

# General Terms of Sale

## Section 1 - General

1.1 All deliveries and services shall be subject to these General Terms and Conditions of Delivery and to any separate contractual agreements. Any differing terms and conditions of purchase of the purchaser shall not become part of the contract either when an order is accepted or if they are not objected to. These General Terms and Conditions of Delivery 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 If there is no separate agreement, a contract shall be concluded when the seller issues his written confirmation of the order. Written form of the order confirmation shall also include confirmations sent in textform by data transfer (e.g. email) or fax.

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 seller 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 consent of the seller. The seller shall make documents designated as confidential by the purchaser available to a third party only with the consent of the purchaser.

## Section 2 - Prices and payment

2.1 Unless agreed separately, the prices shall be ex the works of the seller and shall include loading at the works, but not include packaging and unloading. Value-added tax shall be added to the prices at the respective statutory rate.

2.2 Unless separately agreed, payments shall be made without deduction to the seller's account, namely:

- a down-payment of one third when the order is placed,
- one third payable when half the delivery period expires,
- the remainder payable upon delivery or upon notification of readiness for shipment if delivery is not possible immediately after completion for reasons for which the seller is not responsible.

2.3 Unless otherwise specified in the acknowledgement 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.

2.4 The purchaser 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 seller. In addition, the purchaser shall be authorised to exercise a right

of retention only insofar as his counterclaim is founded on the same contractual relationship.

## Section 3 - Delivery period, delay in delivery

3.1 The delivery period shall be as agreed by the parties. To allow it to commence and to be observed by the seller, all commercial and technical questions must first be clarified and the purchaser 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 shall be extended commensurately. This shall not apply if the seller is responsible for the delay.

3.2 The delivery period shall be deemed to have been observed if the article to be supplied has left the seller's works or the seller has given notification that it is ready for shipment by the time the delivery period expires. If acceptance is contractually required, the contractually specified acceptance deadline, or alternatively the time at which notification of readiness for acceptance is given, shall be authoritative, except in the case where the purchaser justifiably refuses acceptance.

3.3 If shipment or acceptance of the article to be supplied is delayed for reasons for which the purchaser is responsible or if the purchaser culpably violates other duties of cooperation on his part, the seller 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 seller 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 purchaser and/or supply the purchaser within a reasonably extended period of time.

3.4 If a failure to observe the delivery period 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 seller's control, the seller shall be discharged from his performance obligations for the duration of the event and the delivery period shall be extended appropriately. The seller shall inform the purchaser of when such circumstances start and end as soon as possible. If the event lasts for more than 6 months, the seller shall also be authorised to terminate the contract.

3.5 If the seller is in delay and the purchaser 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 seller is in delay and the purchaser 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 seller is responsible,

the purchaser 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 Unless otherwise agreed individually, risk shall pass to the purchaser upon the start of loading of the parts to be supplied at the seller's works, even if partial deliveries are made or the seller has assumed other services, such as shipping cost or delivery and installation.

4.2 If acceptance has been agreed, this must be conducted immediately at the agreed time, alternatively after the seller has given notification that the object is ready for acceptance. The purchaser cannot refuse acceptance due to an insignificant defect, provided the seller 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 seller, the risk of accidental loss or accidental destruction of the article to be supplied shall pass to the purchaser from the day on which notice is given of its readiness for shipment or acceptance. The seller undertakes to take out insurance requested by the purchaser, such as transport insurance, at the expense of the purchaser.

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

4.5 Transport and other packaging in accordance with the German Packaging Ordinance shall not be taken back, except for wooden pallets. The purchaser shall dispose of the packaging at his own expense.

#### **Section 5 – Retention of title**

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

5.2 The purchaser shall be obliged to treat the delivered article 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 seller shall be authorised to take out this insurance at the expense of the purchaser if the purchaser 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 seller shall obtain co-ownership of the other object. If a new object is produced by combining or processing of the retained goods, the seller shall always acquire a corresponding right of co-ownership.

5.4 The purchaser 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 purchaser hereby assigns the claims against his purchasers from the sale (total sum invoiced including value-added tax) or a corresponding part thereof, along with all secondary rights, to the seller until the latter's claims have been settled in full.

5.5 The purchaser shall remain authorised to collect the claim assigned pursuant to Section 5.4; the seller's authorisation to collect the claim himself shall remain unaffected thereby. The seller shall not collect the claim as long as the purchaser 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 purchaser.

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

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

5.7 An application to instigate insolvency proceedings against the seller shall authorise the seller to provide delivery and services only after full receipt of payment or to provide delivery and services conditional upon payment-performance.

#### **Section 6 - Liability for defects**

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

##### **6.1 Defects**

6.1.1 Details given by the seller about the properties of the article 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.

6.1.2 The purchaser can assert claims due to a defect 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 seller, be repaired or resupplied free of charge. Such defects shall be reported to the seller in writing as soon as they are discovered. Replaced parts shall become the property of the seller.

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

6.1.5 Following agreement with the seller, the purchaser shall give the seller the required time and opportunity to make all the repairs and to supply such replacements as the seller deems necessary; otherwise, the seller shall be discharged from liability for the resultant consequences. The purchaser 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 seller only in urgent cases of risk to safety or to avert disproportionately great damage; the seller shall be informed immediately thereof.

6.1.6 Of the direct costs incurred as a result of repair or delivery of a replacement, the seller shall – provided the complaint proves to be justified – bear the costs of the replace-

ment item, including the cost of shipping it to the place of performance. The seller shall also bear the reasonable costs of removing the defective part supplied and the costs of installing the replacement item, if installation of the part that later became defective was originally part of the contract. If it can be reasonably demanded in the individual case, the seller 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 purchaser shall have the right to rescind the contract if the seller – 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 purchaser shall merely have a right to a reduction in the contractual price.

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

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

Unsuitable or improper use or incorrect installation or commissioning by the purchaser 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 purchaser; failure to check or inadequate checking of programs and data for computer viruses (as defined in Section 9.3) by the purchaser, unusual effects of any kind (e.g. vibrations from other assemblies, ingress of foreign matter), chemical, electrochemical or electrical influences – unless the seller is to blame for them, violation by the purchaser of the obligations described in section 6.2.4.

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

The same shall apply to changes to the supplied article that have been made without the prior consent of the seller.

6.1.10 The purchaser shall be obliged to return the defective part to the seller at the request of the seller.

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

## 6.2 Legal imperfections in title

6.2.1 If use of the supplied article results in the infringement of industry property rights or copyrights in Germany, the seller shall in principle and at his own expense obtain the right for the purchaser to continue using it or modify the supplied article in a way that the purchaser 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 purchaser shall be authorised to rescind the contract. If said conditions exist, the seller shall also have the right to rescind the contract.

Moreover, the seller shall – if he is to blame – indemnify the purchaser against claims of the owner of the property rights

that are undisputed or have been ruled on finally and conclusively.

6.2.2 Subject to Section 7, the seller's obligations specified in Section 6.2.1 shall be final in relation to the infringement of proprietary rights or copyrights.

These obligations shall exist only if

- the purchaser informs the seller as soon as infringements of proprietary rights or copyrights are claimed,
- the purchaser assists the seller to a reasonable extent in defending against the claims or enables the seller to make the modifications as stated in Section 6.2.1,
- the seller retains the right to undertake all defensive measures, including out-of-court settlement,
- the legal imperfection in title is not attributable to an instruction by the purchaser or to the fact that the infringement only occurred as a result of combination of the supplied article by the purchaser with products or deliveries outside the seller's scope of supply, and
- the infringement has not been caused by the fact that the purchaser has modified the supplied article on his own or used it in a way not in conformity with the contract.

6.2.3 The seller does not warrant that the end products manufactured on the supplied article, including the manufacturing process used, are free of third-party property rights.

6.2.4 If the purchaser intends to export or transfer the delivery item to a country or territory against which the United Nations, the European Union or the United States of America has imposed or implemented an embargo or any other export or re-export restrictions or intends to use the delivery item in such country or territory, the purchaser shall notify the seller of the same in writing before the contract is entered into. If the purchaser adopts such an intention after the contract is entered into, such export, transfer or use shall be subject to the seller's prior written approval. If the delivery item is resold by the purchaser, the latter shall enter agreements to ensure that these obligations are transferred through to the final customer ultimately holding the delivery item. In the event of a violation, the seller shall be entitled to terminate the contract with immediate effect.

## Section 7 - Liability

7.1 If the supplied article cannot be used by the purchaser in accordance with the contract because the seller 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 article – the provisions of Sections 6 and 7.2 shall apply accordingly, to the exclusion of further claims by the purchaser.

7.2 The seller shall be liable for damage not caused to the supplied article 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 seller has concealed with intent to deceive or if he has warranted qualities of the object,
- in the case of defects to the supplied article, provided the seller is liable for injury to persons or damage to privately used articles pursuant to the German Product Liability Law (*Produkthaftungsgesetz*).

If the seller culpably violates cardinal contractual obligations, he shall be liable even in the case of gross negligence by

non-executive employees and 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 purchaser 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 seller is excluded or limited, this shall also apply to personal liability for damages on the part of the seller's employees.

#### **Section 8 - Limitation of actions**

8.1 All claims of the purchaser – on whatever legal grounds – shall become statute-barred in 12 months. 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 to supplied articles 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 purchaser 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 purchaser shall be granted a non-exclusive right to use it and its documentation. It shall be provided for use on the intended object supplied. The software shall not be used on more than one system.

9.2 The purchaser shall reproduce, revise, compile or translate the software or convert it from object code to source code only to the extent permitted by law (Sections 69 a et seq. of the German Copyright Law (*UrhG*)). The purchaser undertakes not to remove manufacturer's data – in particular copyright notices – or to change them without the seller's prior written consent.

All other rights to the software and documentation, including copies thereof, shall remain with the seller or the software supplier. Sublicensing of it shall not be permitted.

9.3 Before providing the software to the purchaser, the seller 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 purchaser at a later time and possibly change or delete program data of the software or other data or programs or impair systems.

9.4 Consequently, the purchaser himself shall likewise take measures to protect against computer viruses and other destructive data. The purchaser 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 purchaser wishes to use as part of his (operating or control) systems, where the functionality of his software may be affected thereby.

9.5 The purchaser 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 seller shall be liable only for the cost involved in restoring the correct data if the purchaser has backed it up properly.

#### **Section 10 - Applicable law, place of jurisdiction**

10.1 The law of the Federal Republic of Germany governing the legal relationships between domestic parties shall exclusively apply to all legal relationships between the seller and the purchaser.

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

#### **Section 11 - General provisions**

11.1 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 seller's registered offices. This shall also apply if clauses customary in the trade have been agreed.

11.2 Declarations serving to establish, safeguard or exercise rights shall not be valid unless given in writing. Written form shall also include declarations sent in textform by data transfer (e.g. email) or fax, unless the written form is mandatory according to applicable law.

11.3 The purchaser shall not assign his contractual rights to a third party without the written consent of the seller.

11.4 If the seller provides installation, commissioning, maintenance, repair or similar services, the relevant special terms and conditions of the seller shall apply additionally and with precedence.