

# GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY

## I. General

1. All supplies and services are subject to these terms and conditions and any separate contractual agreements. Deviating customer terms and conditions of purchase will not form any part of this contract, including following acceptance of order.

In the absence of separate agreement, formation of the contract will be effected by means of the written order acknowledgement.

2. The supplier retains all rights of ownership and copyright of samples, quotations, drawings and similar information of corporeal or incorporeal nature, including in electronic form; furthermore, such material may not be made available to third parties.

The supplier agrees not to make any information or documentation, designated as confidential by the customer, available to third parties without the approval of the customer.

## II. Price and payment

1. In the absence of separate agreement, all prices are ex works, including loading at the point of supply and excluding packaging and unloading. All prices are subject to sales tax at the statutory rate.

2. In the absence of separate agreement, payment is to be effected without deduction to the supplier's account as follows: 30 % down payment upon receipt of the order acknowledgement, 65 % payment immediately upon notification to the customer that the main components are ready for shipment, with the outstanding balance to be paid within one month following passing of risk.

3. A right to retention of payments or to offset counterclaims shall only be available to the customer insofar as its counterclaims are uncontested or judicially non-appealable.

4. A right to offset counterclaims shall only be available to the customer insofar as its counterclaims are uncontested or judicially non-appealable.

## III. Delivery date, delay in supply

1. The delivery date is determined by agreements between the contracting parties. Observance of the delivery date by the supplier is conditional upon all commercial and technical questions between the contracting parties having been clarified and the customer having fulfilled all obligations incumbent upon it, such as the furnishing of necessary official certificates or authorizations, or the effective performance of a down payment. Where this is not the case, the delivery date will be postponed accordingly. This will not apply insofar as the delay is occasioned by the supplier.

2. Observance of the delivery date is subject to the proper and timely delivery of the supplier's own supplies. The supplier will provide notification of any emerging delays as soon as possible.

3. Observance of the delivery date shall be effected when the complete delivery item has left the premises of the supplier or readiness for shipment has been notified. Should acceptance be required - with the exception of legitimate non-acceptance - the acceptance date, or alternatively the readiness for acceptance, shall be decisive.

4. In the event that shipment or acceptance is delayed for reasons occasioned by the customer, any costs resulting from the said delay will be charged to the customer with effect from one month following notification of the readiness for shipment or acceptance.

5. Where a delivery date cannot be met as a result of force majeure, labor disputes or other events outside the control of the supplier, the delivery date will extend commensurately. The supplier will notify the customer of the start and end of any such circumstances at the earliest possible opportunity.

6. The customer is entitled to withdraw from the contract, without fixing a time limit, where performance in full by the supplier becomes definitively impossible prior to the passing of risk. The customer may also withdraw from the contract where execution of part of an order becomes impossible and the customer has a legitimate interest in rejecting the incomplete shipment. In the absence of withdrawal from the contract, the customer is to effect payment of the contract price pertaining to the

incomplete shipment. The same shall apply in the event of incapacity on the part of the supplier. Section VII.2 applies in remainder.

The customer remains under an obligation to effect consideration where such impossibility or incapacity occurs during default in acceptance, or where the customer is solely or predominantly responsible for these circumstances.

7. In the event of delayed performance on the part of the supplier resulting in damage being suffered by the customer, the customer is entitled to require a lump sum payment of compensation for delayed performance. This payment shall amount to 0.5% for each complete week of delay, however, only up to a maximum of 5% of the value of the part of the overall delivery that cannot be used on time or in accordance with the terms of the contract owing to the delay in performance. Any further claims due to delayed performance are precluded.

Following expiry of the due date for supply and in consideration of statutory exceptions, where the customer notifies the supplier of a reasonable period for performance that the supplier then fails to observe, the customer may - within the scope of statutory provisions - withdraw from the contract. He undertakes upon demand of the supplier to explain within an appropriate period of time if he intends to make use of the right to withdraw from contract.

## IV. Passing of risk, acceptance

1. Risk passes to the customer when the delivery item leaves the supplier's premises; including where part-shipments occur or where the supplier has agreed to additional performance, such as payment of shipment costs, or effecting delivery and installation. Insofar as acceptance is to be performed, this shall be decisive in terms of the passing of risk; and must be promptly carried out on the date of acceptance, or alternatively, following notification from the supplier of readiness for acceptance. The customer may not refuse acceptance due to the existence of a non-substantive defect.

2. Should shipment or acceptance be delayed or fail to occur for reasons not occasioned by the supplier, risk shall pass to the customer on the day of notification of readiness for shipment or acceptance. At the customer's expense, the supplier undertakes to conclude insurance requested by the customer.

3. Part-shipments are permissible, insofar as reasonable for the customer.

## V. Retention of title

1. The supplier retains ownership of the delivery item until all payments resulting from the supply contract have been received.

2. At the customer's expense, the supplier is entitled to insure the delivery item against theft, breakage, damage caused by fire or water, or any other damage, insofar as the customer has not provided evidence of having concluded such insurance itself.

3. The customer is not entitled to sell, pledge or assign the delivery item as security. The customer is to notify the supplier without delay of any levy of execution, seizure or other third party disposition.

4. In the event of conduct on the part of the customer contrary to the terms of the contract - particularly default in payment - and following reminder, the supplier is entitled to recover the delivery item; in which case the customer shall be obliged to surrender the said delivery item.

5. On the basis of retention of title, the supplier is only entitled to reclaim the delivery item where it has withdrawn from the contract.

6. Any application to open insolvency proceedings shall entitle the supplier to withdraw from the contract and require the immediate return of the delivery item.

## VI. Warranty claims

To the exclusion of any further claims and subject to Section VII, the supplier hereby extends a warranty for quality defects and legal deficiencies in title as follows:

Quality defects

1. At the supplier's option, any components showing defects owing to circumstances in existence prior to the passing of risk are to be repaired or remedied of defects free of charge. The supplier is to be notified in writing of the discovery of any such defects without delay. All parts replaced will become the property of the supplier.

2. In agreement with the supplier, the customer is to extend the necessary time and opportunity to allow the supplier to implement any repairs and replacements deemed necessary on its part; where this does not occur the supplier will not be responsible for any resulting consequences. The customer may only remedy the defect itself - or arrange for remedy by a third party - and claim reimbursement of the necessary expenditure from the supplier, in urgent cases posing a threat to operational safety and/or to prevent disproportionately greater damage from occurring; in any such case the supplier is to be notified immediately.

3. Of costs incurred as a direct result of repairs or replacements, and insofar as the complaint of defect proves to be legitimate, the supplier will bear the cost of any replacement parts and their shipment. The supplier will also bear any costs for removal and installation, as well as the cost of providing any necessary fitters and laborers, inclusive of travel expenses, provided such costs do not represent a disproportionate burden for the supplier.

4. Within the scope of statutory provisions, the customer is entitled to withdraw from the contract where, in consideration of statutory exceptions, a reasonable period extended to the supplier to enable it to implement repairs or replacements of quality defects expires without successful remedy. In the event of minor defects, the customer will only be entitled to a reduction of the contract price. The right to a reduction of the contract price is excluded in all other cases.

Any further claims are to be determined in accordance with section VII.2 of these terms and conditions.

5. No responsibility shall be assumed in the following circumstances: unsuitable or improper use, imperfect assembly or initial operation by the customer or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable operating material, insufficient building work, unsuitable subsoil, chemical, electro-chemical or electric influences – unless the supplier is deemed responsible for any of these occurrences.

6. In the event that the customer or any third party performs improper repair work the supplier shall not be liable for any consequential damage. The same shall apply to modifications performed on the supply object with the previous consent of the supplier.

Legal deficiencies in title

7. Should use of the delivery item result in the infringement of any domestic industrial property rights or copyrights, at its own cost, the supplier will procure the right for the customer to continue to use the said delivery item, or will modify it in such a way that the modification is both reasonable to the customer and the infringement of the industrial property right no longer exists.

In the event that this cannot be achieved on economically viable terms or within a reasonable period of time, the customer is entitled to withdraw from the contract. The supplier is also entitled to withdraw from the contract, subject to the above-mentioned conditions.

Furthermore, the supplier will also indemnify the customer against any uncontested or judicially non-appealable claims asserted by the respective holder of the industrial property right.

8. Subject to Section VII. 2, the obligations incumbent upon the supplier in accordance with Section VI.7 are conclusive in the event of any infringement of copyright or industrial property rights.

These obligations apply insofar as

- the customer notifies the supplier immediately of any asserted infringements of copyright or industrial property rights
- the customer supports the supplier to an appropriate extent in the defense of the asserted claims and/or enables the supplier to effect modification measures in accordance with Section VI. 7.
- the supplier reserves the right to effect any defensive action, including out-of-court settlements,

- the legal deficiency in title is not founded on an instruction of the customer and
- the infringement of the right does not result from independent customer modifications to the delivery item, or the customer using the delivery item in a manner contrary to the contract.

#### VII. Liability

1. To the exclusion of any further claims on the part of the customer, should the customer be unable to use the delivery item in accordance with the contract, owing to fault on the part of the supplier resulting from the omission or incorrect performance of suggestions and advice provided prior to or subsequent to conclusion of contract, or as a result of infringement of any other secondary contractual obligations – particularly instructions for use and maintenance of the delivery item – the terms of Sections VI and VII.2 will apply accordingly.

2. Irrespective of legal basis and other than that caused to the delivery item, the supplier will only be responsible for damage resulting from

- a. wrongful intention
- b. gross negligence on the part of its owners/bodies or senior employees,
- c. culpable injury to life, body and health,
- d. defects the supplier has maliciously concealed or guaranteed the absence of,
- e. defects in the delivery item insofar as liability for personal injury or material damage to privately used objects is imposed in accordance with German Product Liability Law (Produkthaftungsgesetz).

In the event of culpable breach of substantial contractual obligations, the supplier is also responsible for gross negligence on the part of non-senior employees and for ordinary negligence; whereby, in the latter case, responsibility is limited to reasonably foreseeable loss typical to the contract.

Any further claims are precluded.

#### VIII. Limitation of actions

All claims on the part of the customer – irrespective of legal basis – are barred by limitation after 12 months. Claims for damages in accordance with Section VII 2 a – e above are subject to the statutory periods of limitation; these also apply for deficiencies in building structures or delivery items that, in line with their normal manner of use, have been used in building structures and have resulted in the unsoundness thereof.

#### IX. Use of software

The customer is granted a non-exclusive right to use any software and related documentation included within the scope of supplies. Such software is provided for use with the specific delivery item for which it is intended and may not be used on more than one system.

The customer may only copy, revise or translate the software, or convert object codes into source codes, to the extent permitted by law (Ss. 69 a) et al. of the German Copyright Act [UrhG]). The customer undertakes not to remove any information pertaining to the manufacturer – particularly copyrights – or to modify such information without the express prior approval of the supplier.

The supplier and/or software provider retain all other rights pertaining to the software and documentation, including copies. The granting of sublicenses is not permitted.

#### X. Applicable law, legal venue

1. For all legal relations between supplier and customer, the law of the Federal Republic of Germany exclusively shall be applicable to the exclusion of any conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

2. Legal venue is the competent court at the supplier's domicile. The supplier is, however, also entitled to institute legal proceedings at the customer's principle place of business.

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