

## **Terms of Sales and Delivery**

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### **§ 1 General information**

1. Any deliveries and services shall be subject to these terms and conditions and, if applicable, any separate contractual agreements. The acceptance of an order shall not imply that any of the customer's deviating terms of purchase shall become an essential part of the contract. Subject to separate agreement – a contract shall become effective with the supplier's confirmation of the order in writing.
2. The supplier's written order confirmation shall be the relevant basis for the extent of the order. In the case of the supplier presenting an offer, which comprises a binding time schedule and timely acceptance of the same, the offer shall be relevant, if an order confirmation has not been received in due time. Bye-laws and alterations shall be subject to the supplier's confirmation in writing.
3. The supplier reserves his proprietary rights and copyrights for any samples, quotation of costs, drawings and similar information, whether material or immaterial; such information shall not be disclosed to any third parties. The supplier shall undertake not to disclose to any third party such information, which the customer has declared to be confidential, unless the former has obtained the customer's prior approval to do so.

### **§ 2 Price and payment**

1. Subject to separate agreement, the prices stated are ex works, without packaging, loaded freely, without insurance for transportation. All prices are subject to additional VAT, as appropriate in accordance with statutory regulations.
2. Subject to separate agreement, payment of the purchase price is always due immediately on receipt of the delivery without any reduction to the supplier's account.
3. The customer's right to withhold payments or set off payments against claims shall only apply, if such claims are undisputed or have been given legal effect.

### **§ 3 Delivery times, delay in delivery**

1. Delivery times shall be subject to agreement between the contract parties. The supplier's adherence to the agreed delivery times shall be preconditioned to the fact that all administrative and technical details have been agreed between the contract parties and that the customer has fulfilled his/her obligations accordingly, e.g. obtaining the necessary certificates and/or approvals from the appropriate authorities or, if applicable, the payment of a deposit. Failure to do so may incur respective and/or appropriate delays with regard to the delivery times. However, this does not apply if the delay is due to the supplier's responsibility.
2. Adherence to the agreed delivery times shall be subject to the due and timely receipt of the respective item by the supplier himself. The supplier shall inform the customer as soon as possible, in the case of expected delays.
3. The delivery time shall be deemed to have been met, when, at the due date the item for delivery has left the works or has been reported to be ready for delivery. In the case the item has to be approved, the approval date shall be the relevant date or, if appropriate, the date when the item has been reported to be ready for approval – except in the case of a justified refusal of approval.
4. In the case the dispatch and or the approval of the delivery item will be delayed due to any failure on behalf of the customer, he or she shall bear any costs incurred as a result of such delay, commencing one month after the item concerned has been reported ready for dispatch and/or approval.
5. In the case the failure to deliver is due to reasons of force majeure, labour disputes or other events, which are out of the control of the supplier, the delivery time shall be extended accordingly. The supplier shall inform the customer of the commencement and the end of such circumstances accordingly.

6. The customer shall be entitled to withdraw from the contract without notice; in the case the supplier will not be able to perform his / her service obligations prior to the transfer of risks. Furthermore, the customer shall be entitled to withdraw from the contract, if with regard to an order it will become impossible to deliver part of the same and he / she has a valid interest in rejecting any part delivery. If this does not apply, the customer shall be obliged to pay the applicable contract price for such part delivery. The same shall apply in the case of failure to perform on behalf of the supplier. Otherwise, paragraph 7.2. shall apply. If such impossibility or failure to perform occurs during the period of delay in the acceptance of the goods or, in the case the customer bears sole or a major part of the responsibility, he or she shall be obliged to quid pro quo.
7. In the case the supplier shall be in delay and as a result damage will be incurred to the customer, the latter shall be entitled to demand a standard allowance in compensation for the delay. Such compensation shall amount to 0.5 % for each week of the delay, however in total 5 % at the most of the value of the appropriate part of the complete delivery, which due to the delay cannot be used in time and/or as agreed in the contract. In the case the customer – in consideration of exceptional cases by law – determines to the supplier a reasonable date of performance and the supplier fails to meet this date, the customer shall be entitled to withdraw from the contract in accordance with applicable statutory regulations. Any other claims as a result of delays in deliveries are exclusively subject to paragraph 7.2 of these terms.

#### **§ 4 Transfer of risks, approval**

1. The risks shall be transferred to the customer when the delivery item has left the factory, this also applies for part deliveries or in the case the supplier has accepted to perform other duties, e.g. the cost of dispatch or on site delivery and assembly. In the case of an approval procedure, this shall be relevant for the transfer of risks, which is to be effective immediately after the date of approval, or following the supplier's announcement that the item is ready for approval. In the case of minor faults, the supplier shall not be permitted to refuse his / her approval.
2. In the case the dispatch will be delayed or the item fails to be dispatched and/or approval will be refused due to circumstances, which are not attributable to the supplier, the risks shall be transferred to the customer on the date of the announcement of the item's readiness for dispatch and/or approval. The supplier shall undertake to take out appropriate insurance cover, on account of the customer, as the latter requires.
3. Part deliveries are permissible to an extent reasonably acceptable to the customer.

#### **§ 5 Reservation of retention of title**

1. The supplier shall reserve the title in the delivery item until he / she has received full payment in relation to the delivery contract.
2. The supplier shall be entitled to take out appropriate insurance cover against theft, breakage, fire, water and other damage, on account of the customer, unless the customer has provided evidence of his / her own insurance cover.
3. The customer shall not be entitled to dispose of, pledge nor assign the delivery item as security. In the case of levy of execution and confiscation or other orders issued by third parties, the customer shall undertake to inform the supplier immediately.
4. In the case of a breach of contract committed by the customer, in particular in the case of delay of payment, the supplier shall be entitled, having previously sent a reminder to the customer, to take the delivery item back and the customer shall be obliged to give up possession of the same.
5. Due to the reservation of retention of title, the supplier shall only be entitled to demand repossession of the delivery item, if he/she has previously withdrawn from the contract.
6. Application for the initiation of bankruptcy procedures shall entitle the supplier to withdraw from the contract and demand the immediate return of the delivery item.

## **§ 6 Warranty claims**

For defect of quality and legal implications regarding the delivery the supplier shall – with the exclusion of any future claims – subject to paragraph 7 – warrant as follows:

1. All parts, which are found to be faulty and/or defect prior to the transfer of risks shall be repaired or replaced free of fault and free of charge in accordance with the supplier's option. Identification of such defects / faults shall have to be reported immediately to the supplier in writing. The supplier shall retain the title in any replaced items.
2. Subsequent to the agreement between the supplier and the customer, the customer shall be obliged to grant the supplier the necessary time and opportunity to carry out the adjustments/repairs and/or replacements as deemed necessary; otherwise the supplier shall be indemnified from any liability for the resulting consequences. Only in urgent circumstances whereby the safety of the company would be in jeopardy and/or in prevention of major damage, in which case the supplier shall be informed immediately, the customer shall be entitled to repair defects and/or faults himself or have them repaired by third parties and subsequently demand to be refunded for the necessary expenses.
3. With regard to the immediate costs incurred by such adjustment/repair and/or replacement delivery, the supplier shall – provided the claim proves to be justified – bear the cost of the replacement piece and the dispatch. In addition, the supplier shall bear the cost of the disassembly and installation and the cost for possible provision of engineers and assistants including travelling expenses, provided that the supplier will not suffer undue stress and expenses hereby.
4. In the outline of the legal regulations, the customer shall have the right of withdrawal from the contract, if the supplier – in consideration of the legal exceptions – fails to carry out his / her obligation to adjust / repair or replace within a reasonably granted time frame. In the case of only minor faults / defects, the customer shall merely be entitled to reduce the contract price accordingly. Otherwise, the right to reduce the contract price shall remain to be ruled out. Any other claims shall be subject to the provisions of paragraph 7.2 of these terms.
5. There shall be no warranty in the following particular cases: Unsuitable or improper use, faulty assembly and/or initial operation by the customer or any other third party, natural wear and tear, faulty or negligent treatment, insufficient and/or undue maintenance and care, unsuitable operational means, faulty construction work, unsuitable surfaces at the building site, chemical, electro-chemical or electrical influences – provided these circumstances are not the supplier's responsibility and/or fault.
6. In the case the customer and/or any third party carries out improper adjustments/repairs, the supplier shall not be obliged to take over any liability for the resulting consequences. The same applies to alterations at the delivery item, which have been performed without the supplier's prior approval

### **Legal implications:**

7. In the case the use of the delivery item will incur any violation of commercial proprietary rights or copyrights, the supplier shall in principal obtain on his/her account the right for the customer to continue the use of the said item or he/she shall modify the delivery item in such manner to be acceptable to the customer that will no longer present any violation of proprietary rights. Should this not be feasible in line with reasonable economic conditions or in an appropriate time frame, the customer shall be entitled to withdraw from the contract. Under the said provisions, the supplier shall also have the right to withdraw from the contract. Furthermore, the supplier shall indemnify the customer in respect of undisputed or non-appealable, identified claims of the respective copyright / proprietary right holder.

8. The supplier's obligations stated in paragraph 6.7 shall be conclusive, subject to the provisions of paragraph 7.2, in the case a violation of proprietary rights or copyrights applies. They shall only apply in the following circumstances:
- If the customer informs the supplier immediately of any claims with regard to the violation of proprietary rights or copyrights.
  - If the customer will to a reasonable extent support the supplier in the defence of such claims and/or enables the supplier to carry out modifications in accordance with paragraph 6.7.
  - If all measures of defence including out of court settlements shall be reserved to the supplier.
  - If the legal implication is not due to an instruction given by the customer and
  - the violation of the law has not been caused by the fact, that the customer has acted without proper authority in altering the delivery item or has used the same contrary to the contractual purpose.

### **§ 7 Liability**

1. Should, through the fault of the supplier and as a result of omissions or faulty design with regard to proposals and advice offered prior to or after the execution of the contract or due to the violation of other contractual bye-laws – in particular with regard to the operating and maintenance instructions pertaining to the delivery item -, the customer be unable to use the item in line with the contractual agreement, the provisions of paragraphs 6 and 7.2 shall apply accordingly, however thus excluding any other customer claims whatsoever.
2. The supplier shall only be liable for damage, that has not been caused to the delivery item itself – for whatever legal grounds – in the following circumstances
  - a) in the case of intent,
  - b) in the case of gross negligence on behalf of the owner / bodies or executives,
  - c) in the case of an intended violation of life, body and health,
  - d) in the case of defects, which he / she has maliciously kept secret or the absence of which he/she has warranted,
  - e) in the case of faults / defects on the delivery item, to the extent that liability will be taken over with regard to personal and/or material damage to privately used objects in accordance with the law of product liabilities.

Should there be an intended violation with regard to essential obligations under this contract, in the case of gross negligence, the supplier shall also be liable of non-executive members of his/her staff and in the case of ordinary negligence, in the final case, liability shall be restricted to reasonably foreseeable damage in line with the contract.

Second hand delivery items shall be sold with the exclusion of any material damage liability.

### **§ 8 Limitation of actions**

The limitation of action in respect of any of the customer's claims – irrespective of any legal grounds – shall be 12 months. Any claims of compensation in accordance with paragraphs 7.2 a-e shall be subject to the legal time frames. This shall also apply to any fault of a building or for delivery items, which have been used in conjunction with a building in accordance with their customary purpose and as a result have caused a fault / defect to that building.

### **§ 9 The use of software**

To the extent that software is provided as part of the delivery package, the customer shall be granted the non exclusive right to use the delivered software and its respective documentation. The software shall be provided for use with the respective delivery item. The use of the software on more than one system shall be prohibited. The customer shall only be entitled to copy, review, translate or modify it from object code to source code. The customer shall undertake not to remove or alter any of the manufacturer's information – this applies in particular to copyright statements – without previously obtaining the supplier's expressed consent.

#### **§ 10 Applicable law, place of jurisdiction**

1. The laws of the Federal Republic of Germany shall exclusively govern all legal and contractual relations between the supplier and the customer.
2. The place of jurisdiction is the responsible court in relation to the supplier's principle place of business. However, the supplier shall be entitled to bring an action to file in the customer's principle place of business.

#### **§ 11 Any other business**

The validity of the standardized law on the execution international purchase contracts with regard to moveable items of 17 July 1973 (BGBlI856-EKAG) shall be excluded. It shall be the foreign customer's duty of care to ensure that the delivery items will be delivered in accordance with the national health and safety standards. The contractual relations are exclusively governed by German law (para 10).

#### **§ 12 The salutary clause**

In the case that now or in the future any of the agreements of this contract should in total or in parts become appealable or not executable or lose their unappealability or executability, this shall have no effect to the validity of any of its other agreements.