

Terms and Conditions of Sale and Supply

I. General provisions

- 1) The mutual written declarations shall determine the scope of the supplies and services (hereinafter: supplies). However, General Terms and Conditions of Business on the part of the customer shall only apply insofar as we have expressly approved the same in writing.
- 2) We shall unrestrictedly reserve our exploitation rights under proprietary right and copyright law to cost estimates, drawings and other documents (hereinafter: documents). Such documents may only be rendered accessible to third parties with our prior consent and, upon request, shall, in the event that we should not be awarded the commission, be returned to us without delay. Sentences 1 and 2 shall apply mutatis mutandis to the customer's submissions, though such submissions may be rendered accessible to third parties to whom we have admissibly assigned responsibility for supplies.
- 3) Partial supplies shall be admissible insofar as the customer may be reasonably expected to accept the same.

II. Prices and Terms and Conditions of Payment

- 1) Prices shall be understood to be ex-works excluding packaging and plus the statutory sales tax obtaining at any given time.
- 2) Packaging shall be invoiced at the lowest possible prices and shall not be taken back.
- 3) Insofar as nothing is agreed to the contrary, payment shall, irrespective of the receipt of the goods involved, be made to us net within thirty days of the invoice date or within eight days with a 2 % discount. In the event that the payment deadline should be exceeded interest shall, without a reminder being required, be calculated pursuant to § 288 German Civil Code.
- 4) We shall be entitled to request advance payments in respect of the invoice amounts at any time prior to the dispatch of goods insofar as we deem such a step to be necessary. Should the customer default on the fulfillment of payment obligations or should the information pertaining to a customer no longer be satisfactory, we shall be entitled to request security for delivered goods or, once a payment deadline has been set, withdraw from the purchase contract.
- 5) The customer may only offset receivables which are undisputed or have been established on a legally binding basis.

III. Reservation of title

Goods shall be supplied subject to reservation of title involving the following extensions:

- 1) All supplied goods shall remain our property until such time as our claims vis-à-vis the customer, including any such claims which may arise from the business link in the future, are settled in full and for such time as the account, including the bill and cheque commitments, has not been settled. This shall also apply in the event that the purchase price for certain deliveries of goods specified by the customer is to be paid. In the case of a current account, the reserved title shall constitute security for our balance claim.
- 2) The customer shall be revocable and, as long as they fulfil their obligations vis-à-vis ourselves and affording consideration to the following provisions, entitled to sell and process during the normal course of business goods which are encumbered with reservation of title. However, the customer shall be forbidden from pledging or assigning as security goods subject to reservation of title which are supplied or processed. The customer shall, insofar as this is compatible with commercial practices, likewise undertake only to resell reserved goods which we have supplied in conjunction with reservation of title. Upon justified request and in the case of default, the customer shall be obliged to apprise us of the name of the third party customer.
- 3) Insofar as goods encumbered with reservation of title are processed, such processing shall, though without any guarantee on our part, be effected for us. In the event of processing by the customer in conjunction with goods which are not our property, we shall be entitled to co-ownership of the new object at the ratio of the value of the reserved goods to the other processed goods on the processing date.
- 4) In the event that goods which we have supplied should be combined with other goods, we shall acquire co-ownership of the amount of the ratio of the value of the reserved goods in the combination date.
- 5) Should the customer sell reserved goods which we have supplied or should such goods be supplied to a third party – irrespective of what value or in which condition – or should such goods be installed within the framework of a work, work performance or a construction contract, the customer shall, until such time as the claims stipulated in subsection 1) are settled in full, hereby assign to us, to the amount of the invoice value of our deliveries, the claim, together with all ancillary rights, including the compensation claims accruing to them from the legal transaction involving the resale or installation, accruing to them vis-à-vis their customer or buyer from such sale, delivery or instalment. In the event of an assignment being obtained in such work, work performance or construction contract and in the event of payment default, the customer shall undertake to apprise their third party customers of the advance assignment.
- 6) In the event that reserved goods which we have supplied should be sold to third parties in conjunction with other goods, we shall be assigned that proportion of the total asking price corresponding to the invoice value of our deliveries.
- 7) The reservation of title with the extensions pursuant to the above provision shall also remain in force in the event of individual claims against their customer on the part of the customer being included in the current account. In this case, the customer shall, at this early juncture, assign to us the balance obtaining to their credit. The customer shall, upon request and particularly in the event of payment default on the part of the purchaser, be obliged to facilitate the direct assertion of the claims involved and apprise the third party debtor of the assignment.
- 8) We shall be appraised without delay of any attachment and every kind of restriction which obtain in respect of our property. In the event that the value of the overall collateral stemming from the business link with which we have been furnished should exceed our delivery claims by more than 20 %, we shall, at the request of the purchaser, be obliged to reassign the assigned claims to such extent.
- 9) In the event of any incidence of damage or other impairment to the equipment supplied on the basis of our terms and conditions, the purchaser shall, at this early juncture, assign to us in advance the compensation claim accruing to them vis-à-vis the insurer from their insurance to the amount of the incidence of damage in question to our reserved property.

IV. Deadline for deliveries; default

- 1) The deadline for deliveries or services shall commence on the day on which written agreement pertaining to the order in question obtains between the customer and ourselves. The observance of such deadline shall presuppose the prompt receipt of all the documents, requisite licences and releases to be furnished by the customer, the prompt clarification and approval of the plans and the observance of the agreed Terms of Conditions of Payment and other obligations. Should these prerequisites not be fulfilled on time, the delivery deadline shall be extended by an adequate period of time; this shall not apply in the event that we should be responsible for a delay.
 - 2) Should the non-observance of deadlines be attributable to force majeure, such as mobilization, war civil commotion or similar occurrences, e.g. strike or lockout, delivery deadlines shall be extended by adequate periods of time.
 - 3) In the event that dispatch or delivery should, at the behest of the customer, be delayed by more than one month following notification of dispatch readiness, the customer may, for every started month, be invoiced storage costs to the amount of 0.5 % of the price of the delivery objects, though no more than a total of 5 %.
- The contracting parties shall be at liberty to prove that lower or higher storage costs have accrued.

V. Transfer of risk

The risk shall also pass to the customer in the event that carriagepaid delivery should have been agreed. In the absence of a written arrangement to the contrary, dispatch shall always be effected according to our best judgement. We shall not assume any responsibility for transportation at market prices. We shall only arrange transport insurance policies the costs of which are borne by the purchaser upon express, written agreement.

VI. Acceptance

The customer may not refuse to accept deliveries on the grounds of the existence of minor defects.

VII. Material defects

- 1) The prerequisite for the assertion of material defects liability shall be the submission to us or our authorized representative of proof of acquisition (delivery note, invoice, etc.). The warranty entitlement may not be transferred to third parties without our consent.
- 2) All those components or services shall, as we see fit, be repaired, resupplied or refurbished which feature a material defect within the limitation period – irrespective of operating life – insofar as the origin of the same obtained at the point in time of transfer of risk.
- 3) Material defects claims shall lapse after twelve month. This shall not apply insofar as the law pursuant to §§ 438, paragraph 1, no. 2 (constructions and objects for constructions), 479, paragraph 1 (claim under a right of recourse) and 634a, paragraph 1, no. 2 (construction defects) German Civil Code makes provision for longer periods of time, in instances of injury to life, body or health, in the event of a wilful or grossly negligent breach of duty on our part and in the event of the malicious nondisclosure of a defect. The statutory provisions pertaining to the suspension of the running of a period, suspension and re-commencement of periods shall remain unaffected.
- 4) The customer shall submit complaints pertaining to material defects to us in writing without delay.
- 5) In the event of notifications of defects, payment on the part of the customer may be withheld on a scale which is in a reasonable ratio to the material defects which have occurred. The customer may only withhold payments should a complaint be asserted the justification of which is beyond doubt. Should a complaint have been submitted without justification, we shall be entitled to request the that customer reimburse the costs which we incurred.
- 6) In the first instance, we shall be granted the opportunity to effect subsequent fulfillment within a reasonable period of time.
- 7) Should such subsequent fulfillment be unsuccessful, the customer – any compensation claims pursuant to subsection IX notwithstanding – may withdraw from the contract or reduce the amount of payment.
- 8) Claims arising from defects shall not obtain in respect of a minor deviation from an agreed quality, a minor impairment to usefulness, natural wear and tear or incidences of prejudice which arise subsequent to the risk transfer in consequence of faulty or negligent handling, excessive strain, unsuitable operating facilities, faulty construction operations, unsuitable subsoil and, in particular, any external influences which are not presupposed by the contract, as well as in respect of non-reproducible software defects. In the event that modifications or maintenance operations should be improperly performed by the customer or any third parties, it shall likewise be the case that no claims arising from defects shall obtain for such modifications and maintenance operations or any resulting consequences.
- 9) Any claims on the part of the customer for expenditure which it is necessary to incur for subsequent fulfillment purposes, particularly transport, travelling, labour and material costs, shall be excluded insofar as such expenditure increases due to the fact that a delivery object has been subsequently transported to a location other than the customer's business premises unless such transportation is in line with the normal utilization of such object.
- 10) Claims under rights of recourse vis-à-vis ourselves on the part of the customer pursuant to § 478 German Civil Code (contractor's recourse) shall only obtain insofar as the customer has not agreed any arrangements with their customer exceeding the scope of the statutory claims arising from defects. No. 9 shall additionally apply mutatis mutandis to the scope of the customer's claim under a right of recourse vis-à-vis ourselves pursuant to § 478, paragraph 1 German Civil Code.
- 11) It should be noted that subsection IX (other compensation claims) shall apply to compensation claims. Any more far-reaching claims for a material defect against us and our vicarious agents on the part of the customer and any claims for a material defect against us and our vicarious agents on the part of the customer other than those stipulated in subsection VII shall be excluded.

VIII. Impossibility, contractual revision

- 1) Insofar as a delivery is impossible the customer shall be entitled to claim compensation unless we are not responsible for such impossibility. However, the customer's entitlement to compensation shall be restricted to 10 % of the value of that component of the delivery which cannot be put into appropriate operation in consequence of such impossibility. This entitlement shall not apply insofar as, in cases of wilful intent, gross negligence or injury to life, body or health, compulsory liability obtains; this shall not entail a change in the burden of proof to the detriment of the customer. The right of the customer to withdraw from the contract shall remain unaffected.
- 2) Insofar as any unforeseeable occurrences within the purport of subsection IV, no. 2 considerably alter the economic importance or the object of a delivery or exercise a major influence on our operations, the contract shall be suitably revised in compliance with the principle of good faith. Insofar as this is not economically justifiable, we shall be entitled to withdraw from the contract. In the event that we should wish to exercise this right of withdrawal, we shall apprise the customer accordingly without delay upon becoming cognizant of the implications of the occurrence in question, including in the event that an extension of the delivery period should initially have been agreed with the customer.

IX. Other compensation claims

- 1) Claims for compensation and claims for the compensation of expenses (hereinafter: compensation claims), irrespective of on which legal grounds, particularly for a breach of the duties arising from the contractual obligation and for tortious acts, shall be excluded.
- 2) This shall not apply insofar as compulsory liability obtains, e.g. pursuant to the Product Liability Act, in cases of wilful intent, gross negligence, injury to life, body or health and a breach of major contractual obligations. However, a claim to compensation for a breach of major contractual obligations shall be restricted to the contractually typical, foreseeable prejudice insofar as wilful intent or gross negligence do not obtain or liability obtains due to injury to life, body or health. The above stipulations shall not entail a change in the burden of proof to the detriment of the customer.
- 3) Insofar as the customer is entitled to compensation claims pursuant to subsection IX, such claims shall lapse upon the expiry of the limitation period pursuant to subsection VII, no. 3 applying to claims for material defects. In the case of compensation claims pursuant to the Product Liability Act, the prevailing statutory limitation provisions shall apply.

X. Diagrams, measurements and weights

Diagrams, measurements and weights shall always be regarded as approximate.

XI. Place of performance, place of jurisdiction and applicable law

- 1) Insofar as nothing to the contrary is agreed, the place of performance shall be Schalksmühle.
- 2) In the event of the customer being a businessman, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Hagen. However, we shall also be entitled to institute legal proceedings at the place of domicile of the customer.
- 3) German substantive law shall, to the exclusion of the UN Convention on Contracts pertaining to the International Sale of Goods (CISG), apply to the legal relations obtaining in connection with this contract.

XII. The remaining provision of the contract shall continue to have binding force even in the event of the legal invalidity of any of the individual provisions contained in the same. This shall not apply in the event of adherence to the contract constituting unreasonable hardship for one of the contracting parties.