

## 1 Scope of Applicability

- 1.1 These terms and conditions shall be applicable in respect of commercial entities (§ 310 clause 1,4 of the German Civil Code/BGB) but not in respect of consumers. Our goods, services and offers will be made exclusively on the basis of the present delivery terms. They will also apply to all future transactions even where they are not expressly agreed on again. Any business or purchase terms by the Client will not become part of the contract even where the Client indicated this upon acceptance of the contract and/or assumed that they would be recognized.
- 1.2 All changes and deviations from our delivery terms will only be binding where stipulated in writing.

## 2 Offer and Conclusion of the Contract

- 2.1 Elaboration of the offers will be on the basis of the documents and information provided by the Client. The Client will be liable for the accuracy of his information and the order and also for the timely receipt by us of the information regarding the goods ordered in such a way that the order can be carried out in good time. All drawings, illustrations, and data on capacity, weight and measurements are only approximate and are unofficial unless expressly specified as official. Unless the offer states otherwise, the compulsory term will be 6 weeks as from the date of the offer.

Conclusion of the contract will take effect only after our written confirmation of the order or by the acceptance declarations by the Client. Our order confirmation will be authoritative for the scope of the mutual rights and duties.

- 2.2 Should after the order confirmation technical problems arise in the provision of services, we shall be entitled to revoke the acceptance of the order at any time. Any liability for damages resulting from the ordering is explicitly excluded.
- 2.3 Up to the tendering phase the Client shall be obliged to inform us of all legal, administrative and other regulations which we are required to observe in the performance of the contract.
- 2.4 We will exclusively be entitled to the ownership right and copyright to all plans, drawings, illustrations, specifications, calculations and other documents. Said documents may not be passed or otherwise made accessible to third parties and must be returned to us unsolicited where the offer is not accepted. Our employees and vicarious agents do not have the right to conclude ancillary agreements or make verbal guarantees going beyond the subject matter of the written contract.

## 3 Prices and payment terms

- 3.1 The prices are ex works (EXW, Incoterms 2012) net, without VAT, duties, taxes, transport, packaging and insurance in the currency specified on the order confirmation. We reserve the right to increase prices after a period of 6 weeks after conclusion of the contract, if after the contract conclusion, increases in the price factors occur, particularly due to collective agreements or increases in material prices. Our invoices are due net by the due date for payment. A processing fee shall be charged for incomplete payments.
- 3.2 If the Client fails to comply with the agreed payment dates, he shall be in default from the due date without any reminder. If the Client is late with the payment or a payment on account, we shall be entitled to postpone other services. The invoices are due for payment even if the customer provides notification of defects. We have the right to first set-off the Client's older debts, contrary to the instructions of the Client and we will inform the Client of the type of set off made. Where costs and interest are already incurred, we will have the right to first set-off payment against the costs, then against the interest and finally the main debt.
- 3.3 Payment will be deemed to have been affected only after we are able to dispose of the amount. In the case of checks and/or acceptance of bills of exchange payment will be deemed effected where the check and/or bill of exchange was cashed.
- 3.4 Where the Client is in arrears with payment, we will have the right to charge interest of 8% above the basic interest rate of the European Central Bank as default damage as from the respective date. Assertion of further-reaching damage compensation claims will remain unaffected by this.
- 3.5 Where we become aware of circumstances detrimental to the creditworthiness of the Client, in particular where a check or bill of exchange is not cashed or payments are stopped, we will have the right to make the entire remaining debt due for payment even where we accepted checks. In this case we will

also have the right to demand advance payments or deposits.

- 3.6 The Client will only have the right to set-off, retention or price reduction where the counterclaims are res judicata or have been recognized in writing, even where complaints are being made on the basis of defects or counterclaims are being asserted. The assignment of claims against us to third parties is only permissible with our express written consent.

## 4 Delivery Period, Delayed Delivery

- 4.1 The delivery period is specified in our written order confirmation. The prerequisite for its observance is the settlement of all business and technical issues between the contracting parties and fulfillment by the Client of all duties incumbent on him such as obtaining the requisite official certificates or permits and payment of the agreed installment or any letters of credit or guarantees.
- 4.2 For supply contracts "on demand", which have a fixed period of acceptance, we shall have no duty for delivery after the expiry of the acceptance period. If there is no acceptance period agreed, after a lapse of time of one year from the time the order was placed we may demand that the Client request the goods. The Client shall be granted a reasonable period of time for this. Should the Client fail to approve the goods in this time, then we may cancel the contract wholly or partially or claim damages.
- 4.3 If shipment or delivery on request of the Client is delayed by more than one month after notification of readiness for dispatch, the Client may, for every additional month commenced, be charged storage costs of 0.5% of the price of the items of the Supplies, however to a total of 5 %. The parties retain the right to furnish evidence that higher or lower storage costs have been incurred.
- 4.4 Observance of the delivery deadline will depend on correct and timely supply to the supplier. The delivery deadline will be deemed to have been observed where the good has left the factory up to the lapse of the deadline or readiness for dispatch has been declared. Where an inspection is to be carried out, the date of the inspection or declaration of readiness for inspection will be authoritative.
- 4.5 Where the shipping or inspection of the good is delayed on grounds for which the Client is liable, the costs and expenses incurred will be charged to him as from the date of declaration of shipment or readiness for inspection.
- 4.6 In the event of delivery and performance delays due to force majeure or events which render delivery fundamentally difficult or impossible - even if they occur at our suppliers or their subcontractors - we shall not be responsible, even where binding dates and deadlines exist. Such delays entitle us to postpone delivery or performance by the duration of the hindrance plus a reasonable period of time or to withdraw wholly or partially from the contract due to the failure to fulfil this part.
- 4.7 Force majeure is an exceptional, unforeseeable and inevitable incident (e.g. natural catastrophes, war, acts of terrorism, revolution, high jacking and fire) the consequences of which cannot be averted by reasonable economic precautions. This includes official measures and government acts if they were not foreseeable or were not caused by an act or omission attributable to us. Natural incidents recurring periodically, and illegal lockouts are not considered incidents of force majeure.
- 4.8 Where delivery is prevented for more than three months as stated in Item 4.5 above, the Client will have the right to re- scind the contract on the basis of the non-performed part after stipulation of a period of grace. Where the delivery period is delayed or we are released from our duty, the Client cannot make any damage compensation claims on this basis.
- 4.9 We are entitled to make partial deliveries of goods and services at any time. The Client accepts the excess and short shipments of 10% of the ordered quantity customary within the trade. The effectively delivered quantity shall be invoiced.

## 5 Passing of Risk

- 5.1 The risk will pass to the Client as soon as the consignment is handed over to the shipper or has left our warehouse for shipment even where partial deliveries are being made or where we have taken on additional services e.g. shipping costs and delivery and assembly. Where an inspection is to be made it will be authoritative for the passing of the risk. It must be performed immediately on the inspection date or after declaration of readiness for inspection. The Client may not refuse inspection in the case of a minor defect only.
- 5.2 Where shipping/the inspection is delayed or cancelled due to circumstances for which we are not liable, the risk will pass to the Client on the date of declaration of readiness for shipment/inspection. Transport insurance shall only be taken

out by us at the express instructions and expense of the Client.

## 6 Retention of title

- 6.1 Up until fulfillment of all obligations (including all balance amounts from the current account) we are entitled to against the Client at present or in future on any legal ground, we will reserve the right of ownership or all items delivered to the Client (reserved goods). Where the value of all rights of security to which the Supplier is entitled exceeds the amount of all secured claims by more than 10 % the Supplier shall, at the request of the Client, release a corresponding portion of the rights of security; the Supplier may choose between different rights of security for release.
- 6.2 The Client has the right to process and sell the reserved goods provided that he is not delayed. Processing or modification will always be performed for us as manufacturers but will not entail any duty for us. We will have a share in the ownership of the new item on the basis of the ratio of the value of the reserved goods (invoice value) to the value of the new item. Where the Client resells the item, Item 6.3, will apply accordingly. As long as the goods have not been fully paid for the Client must store the goods for us, properly and separately from his own property and the property of third parties, secure and insure them and label them as our property.
- 6.3 The Client must insure the reserved goods against the usual risks, provided that the Client proves that he has concluded the respective insurance policies we will have the right to conclude them at the expense of the Client. Any claims arising from resale or another legal ground (insurance, illegal act, etc.) with regard to the reserved goods (including all balance amounts from the current account) are already being fully assigned to us by the purchase as a matter of precaution. We give revocable authorization to the Client to collect claims assigned to us for our account in his own name. Said collection authorization can only be revoked where the Client fails to comply properly with his payment obligations toward us.
- 6.4 The Client may not pledge or assign the reserved goods as security. In the case of access by third parties to the reserved goods, in particular assignments and seizures, the Client must specify our ownership of the goods and immediately inform us in order to assert our ownership rights. Provided that the third party is not able to reimburse any court/out-of court fees, the Client will be liable.
- 6.5 In the case of a breach of contract by the Client in particular in the case of delayed payment we will have the right to take back the reserved goods after a warning and the Client will be obligated to return them. In the case where insolvency proceedings have been filed for we will have the right to rescind the contract and demand the immediate return of the reserved goods. Any rights of retention are excluded in this case.

## 7 Warranty

- 7.1 The Client has to inspect the goods and services supplied within seven working days of receipt of delivery. If no written notification of defects is made during that time, then the goods or services shall be deemed to be complete, unobjectionable and approved with regard to visible defects, identity and quantity. The guarantee period for all goods and services is 12 months as from the date of the passing of the risk of the respective product or acceptance of the respective service. This period shall not apply where the law stipulates longer periods as per §§ 438 para. 1 no. 2 (buildings and items used for buildings), 479 para. 1 (claim to recourse) and 634a para. 1 no. 2 (construction defects) BGB - German Civil Code. We provide a warranty in the case of material and legal defects within the agreed guarantee period, excluding further claims, as follows:

### • Material Defects

- 7.2 All the parts which we choose to rectify free of charge or for which we provide replacement which prove to be defective on the basis of a circumstance prior to the passing of the risk. Detection of such defects is to be reported in writing to us immediately. Replaced parts will become our property.
- 7.3 The Client must grant us the necessary time for all rectifications and replacement deliveries we deem necessary, otherwise we will be released from any liability for ensuing consequences. The Client will only have the right to rectify the defect himself or have it rectified by third parties in urgent cases in which company safety is jeopardized or for prevention of disproportionately grave damage and to demand reimbursement of the expenses thereby incurred. However, the

prerequisite for this is that we are informed of this immediately.

- 7.4 Provided that the complaint is justified, we will bear the costs of the spare part, including shipping of the costs incurred by rectification or replacement. The Client has a right to rescission of the contract within the framework of the statutory regulations where we fail to comply with a deadline stipulated for us for rectification of a material defect or provision of a replacement, excluding the statutory exceptions. Where there is only a minor defect the Client will only have the right to reduction of the contractually stipulated price. The right to reduction of the contractually stipulated price is otherwise excluded.
- 7.5 Guarantee claims by the Client are excluded in the following cases: Unsuitable or improper use, defective assembly / operation by the Client or third party, natural wear and tear, defective or negligent treatment, improper maintenance, unsuitable means of operation, chemical, electro-chemical, electrical or environmental influences, provided that we are not responsible.
- 7.6 Where the Client or a third party rectifies the delivery item or alterations are made to it without our consent, we will not be liable for the consequences.
- Legal Defects
- 7.7 Where use of the delivery item entails infringement of industrial property rights or national copyright we will obtain the right for further use for the Client at our own expense or modify the delivery item in such a way that there is no longer an infringement of an industrial property right. Where this is not possible under economically adequate conditions or within an adequate period the Client will have the right to rescind the contract. We will also have the right to rescind the contract under the specified conditions. The duties specified above will only apply where the Client immediately informed us of infringements of industrial property rights or copyright and assisted us adequately with defense against the claims or facilitated the implementation of the modification measures and all defense measures including out-of-court settlements are reserved to us and the legal defect is not based on an instruction by the Client, design papers instructed by him or other instructions by the Client and the legal violation was not caused by an unauthorized modification of the delivery item by the Client or use of the item by him in a manner which does not comply with the contract. Only the direct Client will be entitled to guarantee claims against us and such claims are not assignable.
- 7.8 The above terms conclusively include all claims for our goods and services. Further guarantee claims are excluded.

## 8 Liability

- 8.1 Where the delivery item cannot be used in accordance with the contract due to our fault as a consequence of non-performance or defective performance or proposals and consultations prior to or after conclusion of the contract or by violation of other ancillary duties - in particular instructions for operation and maintenance of the delivery item, the terms set out in Item 7 of the present terms will apply against us and our vicarious agents, excluding further - reaching claims.
- 8.2 Regarding damage not incurred to the delivery item itself we will be liable, irregardless of the legal grounds, only in the case of - intent - gross negligence by our board members or executives - defects which we willfully concealed or which we guaranteed did not exist - defects of the delivery item where liability is assumed for personal or material damage to privately used items is assumed on the basis of the Product Liability Act. In the case of culpable breach of cardinal contractual duties we will only be liable for damage typical of the contract and which was reasonably foreseeable. Further claims are excluded.

## 9. Developments

If the development work of the Supplier does not result in a targeted result within the agreed period, despite every reasonable effort being made, then the Supplier shall be entitled to withdraw from the contract.

## 10 Export

The Client is responsible for the meeting of all relevant domestic and foreign export regulations.

## 11 Work documents

Documents, auxiliary materials, tools and test programmes as well as IT data created by us for production purposes on the basis of designs or electronic data of the Client that are not in-

voiced to the client represent production tools and are our property.

**12. Applicable Law, Place of Jurisdiction**

- 12.1 The laws of the Federal Republic of Germany, excluding the International Sales Convention will apply to the entire legal relations between us and the Client.
- 12.2 Should a term of the present Delivery Terms be or become invalid, this will not affect the validity of the remaining terms. The invalid term is to be replaced by a term which comes as close as possible to the economic purpose of the invalid term.
- 12.3 Where the Client is a registered businessman as defined by the Commercial Code or is a legal public law entity or estate, the domicile of our company will be the exclusive place of jurisdiction for all disputes directly or indirectly arising from the contract unless another place of jurisdiction is prescribed. However, we also have the right to sue at the main domicile of the plaintiff.