

# General Terms and Conditions

---

This translation is provided for information purposes only. Only the German version is legally binding.

## General Terms and Conditions of Materion GmbH

Version 08/08

### 1. Scope

Sections 2 to 14 of these Terms and Conditions apply to all deliveries and services of Materion GmbH.

### 2. Terms of payment, set-off, right of retention

2.1. For deliveries and services of Materion GmbH abroad, payment shall be made by irrevocable and confirmed letter of credit of a major bank of the Federal Republic of Germany, payable in favour of Materion GmbH against presentation of the documents at this bank, or by advance payment.

2.2. Bills of exchange, cheques and other means of payment are only accepted on account of performance. For these means of payment, the day on which Materion GmbH can dispose of the amount is deemed to be the date of receipt of payment.

2.3. In any case, discount and collection charges and other costs of payment shall be borne by the customer.

2.4. Set-off can only be asserted with regard to claims that are undisputed or have been established by a final court decision.

2.5. Rights of retention can only be asserted insofar as they are based on the same contractual relationship.

2.6. For exchange repair parts (RAT), 10% of the value of the goods is subject to VAT as the value of the old part in addition to the exchange amount, in accordance with the German VAT Act.

### 3. Shipping, packaging, transfer of risk

3.1. Unless otherwise agreed, the costs of shipping and transport shall be borne by the customer. The same applies to the packaging, which is carried out according to the experience of Materion GmbH.

3.2. Even in the case of carriage-paid delivery, the risk passes to the customer at the latest when the delivery items are dispatched, even if partial deliveries are made or Materion GmbH has assumed other services, e.g. transport and installation. If shipping becomes impossible through no fault of Materion GmbH, the risk passes to the customer upon notification of readiness for dispatch. If Materion GmbH carries out the assembly and commissioning of the delivery items within the scope of the delivery contract, the risk passes to the customer upon commissioning; if, for reasons for which Materion GmbH is not responsible, commissioning does not take place within twelve (12) days after written notification of the completion of assembly, the risk passes to the customer upon expiry of this period. If assembly is delayed for reasons for which the customer is responsible, the risk passes to the customer for the duration of the delay.

## **4. Delivery and delivery time**

4.1. Weights and dimensions stated in brochures and offers are only approximate. Reasonable deviations of the design from such information as well as reasonable design changes remain reserved.

4.2. Any reference to technical standards merely constitutes a description of performance. A characteristic is only warranted if it has been confirmed in writing by Materion GmbH.

4.3. The period for deliveries and services does not begin before the customer has provided the documents, permits or approvals that the customer has to obtain. Compliance with the period for deliveries and services requires that the customer fulfils its contractual obligations.

4.4. The delivery time has been met if the delivery item has left the factory by the end of the delivery period.

4.5. The period for deliveries and services shall be extended appropriately in the event of industrial action, in particular strikes and lockouts, and in the event of unforeseeable obstacles beyond the control of Materion GmbH, unless the delivery or service becomes impossible as a result. In such a case of impossibility of delivery, Materion GmbH is released from its obligation to perform the contract. In the event of an extension of the delivery time as well as a release of Materion GmbH from its obligation to perform the contract, any claims for damages of the customer derived therefrom are excluded.

## **5. Withdrawal**

5.1. The customer may withdraw from the contract if the entire performance finally becomes impossible for Materion GmbH before the transfer of risk. The same applies in the event of inability of Materion GmbH. The customer may also withdraw from the contract if, in the case of an order for items of the same kind, the execution of part of the delivery becomes impossible in terms of quantity and the customer has a legitimate interest in rejecting a partial delivery; if this is not the case, the customer may reduce the consideration accordingly.

5.2. If there is a delay in performance and the customer grants Materion GmbH, which is in default, a reasonable grace period in writing with the express declaration that it will refuse acceptance of the performance after expiry of this period, and if the grace period is not observed, the customer is entitled to withdraw from the contract.

5.3. With regard to further claims, section 9 of these Terms and Conditions applies.

## **6. Retention of title**

6.1. The delivered and/or installed items (reserved goods) remain the property of Materion GmbH until all claims, including future claims, arising from the business relationship with the customer have been settled in full, irrespective of the legal grounds, even if payments are made on specifically designated claims. In the case of a current account, the reserved title serves as security for the balance claim of Materion GmbH. Any processing or treatment of the reserved goods is carried out on behalf of Materion GmbH, which is to be regarded as the manufacturer within the meaning of Section 950 of the German Civil Code (BGB) and thus retains ownership of the products at every point in time and at every stage of processing. Such processing or treatment is carried out free of charge and without obligation for Materion GmbH. If the customer processes, combines or mixes the reserved goods with other movable items not belonging to Materion GmbH, Materion GmbH is entitled to co-ownership of the new item in the ratio of the invoice value of the reserved goods to the other items used by the customer at the time of processing, combining or mixing. Otherwise, the same applies to the new item resulting from processing, combining or mixing as to the reserved goods. It is deemed to be reserved goods within the meaning of these conditions.

6.2. The customer's claims arising from a resale of the reserved goods are hereby assigned to Materion GmbH as security for all claims, including future claims, of Materion GmbH arising from the business relationship, irrespective of whether the reserved goods are resold without or after processing and whether they are resold to one or several buyers. The customer remains authorised to collect these assigned claims even after the assignment, unless it suspends its payments or Materion GmbH revokes this authorisation to collect. The right of Materion GmbH to collect the assigned claims itself remains unaffected. Upon request, the customer shall immediately notify Materion GmbH in writing to whom it has sold delivery items and which claims arise from the sale, and shall hand over the documents required for collection.

6.3. The customer is only entitled and authorised to resell the reserved goods on the basis of a purchase contract, a contract for work, a contract for work and materials or any other contract if it reserves the ownership rights of Materion GmbH vis-à-vis the third-party purchaser until the delivery items have been paid for in full. The customer is not entitled to make any other dispositions of the reserved goods, in particular pledges or transfers by way of security. At the request of Materion GmbH, the customer is obliged to notify its buyer of the assignment for payment to Materion GmbH.

6.4. If the value of the securities existing for Materion GmbH exceeds its claims by more than 20% in total, Materion GmbH is obliged, at the request of the customer or of a third party affected by the over-collateralisation of Materion GmbH, to release securities of its choice to that extent.

6.5. The customer must notify Materion GmbH immediately of any seizures, confiscations or other dispositions by third parties.

## **7. Notice of defects and acceptance**

7.1. The customer must unpack deliveries immediately upon arrival in order to identify missing quantities and transport damage. In the event of transport damage, a damage report must be drawn up immediately to secure any claims for damages against the carrier (postal service, railway, forwarding agents, etc.). A defect in the goods can only be asserted within one week of receipt of the goods, unless the defect in question is not obvious. Defective execution of work must be reported immediately after it has been discovered, so that Materion GmbH does not lose its right to rectification.

7.2. Insofar as the customer is prevented from carrying out acceptance by strikes or lockouts, the period for acceptance and the period for notification of defects according to the preceding paragraph are extended to a reasonable extent.

## **8. Warranty**

8.1. Materion GmbH provides a warranty for defects and for the absence of warranted characteristics of delivered new items, exchange repair parts (RAT) or services rendered in accordance with the following provisions.

8.2. The warranty period is 12 months from the day of completion of the services, for delivery items from the day of delivery ex works. In deviation from this, the warranty period for motors of all kinds, pumps, compressors, electrochemical sensors and for parts made of rubber, plastic, glass and ceramics is 6 months from the day of delivery ex works. For delivery items, the warranty relates exclusively to freedom from defects when leaving Materion GmbH; for services, it relates to freedom from defects at the time of their completion or acceptance.

8.3. The warranty consists of free rectification or, at the option of Materion GmbH, a replacement delivery. If the rectification or the replacement deliveries fail, the customer may demand a reduction of the remuneration or, at its option, rescission of the contract. With regard to further claims, section 9 of these Terms and Conditions applies.

8.4. If the customer has asserted the warranty claim within 6 months from the day of completion of the services, for delivery items from the day of delivery ex works, Materion GmbH is obliged to bear the expenses necessary for the purpose of rectification, in particular transport, travel and labour costs. This does not apply insofar as these expenses increase because the delivery item was taken to a place other than the customer's residence or commercial establishment after delivery, unless such relocation corresponds to the intended use of the item.

8.5. The customer is obliged to enable Materion GmbH to carry out the rectification work for the purpose of fulfilling the warranty and, upon request, to send the delivery item to Materion GmbH or to a workshop to be determined by Materion GmbH on a case-by-case basis. Should the customer fail to comply with this obligation, Materion GmbH is released from any warranty.

8.6. The warranty cannot be based on defects caused by interventions of the customer or of third parties; it lapses if the delivery item has not been stored in accordance with the conditions enclosed in each case. Furthermore, the warranty does not cover natural wear and tear.

8.7. If Materion GmbH provides warranty services, the running of the warranty period is suspended for the period during which the customer is unable to use the delivery item as a result of these activities of Materion GmbH.

8.8. For used delivery items, with the exception of exchange repair parts (RAT), all warranty claims, including any claims for rectification and replacement delivery, are excluded.

## **9. Other liability**

Contractual and non-contractual claims against Materion GmbH and its vicarious agents for compensation for damage of any kind, including damage that has not occurred to the delivery item itself, are excluded. This exclusion of liability does not apply in the event of intent or gross negligence on the part of Materion GmbH and its vicarious agents, nor in cases in which there is liability under the German Product Liability Act for personal injury or damage to privately used items caused by defects of the delivery item. Nor does it apply in the absence of expressly warranted characteristics if the warranty was intended precisely to protect the customer against damage that has not occurred to the delivery item itself.

## **10. Copyright**

Materion GmbH reserves without restriction all property rights and exploitation rights under copyright law to drawings, technical documents, computer programs and other know-how; they may not be made accessible to third parties.

## **11. Data protection**

In accordance with Section 26 of the German Federal Data Protection Act (BDSG), Materion GmbH points out that customer data obtained in connection with the business relationship are processed and stored for the own purposes of Materion GmbH.

## **12. Safety regulations**

Attention is drawn to compliance with the relevant safety regulations, such as the German Medical Devices Act or the accident prevention regulations. Insofar as safety regulations exist in the customer's country for deliveries to countries outside Europe, in particular regarding the

approval, maintenance and handling of the delivery items, the customer alone is obliged to comply with them. The customer is obliged to indemnify Materion GmbH against all claims arising from such regulations.

### **13. Place of jurisdiction and applicable law**

13.1. The place of jurisdiction is Schwerin if the customer is a merchant, a legal entity under public law or a special fund under public law. In these cases, however, Materion GmbH is entitled at its discretion to also bring an action before the court competent for the customer's place of residence.

13.2. The law of the Federal Republic of Germany applies. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

### **14. Final provisions**

Deviations from the above Terms and Conditions require in each case the written and legally valid signed confirmation of Materion GmbH in order to be effective. Conditions of the customer deviating from the above provisions are only binding if Materion GmbH has expressly accepted them in writing.

Version 08/08