



# General Terms and Conditions of Business

Jianghai Europe Electronic Components GmbH –  
hereinafter called JIANGHAI, Uerdinger Str. 125, 47799 Krefeld, Germany

## 1. Scope:

JIANGHAI only accepts and executes all the orders – for supplies and for other services – to be fulfilled by it on its own current delivery and payment conditions. Therefore, these conditions also apply to all future business relationships, even if they have not been explicitly agreed again. Buyer's general terms and conditions of business do not put JIANGHAI under any obligation, even if JIANGHAI has not explicitly objected to them at the time of entering into the contract or subsequently. JIANGHAI must, as a matter of principle, confirm any oral side agreements in writing for them to be effective.

## 2. Quotations and conclusion of contracts:

**2.1.** JIANGHAI shall make quotations without obligation. Quotations shall lose their validity after 30 days unless they have already been withdrawn or JIANGHAI has renewed them in writing. Over or under deliveries of up to 10% are permitted.

As a matter of principle, invoicing shall be in accordance with the price lists and discounts in force at the time of delivery, exclusive of whatever turnover tax applies by law at that time and/or of any other taxes or charges becoming due at the time Buyer pays.

JIANGHAI shall have the right to charge any currency fluctuations between the Euro and the USD at the time of delivery leading to any increase in the list price on to Buyer. The same shall apply in the event of any increase in the costs of production and/or of freight.

**2.2.** All the statements, descriptions or illustrations in brochures, advertisements, catalogues, price lists or in any other documentation issued by us (including information conveyed electronically) shall only constitute a non-binding statement of material, condition, properties or suitability, which under no circumstances shall become an assured property or warranty element on our part, or an integral part of the contract. JIANGHAI reserves the right to make changes at any time in this respect. The onus shall be on Buyer to check, on its own responsibility, each and every statement with respect to its purposes.

If JIANGHAI and/or one of its employees hands over products or product components to Buyer prior to and/or at the time of entering into the contract, then this shall be done purely for the purposes of advertising and/or demonstrating the functional possibilities of the product/component concerned, and such not be understood as a provision of samples. The preceding sentence shall only be inapplicable in cases in which a contract to purchase in accordance with samples has been expressly agreed and entered into.

**2.3.** A buyer's order to JIANGHAI shall be deemed an offer. Orders and any changes and additions to them, shall only become legally binding on JIANGHAI if it has confirmed them in writing. Specifications of products and/or of services shall only be binding if such specifications are expressly agreed in writing.

**2.4.** To the extent not agreed to the contrary by individual contract, JIANGHAI shall enter into blanket orders covering maximum terms of 18 months.

## 3. Delivery:

**3.1.** JIANGHAI shall only confirm delivery times without commitment. They shall run from the day of confirmation by JIANGHAI, but presuppose concurrence with all the details that are relevant for fulfilling the order.

**3.2.** Delivery shall be made subject to correct, complete and timely supply of the goods to JIANGHAI.

Delivery periods shall be extended accordingly in the case of unforeseeable events - in particular cases of *force majeure*, of prohibitions/restrictions on import/exports and/or other government measures, transportation delays by upstream suppliers, disruption to factory operations, strikes and lock-outs - by a matching period of time plus an appropriate interval for orderly resumption of the business cycle concerned, provided the supply or service concerned does not become impossible.

**3.3.** Delivery periods shall be deemed complied with if the goods have left JIANGHAI's warehouse before the expiry of the periods or if JIANGHAI has notified Buyer or its representative

that the goods concerned are ready for shipment.

**3.4.** Part deliveries shall be permissible. In this respect, a separate contract covering part delivery shall be deemed having come into force without the contract covering the total delivery having thereby been cancelled.

**3.5.** If Buyer unjustifiably refuses to accept goods that have been produced to its specifications, then JIANGHAI shall have the right to withdraw from the contract without giving any notice at all, to turn the goods into cash at its discretion, and to assert whatever loss has arisen for it as a result of the non-acceptance. The same shall apply in the event of Buyer cancelling the contract after the start of production of the goods it has ordered or postponing the time of their delivery.

## 4. Dispatch:

**4.1.** Dispatch shall be effected "ex works" (EXW, Incoterms 2000), to the extent that nothing to the contrary has been agreed.

**4.2.** All deliveries shall be made at Buyer's risk. Any insurance cover required by Buyer shall be taken out at its expense.

## 5. Warranty:

**5.1.** Goods sold by JIANGHAI shall carry its warranty for twelve months from the passage of risk.

**5.2.** Buyer must check the goods delivered immediately after receiving them. As far as defects that are identifiable in the course of careful checking are concerned, JIANGHAI shall only come under an obligation if a notification of defects has been made in writing within three days of them being received. In the case of hidden defects, the period for notification shall begin when they are actually discovered and shall end when the warranty period granted in clause 5.1 above expires.

**5.3.** The warranty shall be ruled out if JIANGHAI establishes that the defect complained of is attributable wholly or partially to improper application, use or installation, to conditions that were not foreseen and/or to some intervention in the course of use that was in line with the intended purpose, especially unauthorised intervention or changes instigated by Buyer, or to production targets set by Buyer.

**5.4.** Any assurance of properties by JIANGHAI must be in writing.

Without explicit, additional written confirmation by JIANGHAI, the illustrations and details given in JIANGHAI's cost estimates, quotations, price lists and brochures, especially details of weights and dimensions and other technical information and the DIN, VDI and other standards or specimens referred to, shall not constitute any assurance of properties – they shall only serve to identify the goods.

**5.5.** Claims for compensation in damages for indirect consequential damage or loss on account of positive breach of contract shall be ruled out as a matter of principle.

**5.6.** The above provisions shall apply correspondingly for complaints covering weights, numbers of units or packaging.

## 6. General limitation of liability:

**6.1.** Liability claims against JIANGHAI for all damage and loss that is based neither on any intentional or grossly negligent breach of duty by JIANGHAI, nor on any intentional or grossly negligent breach of duty by a legal representative or vicarious agent of JIANGHAI shall be ruled out. An exception to this provision shall be formed by third party liability claims on account of injury to life, limb and health.

**6.2.** This shall also apply for claims for compensation in damages in lieu of performance (non-fulfilment), albeit only to the extent that reimbursement of indirect damage or loss or consequential damages is demanded, unless the liability is based on an assurance that was intended to secure Buyer against the risk of such damage.

Any liability shall be limited to the damage or loss that was foreseeable at the time the contract was entered into. In any case any possible JIANGHAI liability under the product liability act shall remain unaffected, as shall any other claims arising from manufacturers' liability.



**6.3.** JIANGHAI shall give advice and makes recommendations without commitment, but shall do so to the best of its knowledge and in line with the state of the art. Unless it has confirmed such advice/recommendations in writing, however, JIANGHAI shall assume no responsibility in this respect and in particular assume no obligation to reimburse damage and loss. The same shall apply to any other statement by JIANGHAI's employees or representatives that goes beyond the content of this written contract.

#### **7. Payments:**

**7.1.** JIANGHAI invoices shall be paid purely net within thirty days of their date. Any arrangement deviating from this provision shall require a written agreement.

**7.2.** The interest to be paid in the cases of the obligation to pay being deferred, of payment by instalments being conceded, or of Buyer falling into arrears shall be 8% above the basic rate of interest (§ 288 sub-section 2 of the German Civil Code).

**7.3.** If Buyer falls into arrears in respect of an obligation to pay or of any payment instalment, then all claims against it shall become due for payment immediately.

**7.4.** Buyer may only offset against claims it may have against JIANGHAI with undisputed or legally effective counterclaims.

#### **8. Retention of title:**

**8.1.** JIANGHAI shall reserve ownership of the goods it has delivered (conditional commodities) until it has been paid in full for all the claims to which it is entitled - irrespective of their legal basis - arising from this contract and from its business relationship with Buyer and that arise or had already arisen at the time of entering into the contract.

**8.2.** Processing or re-fashioning of the conditional commodities shall always be undertaken for JIANGHAI as their manufacturer, but without any obligation arising for it. If the (co-) ownership of JIANGHAI expires as a result of the combining, blending or processing involved, then it shall count as having been agreed here and now that Buyer's (co-) ownership in the integrated new item passes over to JIANGHAI in proportion to its share of the (invoice) value involved. Buyer shall preserve JIANGHAI's (co-) ownership at no cost to JIANGHAI. The newly manufactured item shall also count as conditional commodities within the meaning of this clause.

**8.3.** Buyer shall have the right to handle the conditional commodities in the course of a proper business dealings and to blend or combine them and indeed to dispose of them in the case of an extended period of retention of title, providing it is not in arrears. No pledging of the retained goods or transfer of ownership of them in the form of security may be undertaken. Buyer here and now assigns to JIANGHAI its claims arising from the onward disposal of such goods or from any other legal situation that arises in respect of them on account of security and fully. JIANGHAI irrevocably empowers Buyer to collect any claim assigned to JIANGHAI in Buyer's own name, but for JIANGHAI's account. This authorisation to collect may only be revoked if Buyer fails to comply with its payment obligations properly.

**8.4.** In the event of third party seizures of conditional commodities, and especially in the case of attachments, Buyer shall draw attention to JIANGHAI's ownership and inform JIANGHAI immediately, so that the latter may assert its rights of ownership. In so far as the third party is not in a position to reimburse JIANGHAI for the court costs or out-of-court costs arising in this connection, Buyer shall itself be liable for such costs.

**8.5.** If Buyer's behaviour is not in accordance with the contract, and particularly if it is in arrears of payment, JIANGHAI shall have the right to take the conditional commodities back or, if necessary, to demand assignment of Buyer's claims against third parties for restitution. Taking back conditional commodities or seizing them shall not represent withdrawal from the contract on the part of JIANGHAI.

**8.6.** In the event of Buyer becoming insolvent, JIANGHAI shall have the right to demand the return of goods delivered and subject to retention of title if the insolvency trustee has not made use of his voting right and/or has declined to perform the contract.

#### **9. Industrial property rights:**

**9.1.** Industrial property rights of all kinds, irrespective of whether or not they are registered or capable of being registered, and especially utility patents, design patents, patent rights, trade mark rights and rights to electronic information shall remain with JIANGHAI. Unless something to the contrary has been agreed in writing, Buyer shall acquire no right of use and in particular no right to develop or manufacture the goods.

**9.2.** In so far as the goods were manufactured specially for Buyer, the latter shall be obliged to indemnify JIANGHAI against any third party claim that threatens JIANGHAI or has already been made arising from JIANGHAI's adherence to Buyer's specifications, irrespective of whether the claim is made on account of infringement of an industrial property right of a third party or for some other reason.

#### **10. Place of performance, jurisdiction:**

The place of performance for JIANGHAI deliveries shall be the place from which it makes delivery, with Krefeld being the place of performance for all of Buyer's obligations.

Krefeld shall be the place of jurisdiction for all legal disputes, including summary proceedings and proceedings involving bills of exchange and cheques.

The law of the Federal Republic of Germany shall apply for all legal relationships, ruling out the United Nations Convention on Contracts for the Sale of International Goods.

#### **11. Final Provisions:**

**11.1.** JIANGHAI may exercise all rights to which it is entitled under the contract or these conditions independently of each other. In no case does the exercise or non-exercise of one right preclude JIANGHAI from exercising other rights or for other occasions.

**11.2.** Only with JIANGHAI's consent may Buyer assign and/or pass on rights arising from the contractual relationship to third parties.

**11.3.** Should any provision of these terms and conditions of business be or become ineffective or be or become so in the context of other agreements, then the effectiveness of all the other provisions or agreements shall not be affected. The contracting parties commit themselves in such a case jointly to find a provision that comes close to the invalid provision in terms of its business significance and purpose.

Krefeld, October 2010