

# General Terms and Conditions of Sales

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## I. Acceptance and Agreement

1. Controlling Terms and Conditions. Upon acceptance of a purchase order from a purchaser ("Buyer") for products of Convergent Technologies GmbH & Co. KG ("CONVERGENT"), issuance of a confirmation of purchase order (in whatever form e.g., Pro forma Invoice, offer for sale, order confirmation etc.) by CONVERGENT or issuance of an invoice by CONVERGENT, these General Terms and Conditions (these "Terms") shall be the only valid and binding terms and conditions applicable to the sale of CONVERGENT products. In the event any of the terms and conditions included in Buyer's purchase order, are different than those contained herein, the terms and conditions contained herein will prevail and be controlling. Acceptance of products by Buyer from CONVERGENT shall constitute complete and unequivocal acceptance by Buyer of these Terms. Should Buyer elect to use its own or any other form of acceptance, confirmation or acknowledgement, any terms proposed in Buyer's acceptance which add to, vary from, or conflict with these Terms are void and of no force or effect.

2. Modification. These Terms shall constitute the complete and exclusive statement of the terms and conditions of sale between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties.

## II. Terms of Payment

1. Prices. All prices quotations for CONVERGENT products will be valid for a period of thirty (30) days, unless otherwise provided by CONVERGENT. Price quotations for spare parts, unless otherwise provided by CONVERGENT, will be valid for a period of thirty (30) days after the earlier of (i) the date of CONVERGENT's quotation to Buyer and (ii) acceptance by CONVERGENT of the Buyer's purchase order. CONVERGENT is not responsible for errors of its employees or distributors with respect to the verbal pricing or quotation of a product and CONVERGENT will not be bound by the terms of such errors.

2. Taxes; Costs; Insurance. Quoted prices exclude shipping or transportation costs or insurance costs unless quoted expressly otherwise upon request of the customer. Prices include standard CONVERGENT packaging only. Any special handling or CONVERGENT packaging requests will result in additional charges to Buyer. CONVERGENT will accept valid tax exemption certificates from Buyer. However, Buyer will reimburse CONVERGENT for any taxes incurred by it on the sale of a product to the extent such tax exemption certificate proves to be insufficient to the applicable taxing authority for any reason. Such reimbursement must occur within ten (10) days from the date CONVERGENT becomes aware of the invalidity of such tax exemption certificate.

3. Payment Terms. Invoices will be issued by CONVERGENT as soon as practicable after each product shipment under these Terms. Payments due to CONVERGENT for products shipped and any other amounts due CONVERGENT by Buyer will be paid to CONVERGENT at its principal office in 35091 Coelbe, Germany. Unless otherwise agreed to in writing, all invoices will be payable net cash, thirty (30) days from the date of invoicing, assuming Buyer has credit references acceptable to CONVERGENT, as determined by CONVERGENT in its sole discretion. All invoices are payable in advance in the absence of such credit arrangements with CONVERGENT. At CONVERGENT's option, Buyer may make payment with an irrevocable letter of credit confirmed by CONVERGENT's bank or another major bank as is acceptable to CONVERGENT, as determined by CONVERGENT in its sole discretion. Whether payment is by cash or irrevocable letter of credit, all payments to CONVERGENT must be in EUROS or U.S. Dollars.

4. Suspended Delivery. CONVERGENT may suspend or discontinue delivery of any further products to Buyer if Buyer fails to make a payment to CONVERGENT for either the product to be delivered or any products previously delivered. Suspended or discontinued delivery will continue until CONVERGENT receives full payment therefor from Buyer or if CONVERGENT receives assurances adequate to CONVERGENT of performance from Buyer.

5. Right of Setoff. CONVERGENT will have the right to setoff and apply any funds received from Buyer for the benefit of any other overdue accounts or amounts owed to CONVERGENT by Buyer.

6. Late Payments. Any amounts not properly paid to CONVERGENT in accordance with Section II.3. will be deemed by CONVERGENT to be late and such overdue amounts will accrue interest at the rate of eighteen percent (18%) per annum. If any overdue amounts have been handed over to an attorney for their collection, Buyer will reimburse CONVERGENT for all costs of collection and associated attorneys' fees (with such costs and fees being not less than thirty percent (30%) of the total overdue amount payable).

7. Buyer's Credit. To the extent CONVERGENT permits Buyer to purchase CONVERGENT products on credit, Buyer shall provide CONVERGENT with such financial and business information CONVERGENT from time to time requests for the purpose of establishing and/or monitoring Buyer's creditworthiness. If the credit or financial responsibility of Buyer becomes impaired or otherwise unsatisfactory to CONVERGENT, or Buyer shall fail to keep or perform any terms or conditions of this or any other agreement with CONVERGENT on its part to be kept or performed, CONVERGENT may, at its option, require advance cash payment for products, specify other credit terms or demand satisfactory security to be given by Buyer. Should Buyer fail to make such advance payment, refuse to agree to other credit terms specified by CONVERGENT or fail to provide security upon demand therefore, CONVERGENT may withhold or cancel further shipment of products to Buyer in accordance with Section II.4.

## III. Delivery; Inspection; Acceptance

1. In General. Buyer is solely responsible for arranging for proper receiving, storing, installing, starting up and maintaining all CONVERGENT products. CONVERGENT will provide Buyer with appropriate price quotations should Buyer request CONVERGENT to perform services other than sale and delivery of the products.

2. Cancellation. Buyer may not cancel any purchase order for products placed with and accepted by CONVERGENT without CONVERGENT's prior written consent. To the extent Buyer cancels an order, Buyer will reimburse CONVERGENT for any direct or indirect cancellation charges incurred by CONVERGENT, including without limitation reasonable profits and all costs and expenses incurred by CONVERGENT to prepare the products for shipping. Further, all orders cancelled will be subject to a restocking fee to be determined by CONVERGENT in its sole discretion, but in no event will such fee be less than twenty-five percent (25%) of the purchase price of the product. For custom orders, CONVERGENT reserves the right to charge Buyer a non-cancellation fee equal to up to one hundred percent (100%) of the purchase price of the product, with the specific amount of such non-cancellation fee to be determined in the sole discretion of CONVERGENT. Any non-cancellation fee will be communicated to Buyer prior to its effectiveness and CONVERGENT will have the right to keep the non-cancellation fee (in addition to any other remedies it may have pursuant to this Section) in the event Buyer cancels such custom order.

3. Delivery. Shipments and delivery of products to Buyer shall be subject to CONVERGENT's production schedule. Unless otherwise agreed by CONVERGENT and Buyer, all shipping dates specified by CONVERGENT are approximate only. CONVERGENT may, at its option, ship products to Buyer in lots of any size that CONVERGENT, in its sole judgment, believes are reasonable. If shipment is delayed at Buyer's request, CONVERGENT may invoice Buyer immediately for any products held at CONVERGENT's facility and may include in such invoice a reasonable charge for any storage or other costs incurred by CONVERGENT as a result of such requested delay. Buyer assumes any damages to the products caused by deterioration resulting from Buyer's requested delay. Unless otherwise stated in Buyer's purchase order, all products are to be shipped via a carrier of CONVERGENT's choosing, with all costs and expenses of transportation to be paid by Buyer. Risk of loss or damage to the products in transit shall be borne by Buyer, whose responsibility it shall be to file claims with the carrier in the event of loss of or damage to the products.

4. Inspection. Unless otherwise specified in CONVERGENT's invoice or CONVERGENT's packing list, Buyer will be entitled to inspect all products for their substantial conformity to the terms of Buyer's purchase order after the arrival of the products at Buyer's facility; provided, however, the failure of Buyer to exercise its post-arrival inspection rights within ten (10) days following arrival of the products, and to advise CONVERGENT in writing of all defects in or objections to the products which may be disclosed by such inspection within that same ten (10) days, shall constitute full, final and complete acceptance of the products, and Buyer shall not thereafter be entitled to reject the products (or any portion thereof) or to revoke its acceptance thereof with respect to any defects which could have been discovered by such inspection.

5. Rejection/Product Damage. Buyer may reject products it inspects in accordance with Section III.4. only to the extent it discovers a defect materially impairing the value of the products. Any claims regarding material defects must be made within thirty (30) days from the date of Buyer's receipt of the products or Buyer will be deemed to have waived such claims. Any lesser defects are governed by the terms of CONVERGENT's Standard Limited Warranty, which are incorporated herein by reference. To the extent any damage to the products has occurred during shipping, Buyer's exclusive remedy will be to file a claim with the carrier.

## IV. Title; Risk of Loss

1. Title. Unless otherwise stated in CONVERGENT's quotation to Buyer, title and risk of loss pass Ex Works (pursuant to Incoterms 2010), that is, at the location of CONVERGENT upon the loading of the products for shipment.

2. Security Interest. Buyer grants to CONVERGENT a security interest in all products being purchased by Buyer. The security interest granted by Buyer is given to secure payment of the full purchase price and all other charges due and owing CONVERGENT by Buyer. This security interest constitutes a "purchase money security interest" pursuant to the Uniform Commercial Code. These Terms constitute a contract and security agreement, and Buyer hereby authorizes and appoints CONVERGENT as its attorney-in-fact to sign on Buyer's behalf appropriate financing statements and to file those financing statements with the appropriate agency to perfect the security interest herein granted.

3. Software/Firmware Licenses. CONVERGENT retains exclusive title to all software and firmware incorporated into the products and Buyer will have no ownership rights with respect to the software or its associated source code. Buyer will retain a nonexclusive, royalty-free license to use the firmware and software incorporated into the products only when operating the products in the configuration in which the products are sold by CONVERGENT or subsequently upgraded by CONVERGENT. CONVERGENT reserves the right to require an additional license and fee for use of software on updated, upgraded or otherwise enhanced computers, processors or controllers. Buyer may not duplicate, decompile, disassemble or in any fashion reverse engineer software object code or firmware and may not duplicate or store on any electronic media software source code. Buyer shall have no rights to software source code and any such stored source code shall either be permanently deleted from Buyer's storage or immediately returned to CONVERGENT.

4. Third Party Licenses. Certain of CONVERGENT's products incorporate third party firmware or software. As a result, license terms other than those of CONVERGENT will govern the terms of such firmware or software and such terms may be materially different from those set forth in Section IV.3.

## V. Indemnities

1. In General. CONVERGENT will not be responsible for losses of Buyer resulting from the installation or use of CONVERGENT products. Buyer will unconditionally release, indemnify, defend and hold CONVERGENT harmless from and against any and all claims, demands, suits, losses, liabilities, judgments, damages, costs and expenses (including without limitation court costs, litigation expenses and attorneys' fees) and causes of action for injury, death or property damage caused by the fault, strict liability or any act or omission of Buyer, its subcontractors, or any of their respective employees, agents or invitees, asserted by any person, including without limitation CONVERGENT, Buyer, their subcontractors, or any of their respective employees, agents or invitees, as a result of, arising directly or indirectly from, or incidental to the sale, delivery, installation or use of the products sold by CONVERGENT to Buyer.

2. Buyer's Intellectual Property Infringement. Buyer will unconditionally release, indemnify, defend and hold CONVERGENT harmless from and against any and all claims, demands, suits, losses, liabilities, judgments, damages, costs and expenses (including without limitation court costs, litigation expenses and attorneys' fees) asserted by or arising in favor of any person or entity for or as a result of infringement or alleged infringement of any patents, copyrights or trademarks, or misappropriation or misuse of any trade secrets or other confidential information, based on or related to Buyer's, its subcontractors' or agents' use or application of any processes, compositions, equipment, machines, articles of manufacture or computer software that are combined with CONVERGENT products or are integrated with CONVERGENT products by Buyer in the practice of a process.

## VI. Limitations on CONVERGENT Liability

1. Limitation on Liability. Buyer agrees CONVERGENT shall not be liable for any direct, indirect, incidental, punitive or consequential damages, including lost profits, lost savings or loss of use, whether Buyer's claim is based in contract, tort, warranty, strict liability or otherwise, which Buyer may suffer for any reason, including reasons attributable to CONVERGENT. Buyer agrees these limitations on CONVERGENT's liability are reasonable and reflected in the amounts charged by CONVERGENT for its products.

2. Limitation on Claims. Any litigation proceedings with respect to defective or nonconforming products or any other claim, whether based in contract, tort, warranty, strict liability or otherwise, must be filed by Buyer within twelve (12) months from the date of shipment of the products or such claim will be precluded by limitations.

3. Force Majeure. CONVERGENT shall not be liable for either direct or consequential damage caused, either directly or indirectly, as a result of any delay in delivery of failure to perform based upon: (i) any act of God, including but not limited to natural disaster, such as fires, floods, earthquakes or tornadoes; (ii) conditions of strikes, labor disputes or difficulties, riots, war or embargo; or (iii) acts or requirements of governmental or civil authority or restrictive import duties.

## VII. General Provisions

1. **Standard Limited Warranty.** The terms of CONVERGENT's Standard Limited Warranty are incorporated herein by reference.
2. **Remanufactured Parts.** Products sold by CONVERGENT may contain remanufactured parts. All spare parts sold by CONVERGENT will be new or equivalent to new.
3. **Product Changes.** CONVERGENT, in its sole discretion, may modify the design and construction of its products and will have no obligation to retrofit previously sold products.
4. **Stenographic Errors.** Any stenographic or clerical errors will be subject to correction and will not be binding upon either CONVERGENT or Buyer.
5. **Buyer Data.** If any data supplied by Buyer, whether in the form of Buyer specifications or pursuant to any purchase order or other documentation, proves to be inaccurate, any warranties or other related obligations of CONVERGENT relying thereon will be void.
6. **Governmental Procurement.** No governmental procurement regulations or contractual clauses will be binding upon either CONVERGENT or Buyer unless such regulations or clauses are required by law or are mutually agreed to by CONVERGENT and Buyer.
7. **Disclaimer of UN Conventions.** In accordance with Article 6 of the United Nations Convention on Contracts for the International Sale of Goods, CONVERGENT and Buyer exclude the application of such convention to these Terms, including all terms, obligations, requirements and duties that may be said to exist or arise from such convention. In accordance with Article 3(2) of the Convention on the Limitation Period in the International Sale of Goods, CONVERGENT and Buyer exclude the application of such convention from these Terms, including all terms, obligations, requirements and duties that may be said to exist or arise from such convention.
8. **Assignment.** Neither CONVERGENT nor Buyer will be able to assign the rights, benefits or obligations resulting from these Terms without the prior written consent of the other.
9. **Entire Agreement.** These Terms represent the entire agreement and understanding relating to the sale of products as between CONVERGENT and Buyer. No parol evidence, outside understandings or literature, or prior, present or future course of dealings may vary these Terms. In case of any conflict between the terms of the agreement and the terms specified herein, General Terms and Conditions of Sales shall prevail.
10. **Survival.** Each of the representations, warranties, covenants and obligations set forth in these Terms shall survive the sale of the products from CONVERGENT to Buyer for an indefinite period and each of CONVERGENT and Buyer will continue to be bound by these Terms.
11. **Nonwaiver of Default.** Any failure by CONVERGENT at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of these Terms or to exercise a right hereunder, shall not operate or be construed as a waiver of such terms, conditions or rights, and shall not affect or impair CONVERGENT's right at any time to enforce same.

12. Governing Law; Venue. Any and all claims or disputes in any way arising out of or relate to these Terms, their interpretation, construction or performance, or the breach or enforcement thereof, or any claims or disputes in any way concerning the conduct of any party in connection with these Terms or otherwise (whether sounding in contract, in tort or based on statute or regulation) shall be governed exclusively by the laws of the Federal Republic of Germany. Venue for any disputes under these Terms will be in Marburg, Hessen and the parties hereto hereby subject themselves to the jurisdiction of the Hessen courts. The parties hereto irrevocably agree any legal proceeding arising out of or in connection with these Terms shall be brought in the state district courts of Marburg, Hessen. The parties hereto deem these Terms performable in Marburg, Hessen, whether or not any part of these Terms is actually performed in Marburg, Hessen. In addition, Buyer agrees the price it is agreeing to pay for CONVERGENT products reflect an analysis of the elimination of uncertainty regarding the jurisdiction and venue for any dispute.

# Warranty Terms and Conditions

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## Limited Warranty

CONVERGENT warrants its products against defects in material and workmanship. Under normal use and service, every hardware portion of the products will be free from physical defects in material and workmanship during the warranty period, or the product will be repaired or replaced as determined solely by CONVERGENT. CONVERGENT provides a limited warranty for its products only to the person or entity that originally purchased the product from CONVERGENT or its authorized distributor or retailer.

CONVERGENT will not be liable in any way for the loss of data stored on CONVERGENT products and any damage caused by this.

The following standard warranty rules apply to CONVERGENT products:

The products carry 1 (one) year limited warranty from the date of shipment (or deemed shipment). In the case of consumables, e.g. electrodes, the warranty periods might be lower. Please refer to the respective inserts for warranty periods.

Extra warranty period might be provided by CONVERGENT's worldwide dealers/distributors. Please contact your dealer/distributor for the local warranty period.

If a product does not operate as warranted above during the applicable warranty period, CONVERGENT shall, at its option and expense (except for shipping costs, customs and similar costs), repair the defective product or part, deliver to the customer an equivalent product or part to replace the defective item. All products that are replaced will become the property of CONVERGENT. Replacement products may be new or reconditioned.

CONVERGENT is not liable to pre-ship the parts against the warranty to its international customers. Convergent shall dispatch the parts claimed under warranty against pre-payment only. Once the warranty case is established for the returned part, a credit note equivalent to the amount charged for the replaced part shall be issued and this credit note could be redeemed against future purchases or could be wired to the customer's designated bank account. Convergent is not liable for shipping costs, customs and similar costs for warranty items and these remain out of the purview of any warranty matters whatsoever. CONVERGENT'S dealers / distributors are strongly recommended to follow CONVERGENT'S "list of recommended spare parts" to avoid any problems and service bottlenecks in their respective countries.

*Warranty does not apply, if:*

The warranty period is expired;

The warranty label is broken or removed;

The serial number label is missing or unrecognizable;



The product has been modified or repaired by any unauthorized service center or personnel;

The defect was subject to abuse, improper use not conforming to product manual instructions, or environment conditions more severe than those specified in the manual and specification;

The defect was subject to Force Majeure, such as acts of God, flood, lighting, earthquake, war, vandalism, theft, brownouts or sags (damage due to low voltage disturbances);

If the customer's product is not covered under warranty, CONVERGENT may offer repair services under the customer's payment.

## Repair Service

Warranty and out of warranty service should be obtained by contacting CONVERGENT/dealer/retailer/e-tailer or distributor where the customer purchased the product. When requesting for service, the proof of purchase and the product serial number must be provided. The return of the defective product should be strictly through the original route of purchase, ONLY AFTER OBTAINING CONVERGENT'S PRIOR APPROVAL and the customers shall pack the product appropriately to prevent the returned product from suffering in the transportation.

Do not allow any unauthorized service center or personnel to repair or modify the product. If the original channel is no longer in business or unavailable, the customer may contact CONVERGENT Technical Support for international RMA services. In this case, the customer will be charged for handling fee, 50€ (Fifty EURO), and all fees incurred, including two ways freight, duties, taxes and brokerage fee.

It is customer's sole responsibility to back up the patient data. Before allowing any service from CONVERGENT or its service provider, including remote login check and repairing service, the customer must back up the patient data and remove any of the confidential, proprietary or personal information. Neither CONVERGENT nor its service provider will be liable for any damage, loss and exposure of confidential or private information or patient data contained in any product, hardware, software or media.

## DISCLAIMER OF WARRANTY

### WARRANTIES EXCLUSIVE

IF THE CONVERGENT PRODUCT DOES NOT OPERATE AS WARRANTED ABOVE, THE CUSTOMER'S SOLE REMEDY SHALL BE, AT CONVERGENT'S OPTION, REPAIR OR REPLACEMENT. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONVERGENT NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION MAINTENANCE OR USE OF CONVERGENT'S PRODUCTS.

CONVERGENT SHALL NOT BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED DEFECT IN THE PRODUCT DOES NOT EXIST OR WAS CAUSED BY CUSTOMER'S OR ANY THIRD PERSON'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO REPAIR OR MODIFY, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING, OR OTHER HAZARD.

### LIMITATIONS OF LIABILITY

UNDER NO CIRCUMSTANCES WILL CONVERGENT, ITS SERVICE PROVIDER OR EITHER'S AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, (INCLUDING, BUT NOT LIMITED TO), CLAIMS FOR LOSS OF DATA, GOODWILL, INCONVENIENCE, DELAY, PROFITS, USE OF MONEY OR USE OF THE CONVERGENT PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA.

CONVERGENT'S AND THE SERVICE PROVIDER'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS RELATED TO OR ARISING OUT OF THESE TERMS AND CONDITIONS FOR ANY CAUSE AND DESPITE THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, STATUTORY OR OTHERWISE, INCLUDING NEGLIGENCE AND STRICT LIABILITY, WILL NOT EXCEED THE AMOUNT OF THE PURCHASE PRICE PAID. THIS LIMITATION OF LIABILITY WILL BE EFFECTIVE EVEN IF CUSTOMER HAS ADVISED CONVERGENT OR ITS SERVICE PROVIDER OF THE POSSIBILITY OF ANY SUCH DAMAGES.

THESE TERMS AND CONDITIONS GIVES CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT MAY VARY FROM STATE TO STATE OR FROM COUNTRY TO COUNTRY. CUSTOMER IS ADVISED TO CONSULT APPLICABLE STATE OR COUNTRY LAWS FOR A FULL DETERMINATION OF CUSTOMER'S RIGHTS. SOME STATES OR COUNTRIES DO NOT ALLOW A LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR CONSUMER PRODUCTS. IN SUCH STATES OR COUNTRIES, SOME EXCLUSIONS OR LIMITATIONS OF THESE TERMS AND CONDITIONS MAY NOT APPLY TO CUSTOMER.

### **Online Service and Support System / Technical System**

Convergent's online service and support system is the only and exclusive platform over which the technical support and complaints are acknowledged, prioritized and processed. Any other mode of communication for such purposes is hereby excluded and shall not be acknowledged. Convergent may from time to time offer to provide technical support or redress complaints over other communication media, e.g., telephone or email. However this shall not be deemed as a regular practice and Convergent shall not be obliged or under liability to follow the same practice in future too. The terms and conditions of using this system are available online on our website.