

## General Terms of Sale

### Section 1 - General

1.1 All deliveries and services shall be subject to these General Terms of Sale and to any separate contractual agreements. Any differing terms and conditions of purchase of the customer shall not become part of the contract either when an order is accepted or if they are not objected to. These General Terms of Sale shall apply only to companies in the meaning of Section 310 (1) of the German Civil Code (BGB), to legal persons under public law or to a special fund under public law.

1.2 Offers are without engagement. If there is no separate agreement, a contract shall be concluded when the contractor issues his written confirmation of the order. Contracts transmitted by fax or by electronic copy via email are deemed to be in written form.

1.3 If clauses customary in the trade are agreed, the rules on interpretation of them as defined in the latest version of Incoterms shall apply, unless otherwise specified in the following.

1.4 Documents, such as illustrations, drawings and information on dimensions and performance shall only be approximately authoritative, unless they are expressly designated as binding.

1.5 The contractor reserves ownership of and copyrights to samples, cost estimates, drawings and the like, and to information embodied in a tangible or intangible manner, including in electronic form. This information shall not be reproduced or made available to a third party without the written consent of the contractor. The contractor shall make documents designated as confidential by the customer available to a third party only with the written consent of the customer. Affiliated companies of the contractor within the meaning of §§ 15 ff. AktG and advisers (attorneys, auditors, tax consultants) of the contractor are not third parties in the sense of this agreement.

### Section 2 - Prices and payment

2.1 Statutory sales tax at the relevant level or the tax similar to sales tax (abroad) must be added to the contractor's prices. This also applies to lump sums.

2.2 Unless otherwise specified in the acknowledgment of order, payments shall be due net (without deduction) within 30 days of the invoice date. The statutory provisions regarding the consequences of default in payment shall apply.

2.3 The customer shall be entitled to offset his counterclaims only if they have been ruled on finally and conclusively, are not disputed or have been acknowledged by the contractor. In addition, the customer shall be authorised to exercise a right of retention only insofar as his counterclaim is founded on the same contractual relationship.

If deliveries and services are not to be provided or delivered within four months after conclusion of the contract, the contractor reserves the right to adjust the prices to the labor and material costs effective at the time of service provision or delivery unless a fixed price has expressly been agreed for the duration of the contract. Cheques and bills of exchange shall only be accepted on account of performance.

If major elements of the calculation basis, especially existing collective labour agreements, cost of materials etc. change, then the contractor shall be allowed to adjust the price of future deliveries and services accordingly. However, this right may be executed for the first time one year after conclusion of the contract.

### Section 3 - Delivery period/time of performance, delay in delivery

3.1 The delivery period/time of performance shall be as agreed by the parties. The agreed period/time shall become significant in terms of the contract if the parties have expressly agreed to this. To allow it to commence and to be observed by the contractor, all commercial and technical questions must first be clarified and the customer must have fulfilled all his obligations, such as furnishing of the necessary official certificates or approvals or making of a down-payment. If this is not the case, the delivery period/time of performance shall be extended commensurately. This shall not apply if the contractor is responsible for the delay.

3.2 If acceptance is contractually required, the contractually specified acceptance deadline, or alternatively the notice of completion shall be authoritative for meeting the delivery period/time of performance, except in the case where the customer justifiably refuses acceptance.

3.3 If shipment or acceptance of the article to be supplied is delayed for reasons for which the customer is responsible or if the customer culpably violates other duties of cooperation on his part, the contractor shall be authorised to demand compensation for the damage he has incurred in this regard, including any additional expenses. Without prejudice to further claims, the contractor can otherwise dispose of the article to be supplied after he has set a reasonable period of grace and this has expired without remedy, in particular store the article to be supplied at the risk and expense of the customer and/or supply the customer within a reasonably extended period of time.

3.4 If a failure to observe the delivery period/time of performance is due to force majeure, such as natural disasters, epidemics, war, armed conflicts, civil war, revolution, terrorism, sabotage, nuclear/reactor accidents, labour disputes or other events that are outside the contractor's control, the contractor shall be discharged from his performance obligations for the duration of the event and the delivery period shall be extended appropriately. The contractor shall inform the customer of when such circumstances start and end as soon as possible. If the event lasts for more than 6 months, the contractor shall also be authorised to terminate the contract.

3.5 If the contractor is in delay and the customer incurs damage as a result, the latter shall be authorised to demand lump-sum compensation for the damage due to such delay. This shall be 0.5% of the value of that part of the overall delivery that cannot be used on time or in accordance with the contract as a result of the delay, for each full week of the delay but a maximum total amount of 5% of said value. If the contractor is in delay and the customer grants him a reasonable period of time to perform his obligation – taking into account the statutory exceptions – and if this period of time is not observed for reasons for which the contractor is responsible, the customer shall be authorised to rescind the contract within the framework of the statutory provisions. Further claims from delay in delivery shall be defined solely by Section 7 of these terms and conditions.

#### **Section 4 - Transfer of risk, acceptance, packaging**

4.1 Delivery or services shall be at the customer's risk from the moment the service provision/delivery is completed. Regarding the delivery of goods, the delivery items shall be at the customer's risk from the moment the respective loading has started at the contractor's factory, even in case of partial deliveries.

4.2 If acceptance has been agreed, this must be conducted immediately at the agreed time, alternatively immediately after the contractor has given notification of completion. The customer cannot refuse acceptance due to an insignificant defect, provided the contractor acknowledges his obligation to remedy the defect.

4.3 If shipment or acceptance is delayed or not performed due to circumstances not attributable to the contractor, the risk of accidental loss or accidental destruction of the article to be supplied shall pass to the customer from the day on which notice is given of its readiness for shipment resp. the notice of completion. The contractor undertakes to take out insurance requested by the customer in writing, such as transport insurance, at the expense of the customer.

4.4 Partial deliveries shall be permitted as long as is reasonable for the customer.

4.5 Transport and other packaging in accordance with the German Packaging Ordinance shall not be taken

back, except for wooden pallets. The customer shall dispose of the packaging at his own expense.

#### **Section 5 - Retention of title**

5.1 The contractor shall retain his title to the delivery or services until all claims have been settled, in particular the respective outstanding balances from a current account to which the contractor is entitled as part of the business relationship with the customer (overall retention of title).

5.2 The customer shall be obliged to treat the delivery or services subject to retention of title (retained goods) with care; in particular, he shall be obliged at his own expense to insure it adequately against theft, breakage, fire, water and other damage at the reinstatement value. The contractor shall be authorised to take out this insurance at the expense of the customer if the customer has demonstrably not taken it out.

5.3 If the retained goods are combined with other objects such that they become an essential part of another object, the contractor shall obtain co-ownership of the other object. If a new object is produced by combining or processing of the retained goods, the contractor shall always acquire a corresponding right of co-ownership.

5.4 The customer shall be authorised to resell the retained goods in the normal course of business. If the retained goods that have been supplied or produced in accordance with Section 5.3 are sold, the customer hereby assigns the claims against his customers from the sale (total sum invoiced including value-added tax) or a corresponding part thereof, along with all secondary rights, to the contractor until the latter's claims have been settled in full.

5.5 The customer shall remain authorised to collect the claim assigned pursuant to Section 5.4; the contractor's authorisation to collect the claim himself shall remain unaffected thereby. The contractor shall not collect the claim as long as the customer meets his payment obligations from the collected amounts, is not in arrears with payment or has not discontinued payment, and an application for instigation of insolvency or composition proceedings has not been filed against the customer.

If one of the above situations applies, the contractor can demand that the customer disclose the claims assigned to the contractor as security and provide all details required to collect them.

5.6 If the customer acts in breach of contract, in particular if he is in arrears with payment, the contractor shall be authorised to take back the deliveries or services after issuing a warning. This, like any levy of execution on the deliveries or services by the contractor, shall not constitute a rescission of the contract by the contractor.

## Section 6 - Liability for defects

The contractor shall be liable for defects in quality and defects of title to the exclusion of further claims – subject to Section 7 – as follows:

### 6.1 Defects in quality (Sachmängel)

6.1.1 Details given by the contractor about the properties of the deliveries or services to be supplied are the result of his measurements and calculations and shall be the article's agreed nature, but not its warranted qualities or guarantees within the meaning of Section 443 BGB.

Deviations customary in trade or commerce and deviations due to legal provisions or deviations representing technical improvements as well as replacing parts with equivalent parts are permitted as long as they do not prejudice the use of the deliveries and services as stipulated in the contract.

6.1.2 The customer can assert claims due to a defect in quality of the deliveries or services only if he has properly fulfilled his obligations to examine the supplied article and to give notice of defects in accordance with Section 377 of the German Commercial Code (HGB).

6.1.3 All parts that prove to be defective as a result of circumstances before the passage of risk shall, at the discretion of the contractor, be repaired or resupplied free of charge. Such defects shall be reported to the contractor in writing as soon as they are discovered. Dismantled/replaced parts shall become the property of the contractor.

6.1.4 The contractor's liability for defects in essential third-party products shall be limited to assignment of the claims for defects of the contractor against his supplier. If the assigned claims for defects are not settled, the claims of the customer against the contractor due to defects shall be revived.

6.1.5 Following agreement with the contractor, the customer shall give the contractor the required time and opportunity to make all the repairs and to supply such replacements as the contractor deems necessary; otherwise, the contractor shall be discharged from liability for the resultant consequences. The customer shall have the right to rectify the defect himself or have it rectified by a third party and demand compensation for his necessary expenses from the contractor only in urgent cases of risk to safety or to avert disproportionately great damage; the contractor shall be informed immediately thereof.

6.1.6 Of the direct costs incurred as a result of repair or delivery of a replacement, the contractor shall – provided the complaint proves to be justified – bear the costs of the replacement item, including the cost of shipping it to the place of performance. The contractor shall also bear the reasonable costs of removing the defective part supplied and the costs of installing the replacement item. If it can be reasonably demanded in the individual case, the con-

tractor shall also bear the costs of providing any necessary fitters and assistants, provided these costs are not increased due to the fact that the supplied article has been moved to a place other than the place of performance.

6.1.7 Within the framework of the statutory provisions, the customer shall have the right to rescind the contract if the contractor – taking into account the statutory exceptions – fails to remedy a defect by a reasonable period of time set for him to repair the article or supply a replacement. If the defect is only insignificant, the customer shall merely have a right to a reduction in the contractual price.

6.1.8 The contractor shall not be liable for defects that are attributable to measures or designs expressly demanded by the customer or that occur in materials or products which have been provided by the customer or whose use the customer has expressly demanded contrary to the contractor's advice.

In particular, no liability shall be assumed in the following cases:

Unsuitable or improper use or incorrect installation or commissioning by the customer or a third party, failure to use original parts and materials, normal wear and tear, incorrect or negligent handling, improper maintenance, unsuitable operating supplies, faulty construction work, unsuitable subsoil, failure to back up or inadequate backing up of data by the customer; failure to check or inadequate checking of programs and data for computer viruses (as defined in Section 9.3) by the customer, unusual effects of any kind (e.g. vibrations from other assemblies, ingress of foreign matter), chemical, electrochemical or electrical influences – unless the contractor is to blame for them.

6.1.9 If the customer or a third party carries out repairs improperly, the contractor shall not be liable for the resultant consequences.

The same shall apply to changes to the supplied deliveries or services that have been made without the prior consent of the contractor.

6.1.10 The customer shall be obliged to return the defective part to the contractor at the request of the contractor.

6.1.11 Subject to Section 8.2, the above warranty provisions shall apply accordingly to rectification of defects.

### 6.2 Defects of title (Rechtsmängel)

6.2.1 If use of the supplied deliveries or services results in the infringement of industry property rights or copyrights in Germany, the contractor shall in principle and at his own expense obtain the right for the customer to continue using it or modify the supplied article in a way that the customer can reasonably be expected to accept so that the property right is no longer infringed.

If this is not economically feasible or not possible within a reasonable period of time, the customer shall be authorised to rescind the contract. If said conditions exist, the

contractor shall also have the right to rescind the contract.

Moreover, the contractor shall – if he is liable – indemnify the customer against claims of the owner of the property rights that are undisputed or have been ruled on finally and conclusively.

6.2.2 The contractor does not warrant that the end products manufactured on the supplied deliveries or services, including the manufacturing process used, are free of third-party property rights.

## Section 7 - Liability

7.1 If the supplied deliveries or services cannot be used by the customer in accordance with the contract because the contractor is to blame for failure to implement or inadequate implementation of suggestions and advice provided before or after conclusion of the contract or for violation of other additional contractual obligations – in particular the obligation to provide instructions on the use of and maintenance of the supplied deliveries or services – the provisions of Sections 6 and 7.2 shall apply accordingly, to the exclusion of further claims by the customer.

7.2 The contractor shall be liable for damage not caused to the supplied deliveries or services itself – on whatever legal grounds – only

- if he has acted with intent,
- if his owner/management bodies or executive employees have been grossly negligent,
- in the event of culpable injury to life, body or health,
- in the case of defects the contractor has concealed with intent to deceive or if he has warranted qualities of the object,
- in the case of defects to the supplied deliveries or services, provided the contractor is liable for injury to persons or damage to privately used articles pursuant to the German Product Liability Law (Produkthaftungs-gesetz).

If the contractor culpably violates cardinal contractual obligations, he shall be liable (i) even in the case of gross negligence by non-executive employees and (ii) in the case of slight negligence, with liability in the latter case being limited to damage that could reasonably be foreseen and is typical of the contract. Cardinal contractual obligations are those that have to be met to enable proper fulfilment of the contract and which the customer can normally rely on being observed.

7.3 Further claims for damages – on whatever legal grounds – shall be excluded. If liability for damages on the part of the contractor is excluded or limited, this shall also apply to personal liability for damages on the part of the contractor's employees.

## Section 8 - Limitation of actions

8.1 All claims of the customer – on whatever legal grounds – shall become statute-barred in 12 months. The beginning of statutory limitation is determined by law. However, warranty claims shall be time-barred after 12 months from putting into operation, but not later than 15 months from the date of delivery. The statutory periods of limitation shall apply to intent or intent to deceive, culpable injury to life, body or health and claims under the German Product Liability Law. They shall also apply to defects in a building or on supplied deliveries or services that have been used for a building in accordance with their customary usage and have caused the defect in the building.

8.2 If, as part of rectification of a defect, the customer obtains new rights in relation to defects, all claims shall become statute-barred at the latest 24 months from when the original part was supplied.

## Section 9 - Use of software

9.1 If software is supplied, the customer shall be granted a non-exclusive right to use it and its documentation for the contractually agreed purposes. It shall be provided for use on the intended delivery or service supplied. The software shall not be used on more than one system.

9.2 The customer undertakes not to remove manufacturer's data – in particular copyright notices – or to change them without the contractor's prior written consent. All other rights to the software and documentation, including copies thereof, shall remain with the contractor or the software supplier. Sublicensing of it shall not be permitted.

9.3 Before providing the software to the customer, the contractor shall use state-of-the-art, up-to-date protection measures to check it for computer viruses, Trojan horses, virus hoaxes and similar programs, program parts and malicious functions that may result in loss or falsification of data or programs or impairment of systems or parts of them (hereinafter referred to as "computer viruses"). Nevertheless, it is not possible to rule out the risk that the software contains unknown or mutated computer viruses or that such viruses may enter an (operating or control) system of the customer at a later time and possibly change or delete program data of the software or other data or programs or impair systems.

9.4 The customer himself shall take measures to protect against computer viruses and other destructive data. The customer shall be obliged to test whether the supplied software or files are infected with computer viruses before executing the software or opening the files. This shall also apply to software the customer wishes to use as part of his (operating or control) systems, where the functionality of his software may be affected thereby.

9.5 The customer shall be obliged to back up data himself on a regular basis in order to prevent loss of it as a result of computer viruses. If data is lost or manipulated, the contractor shall be liable only for the cost involved in restoring the correct data if the customer has backed it up properly.

### **Section 10 - Duration of contract**

If the deliveries or services are not a one-off delivery/service and if no fixed term has been agreed upon with the customer, the contract duration shall be one year. It shall be extended by one year each time neither of the parties to the contract objects to the extension in writing three months prior to the expiry of the term.

### **Section 11 - Insolvency of the Customer**

If the customer suspends payment or the customer or one of its creditors applies for the opening of insolvency proceedings regarding the customer's assets, or the insolvency proceedings against the customer's assets are opened, or the opening of such proceedings is refused for insufficiency of assets, the contractor may, without prejudice to its other legal or contractual rights, terminate the contract without notice.

### **Section 12 - Duty to cooperate**

The customer shall ensure that the contractor's employees have unhindered access to the place of performance during the agreed delivery period/time of performance. If the contractor needs to carry out clearance work prior to delivery or service provision, it will be invoiced separately. At its own expense, the customer shall provide sufficient air, ventilation, electricity, sockets, heating as well as a lockable storage area for work equipment and spare parts at the place of delivery.

### **Section 13 - Applicable law, place of jurisdiction**

13.1 The law of the Federal Republic of Germany governing the legal relationships between domestic parties (excluding its choice of law rules) shall exclusively apply to all legal relationships between the contractor and the customer.

13.2 The place of the contractor's registered office shall have jurisdiction and venue for all disputes arising out of the contract. However, the contractor shall be authorised to file legal action at the customer's main place of business.

### **Section 14 - General provisions**

14.1 Unless otherwise specified in the acknowledgement of order, the place of performance for the parties' mutual obligations from the contractual relationship shall be the place of the contractor's registered offices. This

shall also apply if clauses customary in the trade have been agreed.

14.2 Declarations serving to establish, safeguard or exercise rights shall not be valid unless given in writing.

14.3 The customer shall not assign his contractual rights to a third party without the written consent of the contractor.

14.4 If individual provisions of these general terms of sale are or become invalid completely or in part, the validity of the remainder of the provisions shall be unaffected.