

## GENERAL TERMS AND CONDITIONS for Deliveries and Services

### 1. Scope

- 1.1 These general terms and conditions of business only apply to companies in the context of section § 14 of the BGB (German civil code) and not to consumers.
- 1.2 We supply all our goods and services exclusively in accordance with these general terms and conditions. We do not acknowledge any conflicting or divergent conditions used by the customer unless we have expressly approved their validity.
- 1.3 Our general terms and conditions of business also apply to future transactions even if we do not specifically refer to them in each case.

### 2. Offer and order acceptance

- 2.1 Our offers are non-binding and subject to confirmation provided they have not explicitly been marked as binding.
- 2.2 Authoritative for the order is our written order confirmation.

### 3. Delivery and passing of risk

- 3.1 The delivery period shall be governed by the details listed in the order confirmation. Compliance with the agreed period of delivery requires that all commercial and technical issues have been clarified and that the customer has fulfilled all his obligations. If this is not the case the delivery period shall be extended appropriately. This does not apply if we are responsible for the delay.
- 3.2 If non-fulfilment of the delivery period is due to force majeure, labour conflicts or other events beyond our control, the period of delivery shall be prolonged accordingly. This also applies to a failure of our own suppliers to supply us on time if we have entered into a contract of identical coverage. We will promptly notify the customer of any delays and at the same time inform the customer of the expected, new delivery time.
- 3.3 The delivery term shall be deemed to have been complied with when the delivery item has been dispatched or when a ready-for-dispatch note has been issued. Where advance acceptance testing is required to take place – except for justified rejection of acceptance – the advance acceptance testing deadline is authoritative, or alternatively our notification of readiness for acceptance testing. If delivery or acceptance of the goods is delayed due to reasons caused by the customer, we have the right to charge the costs resulting from this delay, starting one month from the date of notifying the customer of readiness for dispatch or acceptance.
- 3.4 Dispatch and transportation of the goods is made at the cost and risk of the customer. The risk is passed on to the customer as soon as the goods have left our company. As far as acceptance testing is to take place, the risk is passed to the customer with the acceptance testing. The deadline for the advance acceptance is also authoritative for the passing of the risk even when the customer unjustifiably refuses the acceptance.
- 3.5 We are entitled to effect partial shipments as far as the remaining parts are delivered within the stipulated delivery time and where this can be reasonably expected from the customer.
- 3.6 If the delivery is delayed, we then accept liability in the case of gross negligence for any damage caused to the customer resulting from the delay. In the case of ordinary negligence, liability for damages is excluded.

### 4. Prices / offsetting and withholding payments

- 4.1 The prices quoted in the order confirmation by us shall prevail. Our prices are valid ex works and do not include costs for packaging, carriage, insurance customs charges, other expenses and statutory sales tax.

- 4.2 The customer may only set off claims with a counterclaim which is uncontested or res judicata. The customer will only be permitted to assert a right of retention if it is based upon the same contract.

### 5. Material defects

- 5.1 The customer is obliged to inspect the goods without delay and notify us without delay in writing of any defects observed. A complaint regarding hidden defects must be made in writing immediately after their detection. Otherwise the delivery is deemed to be accepted.
- 5.2 If there is a defect for which we are responsible, we shall have the right of subsequent performance by either opting to repair the defects or supply parts free of the respective defect. In the event that we refuse subsequent fulfilment, or that the subsequent fulfilment has failed, or is unacceptable to the customer, the customer may assert its other legal rights.
- 5.3 In order to carry out all reworking or effect substitute deliveries which we deem necessary, the customer is to grant us the time and opportunity required to remedy the problem, otherwise we shall be released from any liability for resulting consequences. Only in urgent cases in which operational safety is compromised and/or to prevent disproportionately greater damages shall the customer have the right to repair the defect himself or have the defect repaired by a third party and to demand reimbursement from our company. If the defect is insignificant, the customer shall not be entitled to withdraw from the contract.
- 5.4 The customer is not entitled to make claims for defects in the case of inappropriate operation or use, incorrect assembly or commissioning carried out by the customer or third party, improper or careless handling, inappropriate maintenance, unsuitable equipment, incorrect installation work, inappropriate area of application and chemical, electro-chemical or electrical influences. In these cases liability on our part can only be considered provided the customer can verify that the defect was not caused in part or in total by the aforementioned influences.

### 6. Compensation for damages

- 6.1 We are liable to pay compensation for damages regardless of any legal basis in the case of intent or gross negligence on our part. In cases of ordinary negligence we will only be liable for
  - damages arising from the destruction of life, personal injury or loss of health;
  - damages resulting from the infringement of important contractual obligations (obligations, whose fulfilment allow the contract to be properly implemented in the first place and in whose compliance the customer regularly trusts and may trust) whereby in this case, however, our liability is limited to the reimbursement of the foreseeable, typically occurring damages.
- 6.2 The limitations of liability provided herein shall not apply to the extent that we have maliciously failed to disclose a defect or have assumed a guarantee for the quality of the goods and for liability under product liability law.
- 6.3 The culpability of our representatives or agents shall be attributed to us.
- 6.4 The legal provisions regarding burden of proof shall remain unaffected by the aforementioned regulations.
- 6.5 Any liability for indirect or collateral damages and/or consequential damages and/or damages caused by defects (such as loss of profit, loss of production and loss of bank interest, etc.) is excluded in all cases.

## **7. Limitation of claims**

- 7.1 Unless agreed otherwise the limitation period for the customer claims relating to quality defects and defects of title of the goods is one year starting from the delivery date. This period of limitation is also valid for the contractual and extra-contractual claims for damages of the customer which relate to a defect in the goods.
- 7.2 The statutory limitation periods apply
- for claims for damages relating to destruction of life, personal injury and loss of health;
  - for liability according to the product liability law;
  - to the extent that we have maliciously failed to disclose a defect;
  - to the extent that we have assumed a guarantee;
  - to the extent that the claim is related to a building or an article which was used for construction work in accordance with its normal method of utilisation and which caused the defect;
  - for claims of recourse against the supplier in final supply to an end consumer (section § 479 of the German civil code, BGB).

## **8. Retention of title**

- 8.1 We reserve the right of ownership to all goods delivered by us until complete payment of all obligations from previous contracts.
- 8.2 If the customer defaults payment or if it is obvious that our claims to payment are jeopardised because of the customer's inability to pay, we shall be permitted to demand the return of the goods.
- 8.3 In the event of attachments or other interventions by third parties, the customer must notify us immediately. The customer shall bear any costs caused by the suspension of access and by the recovery of the delivery items as far as they cannot be confiscated by third parties.
- 8.4 The customer shall have the right, subject to revocation permitted for cause, to dispose of the object supplied within the course of proper business operations. It is not permitted to use the goods as a pledge or security. The goods subject to reservation of proprietary rights may only be passed on to the end consumer by the customer provided the customer is not in arrears with his liabilities towards us.
- In the event of a resale the customer at this time already assigns to us all claims resulting from the resale to the amount of the sum total of the invoice (including statutory sales tax), especially including claims for payment but also claims in connection with the sale. The customer shall have the right, subject to revocation permitted for cause, to collect the assigned claims on a trust basis. The sale of accounts receivable under the terms of factoring requires our prior consent. We shall be entitled for cause to announce the assignment of the claims also to third party debtors of the customer. The customer's collection authorisation expires once the assignment to the third-party debtor has been announced.
- In the event of a revocation of the right of collection we have the right to request that the customer discloses to us the assigned claims and their respective debtors, to furnish all information required for collection, hand over the relevant documents, and inform the debtors of the surrender. Important reasons in the sense of these provisions are payment default, suspension of payments, the opening of insolvency proceedings or clear evidence of excessive indebtedness or impending insolvency on the customer's part.
- 8.5 To the extent that the retention of title or the assignment of claims is invalid or unenforceable due to any mandatory foreign law, such security as corresponds to the retention of title or assignment of claims in said region shall be deemed to have been agreed. If, according to this, the assistance of the customer is required, the customer must take all steps necessary in order to establish and maintain the security.

## **9. Use of software and data / intellectual property**

- 9.1 If software and electronic data are included in the scope of delivery, the customer shall be granted a non-exclusive right to use the supplied software including its documentation and data. It is exclusively for use with the delivered article and the intended purpose. Utilisation of the software on more than one system is not permitted.
- 9.2 The customer may only reproduce, revise, translate the software and electronic data or convert the object code to source code to the extent permitted by law. The customer undertakes not to remove manufacturers' specifications – in particular copyright notices – or to alter the same without our prior express approval.
- 9.3 All other rights to the software and the documentation shall remain in our possession or in the possession of the software supplier. The allocation of sublicenses is not permitted.
- 9.4 We reserve and retain all property rights and copyrights to samples, cost estimates, drawings and similar information of a physical or non-physical nature including information in electronic form. The customer is not permitted to make such documents accessible to third parties, whereby the documents may only be used by the customer for the purpose of the contract and in particular not used for the purpose of own production of the objects in question.

## **10. Place of performance, court of jurisdiction, applicable law**

- 10.1 The place of fulfilment for the delivery, payment and all other obligations from the contractual relationship unless otherwise agreed is Pforzheim.
- 10.2 The legal venue for any and all litigation arising from this contractual relationship for both parties is the headquarters of our company provided the customer is a businessman or legal person under public law. At our discretion we may opt to file suit at the customer's domicile.
- 10.3 The contract is subject to German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not be applicable.

Pforzheim, 1<sup>st</sup> September, 2012