayed scheduled payments.
18. The Seller is entitled to provide and invoice for partial and/or advanced deliveries. Should delivery on demand be agreed, the goods are considered delivered at most 1 year after placement of the order.
19. Insofar as no specific written arrangements have been made, the Seller shall choose the method and nature of shipment. In particular, there is no obligation on the Seller to select the most cost effective mode of shipment.
20. Deliveries are made only in full packaging units. If smaller units are ordered, the Seller reserves the right to charge a minimum quantity/volume surcharge. The packaging, including for partial and/or advanced deliveries, will conform to standard commercial practice.
21. The nature and extent of the services to be provided by the Seller is described in the respective order confirmation. The Buyer shall facilitate the performance of the services and in all cases shall make available a competent person and all required equipment (e.g. ladders, scaffolds, work cage). The Buyer shall provide replacement parts (e.g. light sources, control units, lighting, lamps etc.) at its own expense; alternatively these may be provided and charged for by the Seller.
22. Services are performed on workdays between 08.00 and 17.00. Should the Buyer request and receive services from the Seller outside of these timeframes the following surcharges apply:
 - 50% surcharge for services performed on Saturdays; and
 - 100% surcharge for services performed on Sundays and public holidays.
23. The Buyer is obliged to immediately inform the Seller of all material circumstances regarding the Buyer's plant (if applicable) and/or performance of services in question and, at the request of the Seller, the Buyer shall withdraw from operation either the whole or part of the plant for the duration of the service provision (if applicable). The Buyer is obliged to immediately inform the Seller in writing of any safety precautions or compliance with any safety standards required in performing the service. Relevant training required by the Seller's personnel is undertaken at the Buyer's expense. The Seller is entitled to separately charge the Buyer for any resulting additional efforts.
24. Where unforeseeable circumstances arise or where the circumstances are independent of the intent of the parties or where the circumstances are beyond the reasonable control of the Seller, for example all cases of force majeure, that impede, hinder or disrupt compliance by the Seller with a delivery date agreed in writing, such delays shall extend the delivery date under exclusion of all legal claims the Buyer could otherwise assert for the duration of these circumstance; included herein are, for example, official interventions and prohibitions, transport and customs delays, transport damage, energy and raw materials shortages, strikes, labour disputes, default on the part of subcontractors or difficulty to replace subcontractors, fire, flood, earthquake, riot, civil commotion, lockout, cyber-attack, sabotage, accident, war, act of God, terrorism, epidemic, pandemic, infectious diseases, global health or other life-threatening emergencies or any law, ordinance, rule or regulation (including government directives, advisories, orders, quarantines, and/or curfews). These aforementioned circumstances also entitle an extension of the delivery period if they affect the Seller's suppliers or sub-suppliers.

Payment

25. Unless other written payment conditions have been agreed, each delivery and/or service is payable by the Buyer upon receipt of the Seller's invoice. In the event of partial invoices the partial payment is also due upon receipt of invoice.
26. Payments are to be made without deductions in the agreed currency. Any acceptance of cheques or bank transfers is possible only on account of payment. All resulting interest and charges are borne by the Buyer.
27. The Buyer is not entitled to withhold or offset payments as a result of warranty claims or any other claims.
28. If the Buyer is in arrears regarding an agreed payment or for other services, the Seller may, without prejudicing its other rights:
 - a) Delay fulfilment of its own obligations until payment has been effected; and/or
 - b) Demand payment of all outstanding receivables and demand interest arrears in the amount of 12% per annum plus SST from the due date. In the event of default all granted discounts and bonuses are forfeited. The Seller is entitled to claim pre-trial costs, in particular reminder fees and legal expenses, from the Buyer.
29. The Seller retains ownership in all goods delivered by it until full payment of invoice amounts plus interest and expenses. In order to secure the purchase price claim, the Buyer herewith assigns all its claims from the resale of such reserved goods even where these have been processed, transformed or combined, to the Seller as collateral security and agrees to make the corresponding entries in its accounts or invoices. The Seller accepts this assignment. Upon request, the Buyer shall inform the Seller of the assigned claims and the debtors, and make available all required information and material for collection of the debt. The Buyer shall notify third-party debtors of the assignment in writing upon such claims arising. In the event of seizure or other claims the Buyer is obliged to point out the Seller's property rights and to inform the Seller immediately.
30. In the event of a lack of credit worthiness or risk of credit unworthiness on the part of the Buyer, the Seller is entitled to withhold delivery and/or performance and to demand securities.
31. A processing fee will be charged for orders which fall below the Seller's stated minimum net order value (excluding taxes, fees and charges). Upon request, the Buyer shall be informed as to the amount of the applicable surcharge, minimum net order value and the processing fee.
32. In the event of late payment, the Buyer is liable for any currency losses incurred between the original due date and the actual date of payment.
33. The Seller is obliged to release securities to the extent that their realisable value exceeds the claims due to the Seller by more than 10%, whereby the Seller reserves the right to determine which goods or claims are released.
34. If retention of title pursuant to the law in the location of the goods is not valid, a security corresponding to retention of title is deemed agreed. If the cooperation of the Buyer is required, upon the request of the Seller it is obliged to undertake all reasonable measures at its own expense to establish and preserve such rights.

Warranty

35. In accordance with points 35 to 42, the Seller will rectify any defect impairing functionality that exists at the time of delivery based on faults in construction, materials or workmanship of the services, to the extent necessary to meet the specifications in the order confirmation or the Buyer's instructions at point 39. The Seller disclaims all implied warranties including merchantability, satisfactory quality, title, non-infringement and fitness for a particular purpose.
36. The warranty period for latent defects undetectable at the time of delivery is 24 months from the time of delivery, including any partial delivery, and is neither extended nor interrupted by remedial activities. Latent defects are to be reported to the Seller without delay in writing otherwise warranty or other claims for such defects are forfeited. Patent defects detectable upon delivery must be reported to the Seller in writing within 8 days of delivery otherwise warranty or other claims for such defects are forfeited. Any defects shall not entitle the Buyer to withhold invoice amounts or parts thereof. Any warranty or other claims for any defect is subject to the Buyer providing proof to the Seller's reasonable satisfaction that the defect existed in the goods at the time of delivery.
37. In the event of a defect subject to a warranty obligation in accordance with points 35 to 42, the Seller may, at its discretion, repair the defective good or part at the place of performance or have it sent for repair or to replace (exchange) it or to award the Buyer a price reduction. Invoices for repairs by third parties shall not be recognised.

38. All ancillary expenses incurred in connection with rectifying defects (such as assembly and disassembly, transport, disposal, travel and travel time expenses) are borne by the Buyer. For warranty work carried out at the Buyer's premises, the necessary assistance, hoisting gear, scaffolding and sundry materials etc. are to be supplied free of charge by the Buyer.
39. If the Seller produces goods on the basis of design specifications, drawings or other instructions provided by the Buyer, the Seller's liability is limited to the implementation of these instructions. All claims of the Buyer are to be judicially asserted within 24 months from time of delivery of the goods, otherwise the claim will be forfeited.
40. The Seller shall accept returns only after giving its prior written consent.
41. The provisions in points 35 to 42 also apply analogously for each defect arising from other legal grounds, including but not limited to, claims for damages.
42. The assignment of warranty claims and/or damages claims and similar matters is not permitted.

Damages and liability limitations

43. The Seller is liable to the Buyer for damages incurred as a result of the performance of the services – insofar as is legally permissible – only to an amount of no more than one half of the value of the order and only in the event of wilful default or gross negligence on the part of the Seller. The Buyer must prove wilful default or gross negligence on the part of the Seller.
44. Compensation for purely financial losses, lost profit, interest losses, losses from claims by third parties – whether direct or indirect damages - consequential damages or (criminal) damages is – insofar as is legally permissible – precluded.
45. Claims for damages expire – insofar as is legally permissible – within 6 months of knowledge (actual, constructive or imputed) of the damage and of the damaging party. The Buyer shall notify the Seller of any damage in writing within a reasonable period of time, however, not exceeding 7 calendar days from obtaining such knowledge. In addition, the Buyer must provide detailed proof that the damage has occurred as well as the extent of the damage.
46. Should the Buyer be held liable for any product liability arising from the goods delivered by the Seller, it waives any recourse against the Seller. In this event, the Buyer is obliged to indemnify the Seller from third party claims regarding such product liability.

Withdrawal from agreement

47. The Seller may forthwith withdraw from and terminate any agreement between the Buyer and the Seller concluded hereunder if, (i) performance and/or delivery of services is delayed by the Buyer, (ii) the Seller has concerns regarding the Buyer's solvency – insofar as is legally permissible or (iii) the Buyer is in breach of such agreement. Either party may withdraw from and terminate such agreement for any other reason by giving at least 60 days end of calendar month written notice to the other party.
48. In the event of such termination under point 47:
 - a) the Buyer shall immediately pay to the Seller all outstanding invoices and other amounts due to the Seller as at the date of termination; and
 - b) the Seller shall be discharged from all remaining obligations under such agreement; and
 - c) any provisions of such agreement which are expressed or intended by their nature to survive termination shall remain in full force and effect.

Industrial property rights and copyrights

49. The Buyer shall indemnify the Seller for all infringements of intellectual property rights where goods have been manufactured by the Seller on the basis of design specifications, drawings, models or other specifications provided by the Buyer. Where goods have been manufactured by the Seller based on intellectual property rights of the Seller or any third party, such intellectual property rights shall remain vested in the Seller or such third party (as the case may be) and the Buyer shall not do anything to impair or infringe such rights.
50. Production documents, such as plans, drawings and other technical documents as well as samples, catalogues, brochures, illustrations and the like remain the property of the Seller and are subject to the relevant statutory provisions governing reproduction, imitation, competition etc.

Compliance with export control regulations

51. In the event of transfer of goods supplied by the Seller (e.g. hard and/or software and/or technology including related documentation, independent of the manner of provision) or of services provided by the Seller (including all technical support) to third parties at home and abroad, the Buyer shall comply with all applicable national and international (re)export control regulations. In all cases it must observe the (re)export control regulations of the relevant jurisdiction.
52. To the extent required for export control checks, the Buyer shall supply the Seller immediately upon request with all information pertaining to the final recipient, destination and intended use of the goods or services provided by the Seller as well as any export control restrictions. The Buyer shall fully indemnify the Seller against all claims by public authorities or other third parties for non-observance of the above export control regulations and is obliged to indemnify the Seller for all expenses and damages incurred in this regard, unless the Buyer is not responsible for the breach of duty. This does not constitute a reversal of the burden of proof.
53. Performance of the agreement on the part of the Seller is subject to the proviso that no obstacles based on national or international foreign trade regulations, as well as embargos and/or other sanctions prevent performance.

Applicable law and legal venue

54. These General Terms and Conditions are subject to Malaysia law under exclusion of conflict of law principles of international private law and exclusion of the UN Convention on the International Sale of Goods.
55. All disputes and claims arising from these General Terms and Conditions – including disputes regarding its validity, infringement, termination or nullity – shall be referred to and resolved by arbitration before the Asian International Arbitration Centre (“AIAC”) in accordance with the arbitration rules then in force, which rules shall be deemed to form a part of these General Terms and Conditions. The arbitration shall be conducted in English. The arbitration tribunal shall consist of 1 arbitrator to be jointly appointed by the parties, or failing such agreement within 14 days, to be appointed by the AIAC. The decision of the arbitrator shall be final and conclusive on the parties. The costs and expenses of the arbitration shall be borne by the parties in accordance with the orders of the arbitrator. Unless otherwise mutually agreed by the parties in writing at the time of a dispute, the parties shall continue to perform their respective obligations under these General Terms and Conditions during the duration pending the resolution of any dispute. Nothing in these General Terms and Conditions shall limit any party's right to bring actions for temporary injunctive relief to a competent court under applicable laws, if necessary, to preserve the relevant party's rights pending final resolution of the dispute.

Additional conditions for agreements concluded on the internet

56. The Buyer obtains access to the Seller's eCommerce Portal (portal.tridonic.com) when it enters a legitimate username and password (hereinafter “login data”) supplied by the Seller. The Buyer is obliged to change the password immediately upon receipt, as well as periodically thereafter and to protect it from unauthorised access. The Seller shall assign, within reasonable limits, each person authorised by the Buyer with individual login data. Login data assigned to the Buyer by the Seller may not be disclosed under any circumstances and the Buyer is obliged to immediately notify the Seller of any significant changes regarding access permission for authorised persons. The Buyer is responsible for the consequences of non-observance of this provision by it or by its organs, employees, assistants and agents.
57. Whoever legitimises himself with the login data of the Buyer is considered by the Seller to be authorised to carry out all possible eCommerce Portal transactions on behalf of the Buyer irrespective of whether this person is actually the Buyer or its representative. The Buyer accepts that all transactions made in the Seller's eCommerce Portal using its login data are binding.
58. Processing of all agreements concluded in the eCommerce Portal as well as all related information is carried out in part by automated email. The Buyer is responsible for ensuring its registered email address is valid and the receipt of emails is assured.
59. The Seller assumes no responsibility for error free operation of its eCommerce Portal and explicitly excludes liability for damages resulting from its use and from the related use of the internet. Responsibility and liability for access failures such as limited or no availability of the eCommerce Portal, faulty transmission of information and instructions on the use of the eCommerce Portal is also precluded. By its use of the eCommerce Portal the Buyer confirms that it is sufficiently informed as to the risks associated with the internet.

60. The Buyer acknowledges that use of the eCommerce Portal abroad may infringe upon foreign laws, for example, by use of the eCommerce Portal encryption process. The Seller assumes no responsibility or liability in this regard.
61. Representations of the Seller's goods in the eCommerce Portal are non-binding and do not represent a binding offer for the conclusion of an agreement. Orders placed in the eCommerce Portal are a binding offer of the Buyer to the Seller. The Seller's automatically generated order confirmation is intended for information purposes only and does not result in the conclusion of an agreement. Receipt of the Buyer's purchase offer is confirmed separately in writing by the Seller (e.g. by email) upon execution of the order (order confirmation) or by dispatch of the goods (dispatch confirmation).

Confidentiality

62. The Buyer shall treat as strictly confidential and shall not, without the Seller's prior written consent, disclose to any third party any confidential information of the Seller (including but not limited to prices of goods) received or obtained by it as a result of or in connection with the performance of the services, except any such confidential information which comes into the public domain otherwise than by breach of this point 62 or is required to be disclosed pursuant to applicable law or a court order.

General provisions

63. Any other person who is not a party to these General Terms and Conditions shall have no right to enforce any provision in these General Terms and Conditions.
64. The Seller shall be entitled to assign or transfer any of its rights, benefits and obligations under these General Terms and Conditions without the prior consent of the Buyer. The Buyer shall not be entitled to assign or transfer any of its rights, benefits and obligations under these General Terms and Conditions without the prior written consent of the Seller. These General Terms and Conditions shall be binding on and inure for the benefit of the respective successors in title and permitted assigns of the parties.
65. The failure of the Seller to exercise or delay in exercising a right or remedy provided by these General Terms and Conditions or by law does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of other rights or remedies of the Seller. The Seller's rights and remedies contained in these General Terms and Conditions are cumulative and not exclusive of rights or remedies provided by law.
66. The Buyer agrees to perform all such acts and things and/or to execute and deliver all such documents, as may be required by law or as may be necessary for giving full effect to these General Terms and Conditions and securing to the Seller the full benefit of the rights, powers and remedies conferred upon the Seller by these General Terms and Conditions.
67. Any agreement between the Buyer and the Seller concluded hereunder may only be varied if it is mutually agreed by the parties in writing and signed by or on behalf of each party. Such agreement or any variation thereof may be executed in any number of counterparts and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart by e-mail attachment shall be an effective mode of delivery. Any such signatures executed by way of PDF or other electronic transmission shall be recognized and construed as electronic signatures pursuant to the Electronic Commerce Act 2006 and the parties accordingly shall deem such signatures to be original signatures for all purposes.

Tridonic Malaysia Sdn Bhd, VO3-10-01 Designer Office, Lingkar SV, Sunway Velocity, Cheras
55100 Kuala Lumpur, Malaysia
T: +60 3 2733 6484, Email: asean@tridonic.com, Website: www.tridonic.com