

# General Terms and Conditions



Selectron Systems AG, CH-3250 Lyss  
(here in after: Selectron)

## 1. Validity

1.1. The following terms apply to business transacted between Selectron and its customership. Modifications or sub-clauses shall only be considered relevant if they have been confirmed in writing by us. This constitutes an objection to customers' standard terms and conditions and conditions of purchase, which shall not form part of the contract.

## 2. Scope of the delivery

2.1. Unless some other place of performance for a contract is specified by the parties thereto, or is determined by the nature of the business itself, delivery shall be deemed to have been effected with the readiness of the products at the domicile of Selectron. The provisions agreed in the confirmation of order shall be taken as definitive for determining the scope and execution of a delivery. We shall be entitled to make part-deliveries. The relevant invoice shall be taken as definitive in the case of a delivery being effected without a confirmation of order.

2.2. The right is reserved to make changes relative to the confirmation of order provided that the equipment supplied fulfils at least the same functions. We are, however, not obliged to make such changes also to equipment that has already been delivered or to part-deliveries.

2.3. Software shall be supplied in the currently valid version.

## 3. Software and know-how

3.1. The customer agrees to use the programs supplied only for his own applications in either a Selectron Controller (controller programs) or in his PC. All programs and documentation produced by us, including the associated know-how, all drawings, plans, circuit diagrams, project studies, cost proposals, etc. remain our copyright even if the customer subsequently alters the record of a program or item of know-how. The customer is permitted to make a maximum of three copies of any software for backup and archiving purposes. A larger number of copies or utilization for other purposes requires our written agreement.

3.2. The licence right that we grant to the customer is not transferable and is not exclusive. The licence-holder shall take all reasonable measures to prevent illegal copying of our programs. The customer shall affix the same protection remark to all modifications and copies as that which appears on the original.

## 4. Conditions applicable to the use of certain products, standards and prescriptions

4.1. Selectron has laid down special conditions that are applicable to the use of certain products. These conditions are supplied together with the General Terms of Business and have the status of an integral part of those terms. In the event of their contradicting the General Terms of Business, the special conditions shall take precedence. The observance of the standards and prescriptions valid at the place of operation are in the responsibility of the customer.

## 5. Brochures, catalogues, price lists, documentation

5.1. Brochures, catalogues and price lists are not binding unless agreed otherwise.

5.2. The technical data and remarks in our catalogues and manuals have also to be considered by the customer. Variations in the documentation, such as in the descriptions and illustrations given, are subject to technical innovation and shall therefore be permissible.

## 6. Discretion

6.1. Neither party shall reveal to a third party any information pertaining to the business affairs of the other party that is either not generally accessible or generally known and shall take all reasonable measures to prevent a third party from gaining access to such information. On the other hand, either party may utilize in its accustomed activities any knowledge gained in the course of the respective business affairs. The parties shall ensure that their employees also respect these obligations.

## 7. Customer's obligation to inform

7.1. The customer shall inform us, at the latest upon placement of an order, of any particular technical pre-requisites as well as of any legal, regulatory or other prescriptions applicable at the intended place of utilization insofar as they are pertinent to the execution and use of the products concerned.

## 8. Responsibility for use

8.1. The customer shall have sole responsibility for the installation and use of our products and services and for their combination with other products. In exercising this responsibility he shall employ the necessary care and take account of safety/security aspects.

8.2. The customer shall make available to the user, in suitable form, all the information required for safety/security purposes, for example with warnings on the product itself, on the packaging or in any instructions for use. The customer shall obtain the requisite information himself. We shall be pleased to assist the customer in so doing.

## 9. Delivery dates

9.1. Delivery dates shall be binding on Selectron only if it has expressly confirmed them in writing. Confirmed delivery dates can be prolonged:

9.1.1. if the information that we need to execute the order is not available in time or if the customer subsequently alters any information that has already been supplied;

9.1.2. if the customer falls behind in work that he must carry out or is in arrears with the fulfilment of contractual obligations, especially those concerning conditions of payment;

9.1.3. if hindrances occur that are outside our control such as an act of God, military mobilization, war, riot, epidemic, accident, significant operational disruption, industrial conflict, delayed or faulty goods received as well as governmental measures.

9.2. Binding deadlines shall be regarded as having been met even if Selectron completes performance within a period of grace of 30 days. Should we fail to complete the order within this prolongation, the customer may, upon giving notice of intent within a period of three days thereof, renounce the outstanding delivery or withdraw from the contract.

9.3. Delivery of call-off orders must be accepted within the agreed period (12 months maximum) otherwise we reserve the right to ship and invoice the outstanding material/service.

## 10. Acceptance

10.1. Unless some other acceptance procedure has been agreed and confirmed, the customer shall check a delivery himself and report any defect in writing. Should the customer not complain within eight days of receipt of the goods, all functions shall be understood to have been satisfactorily fulfilled and the delivery as being therefore accepted.

10.2. The customer shall immediately give notice in writing of any defect that could not have been detected even through careful testing and which subsequently manifests itself within the warranty period. In any other case, the delivery shall be considered as accepted even in spite of said defect.

10.3. Should a delivery prove not to conform to the contract, the customer shall grant us the opportunity to eliminate any shortcoming.

## 11. Returns

11.1. Products sold by us cannot be taken back. Should we declare ourselves prepared to take a product back in a justifiable and exceptional case, said product must be in new condition, not more than 12 months old, still be in our standard product range and be sent post-paid to our factory in Lyss.

11.2. A credit shall only be granted after the product has been tested and found to be in order. We shall deduct at least 20% of the original invoiced amount for said product to cover testing and administrative costs.

## 12. Warranty

12.1. We warrant that we shall take the necessary care in the provision of our services and that our products and services fulfil the properties stated in writing. We accept the responsibility under the terms of our warranty to eliminate any fault that is demonstrably due to our lack of care, and to replace any part that is provably damaged or unusable as a result of a material, constructional or manufacturing defect/error.

12.2. In the case of software, the warranty relates to demonstrable defects documented by the customer, i.e. departures from the description of the programs in the relevant documentation, if these cause a substantial adverse effect on use in accordance with the contractual terms, and we shall endeavour to correct these by supplying an amended version or a workaround solution or by giving instructions on preventing the effects of the defect. We provide no warranty for features, functions, possible applications or other properties of the software that are not described in the documentation.

12.3. Excluded from this warranty are defects and problems for which we cannot be held responsible due to, for example, natural wear and tear, force majeure, improper installation or handling, intervention by the customer or a third party, excessive loading, unsuitable operating conditions or extreme environmental effects. We accept the warranty responsibilities for goods delivered by us and expressly stated to be of external origin only to the extent to which we are covered by the original manufacturer of said goods.

12.4. Service under warranty shall be carried out according to our choice either on our own premises or on those of the customer who shall, in such a case, grant us free access to the item concerned. Dismantling, assembly, transport, packaging, travelling and accommodation costs shall be charged to the customer. Replaced parts remain our property. Should it not be possible to correct the fault, the customer shall have the right to a price reduction and reimbursement of the proven, direct damage limited, however, to a maximum of 20% of the value of the defective product.

12.5. The warranty expires:

- for products, which brand label is Selectron, 24 month from the delivery date or 30 months from manufacturing date;

- for third party products, which brand label is not Selectron, in conformity with the relevant suppliers' warranty period, but no later than 12 month from the date of our advice of readiness to deliver;

- for software and engineering services, 2 months from the date of invoice;

- for spare parts and additional supplies, 6 months from the delivery date.

12.6. Work and deliveries carried out under warranty do not prolong the warranty period.

## 13. Liability

13.1. Selectron shall be liable for any proven direct loss suffered by the customer, on whatsoever legal basis (e.g. contract, tort, products liability), where admissible by law up to a maximum sum equivalent to 20% of the price paid for the products or programs giving rise to the loss or otherwise associated with the loss-entailing occurrence. Compensation shall be ruled out, where admissible by law, for loss consequent upon a defect and other indirect losses, such as loss of profits, third-party claims against the customer or loss of data.

13.2. Payment of compensation for losses caused wilfully and knowingly by Selectron's executive officers or through their gross negligence shall be reserved.

## 14. Offers, prices and payment conditions

14.1. Our offers remain valid for a period of three months unless otherwise agreed. Changes to price lists, effective immediately, can be made without giving prior notice. We reserve the right to make price adjustments with respect to an offer in the event that the scope or execution of a delivery has to be modified because the documentation supplied by the customer does not accord with the facts or is incomplete. Unless otherwise stated, the prices quoted are in Swiss Francs without value-added tax, duties, express supplements, levies, customs charges, transport, packaging, insurance, installation, commissioning, training and application-support.

14.2. Bills are liable for payment in full within 30 days of the date of invoice. In the case of customer-specific projects which amount to more than CHF 30,000, the cost is to be paid in the following instalments:

- one third as a deposit upon placement of the order

- one third upon delivery

- one third within 30 days of delivery.

14.3. Should the customer move the delivery date after the contract has been signed, we shall have the right to invoice the second payment on the date originally foreseen.

14.4. The customer may only make counterclaims to settle the account with our written consent or upon presentation of a legally valid court decision even if these are attributable to the same contract or its contestation.

14.5. Should the customer fail to respect the terms of payment, he becomes liable for default interest of 1% per month from the expiry of the payment term without any reminder having been sent. Goods that have been delivered remain our property until payment in full has been made for all demands arising from the business transaction. We reserve the right to register our title to the property with the appropriate body. The customer shall be responsible for taking all the necessary measures to protect our property.

14.6. In the case of deliveries abroad, we reserve the right to request prepayment or a letter of credit.

## 15. Export

15.1. The customer shall be responsible for respecting the relevant national and foreign export regulations. The re-export of certain products of foreign origin is only permissible with the permission of the Import/Export Department of the Swiss Federal Economics Ministry (EVD). The products concerned are specifically indicated in our offers and invoices with which the responsibility for respecting the conditions imposed passes to the customer.

## 16. Applicable law and legal venue

16.1. These General Terms of Business and the entire legal relationship between the customer and Selectron shall be subject to Swiss material law, namely the Swiss Code of Obligations, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and the Hague Convention on the law applicable to international sales of goods.

16.2. The courts at Selectron's registered office at the time, currently Lyss (canton of Berne), shall have exclusive jurisdiction for all disputes arising from or in connection with the purchase and use of the products, services and programs.

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