



#### **I. General**

1. All present and future business with the Customers shall be exclusively based on these Standard Terms of Sale and Delivery, even if they have not been expressly agreed.
2. We will not recognise any terms of the Customer which contradict or depart from our terms of sale unless we have expressly agreed to them in writing.
3. These terms only apply vis-à-vis businesses in the meaning of s. 310 para. 1 of the German Civil Code (BGB), legal entities under public law and special public funds.
4. These terms also exist in German. In case of differences between the German and English versions or in other cases of doubt, the German version applies.

#### **II. Offers**

1. Our offers are subject to change without notice. We reserve the right to make technical modifications, modifications to the scope of delivery and modifications in form, colour and weight, in as far as this is reasonable.
2. If the order is to qualify as an offer in accordance with s. 145 BGB, we can assume that this is the case within 2 weeks. Acceptance shall be made in the form of an acknowledgement of the order or by delivering the goods to the Customer.
3. Side agreements and amendments shall require the Supplier's written confirmation.
4. The contract shall be formed subject to the reservation that we ourselves are supplied with the right goods in good time by our own suppliers. This only applies if we are not at fault for failure to deliver, particularly on entering into a congruent hedging transaction with our own supplier. If the item is not available we shall inform the Customer immediately and shall reimburse him for any consideration paid.
5. The documents accompanying the offer such as pictures, drawings and details concerning weights and measures are only approximate in as far as they are not expressly designated as being binding. The Supplier reserves rights of ownership and copyright to the cost estimates, drawings, electronic data records and other documents; they may not be made accessible to third parties. The Supplier may only disclose plans which the Customer has designated as being confidential to third parties if the Customer has given its consent.
6. The Customer guarantees that the execution drawings it submits do not interfere with the industrial property rights of third parties. If, however, claims are made against the Supplier due to the violation of the industrial property rights of third parties, the Customer must indemnify the Supplier in full.

#### **III. Prices and terms of payment**

1. All prices offered are net prices; the purchase price does not include statutory value added tax. The prices apply ex works including loading at the works, but not including packaging, the Supplier being free to choose the forwarding agent.
2. In as far as nothing to the contrary is agreed, the purchase price must be paid net within 30 days after date of invoice. If this time limit expires to no avail, the Customer shall be in default without a reminder being necessary. During the time that the Customer is in default, interest must be paid on the money owed according to the statutory provisions. The Supplier reserves the right to assert claims for a higher sum in default damages.
3. Payment orders and cheques shall only be accepted on account of payment. Collection expenses and other expenses shall be borne by the Customer.
4. The Customer shall only be entitled to set off claims if the Buyer's counterclaims are final and absolute, undisputed or have been acknowledged by ourselves. Furthermore the Customer shall only be entitled to exercise a right of retention in as far as his counterclaim is based on the same contractual relationship.

#### **IV. Delivery period**

1. The delivery period shall commence on the date that the acknowledgement of the order is sent out, but not before the Customer has fulfilled its contractual obligations, which particularly means providing the documents, approvals and go-aheads that the Buyer has to obtain nor before any down payment that has been agreed.
2. Adherence to the delivery deadline is subject to the reservation that we ourselves are supplied with the right goods in good time. The Suppliers shall give notice as soon as possible if there are signs of any delays.
3. The delivery deadline shall have been complied with if the item to be delivered has left the works by the time that the deadline expires or when the Customer has been informed that the goods are ready to be shipped, in as far as the Customer is obliged to collect or ship the goods. If there is to be an acceptance test, the date of the acceptance test shall be authoritative except when acceptance is justifiably refused; as an alternative the date when notification is given that the goods are ready for acceptance shall be authoritative.
4. The delivery period shall be extended by a reasonable period time in the case of measures to do with industrial disputes, particularly strikes and lock-outs, and in the event of unforeseen events which are not the Supplier's fault, in as far as such events can be proved to have had a considerable influence on the completion or delivery of the item to be delivered. This shall also apply if such circumstances occur among our own suppliers.
5. If the shipping of the goods is delayed at the Customer's request, the Supplier shall be entitled to make other

arrangements for the item in question instead of claims for damages being asserted due to the delay after setting a reasonable deadline and this deadline expiring and also to supply the Customer with the item by a reasonably extended deadline.

#### **V. The passage of risk**

1. The risk shall pass to the Customer when the goods are handed over. If the goods are to be shipped, the risk shall pass on the date that the goods are delivered to the party that has been selected to handle shipping. If there is to be an acceptance test, this shall be authoritative for the passage of risk. The acceptance test must be carried out immediately on the set date or alternatively after the Supplier has given notice that the goods are ready for acceptance. The Customer may not refuse acceptance in the case of only a slight defect. If shipping is delayed or does not take place or if the acceptance test is not held due to circumstances which are not the fault of the Supplier, the risk shall pass to the Customer on the date that notice is given that the goods are ready for shipping or ready for acceptance. Any delay on the part of the Customer in performing the acceptance test shall be deemed equivalent to the handing over of the goods.
2. At the Buyer's request and expense an insurance policy shall be taken out to cover theft, breakage, damage caused by transport, fire and water and other insurable risks.
3. The Customer shall accept any items that have been delivered even if they have slight defects without prejudice to the rights set out in section VI.
4. Part deliveries shall be permissible in as far as this is reasonable for the Customer. Permissible part deliveries shall be deemed a self-contained transaction.

#### **VI. Liability for defects**

1. All parts which turn out to be defective as a result of circumstances occurring before the passage of risk shall be improved or replaced by undamaged parts, at the Supplier's choice. Replaced parts shall become the Supplier's property.
2. Within the framework of the statutory provisions the Customer shall have the right to rescind the contract if the Supplier allows a reasonable deadline which has been set for an improvement or a substitute delivery in respect of a material defect to expire to no avail, taking account of the exceptions allowed under the law. If there is only a slight defect, the Customer shall only have the right to reduce the contractual price. The right to reduce the contractual price shall be excluded in all other cases. In lieu of this, the Customer may claim damages or compensation for expenses incurred in vain in accordance with section VII. 2 of these Standard Terms.
3. In order to assert the claims set out in paragraphs 1 and 2 the Customer must give immediate notice of the complaint; in the case of hidden defects the cut-off period for giving notice of the complaint shall be 1 year.
4. Only in urgent cases when there is a danger to operational reliability and in order to avert disproportionate damage (it being necessary to notify the Supplier immediately) or if the Supplier delays in rectifying the defect shall the Customer have the right to rectify the defect itself or to have the defect rectified by third parties and to claim compensation from the Supplier for the costs incurred.
5. The Supplier shall bear the costs of subsequent performance with the exception of the costs additionally incurred due to the fact that the item ordered has been taken to a place other than the place of performance.

#### **VII. Limitation of liability**

1. If the Customer cannot use the item to be delivered as agreed in the contract due to a fault on the part of the Supplier, due to proposals and discussions before or after the formation of the contract not being carried out or being imperfectly carried out or due to a breach of any other secondary obligations under the contract, particularly the instructions for the operation and maintenance of the item to be delivered, the provisions set out in sections VI. and VII. 2 shall apply accordingly, excluding further claims on the part of the Customer.
2. In the case of damage which is not damage to the item to be delivered, the Supplier shall only be liable, irrespective of on which legal grounds,
  - a. in the case of intent
  - b. in the case of gross negligence
  - c. in the case of a culpable injury to life, physical injury and injury to health
  - d. in the case of defects which it has fraudulently concealed or whose absence it has guaranteed
  - e. in the case of defects to the item to be delivered in as far as liability has arisen under the Product Liability Law for personal injury or damage to items of private use
  - f. for execution according to the drawings if an item is manufactured according to the Customer's drawings, but not for damage due to construction defects.In the case of breach of major contractual obligations due to slight negligence on the part of the Supplier or the Supplier's vicarious agents liability shall be limited to the typical and reasonably foreseeable damage. All further claims shall be excluded.

#### **VIII. Limitation period**

All Claims of the Customer - on whatsoever legal grounds - shall become statute-barred in 12 months. The statutory limitation periods shall apply to claims for damages in accordance with section VII. 2. a to e). They shall also apply to defects to an edifice or for items delivered which have

been used for an edifice in accordance with their usual use and which have caused it to be defective.

#### **IX. Security**

If the Supplier does not become aware that the Customer is in difficult financial circumstances until after the formation of the contract, the Supplier may demand a security that is recognised in business transactions for the Customer's consideration. If the Supplier is not presented with the security within the set time limit, the Supplier shall have the right to rescind the contract.

#### **X. Reservation of title**

1. The Supplier reserves title to the goods until all claims under the current business relationship have been settled in full. The Customer is under an obligation to treat our property with care and only for its intended purpose.
2. If the Customer is in breach of contract, particularly by mishandling the item in breach of duty, and in the case of late payment and the commencement of insolvency proceedings against the Customer, we shall have the right to rescind the contract and to take back the item purchased. No right of retention from claims which are not based on this contract may be set off against this claim to the surrender of the goods. This shall also apply in the case of undisputed claims or claims which have become final and absolute.
3. The Customer may neither pledge the item under reservation of title nor assign it by way of security. The Customer must notify us immediately in the case of attachment or other forms of seizure by third parties, in the case of a change of possession and a change in the Customer's principal place of business.
4. The Customer shall have the right to resell the goods in the ordinary course of business. The Customer hereby assigns to us all claims against a third party which accrue to the Customer due to the resale. We accept this assignment. If the value of the assigned claims exceeds our claim to the payment of the purchase price by more than 10 %, we shall be obliged to reassign this part of the claim at the Customer's request. After the assignment, the Customer shall be authorised to collect the claim. We reserve the right to collect the claim ourselves as soon as the Customer defaults on payment, an application is filed for the commencement of insolvency proceedings or payments are suspended. At our request the Customer must notify us of the addresses of his own customers. At our request the Customer must also notify its own customers of the assignment of the claim.
5. Any working or reshaping of the item purchased shall always be done on our behalf. If the item is worked together with objects that do not belong to us, we shall gain co-ownership of the new item in the same ratio as that between the value of the goods supplied by us and the value of the other objects worked. The same shall apply if the goods are mixed with other items which do not belong to us.

#### **XI. Software**

1. In as far as the items to be delivered include software, the Customer shall be granted a non-exclusive right to use such software including its documentation. The software shall only be provided for use on the specified item.
2. The Customer may not duplicate, revise or translate the software nor convert it from the object code into the source code.
3. All other rights to the software and the documentation, including the copies, shall remain with the Supplier or the supplier of the software. It is not permissible to grant sublicenses.

#### **XII. Collect of receivables**

1. The supplier shall be entitled to assign its accounts receivable, existing against the ordering party, to third parties.
2. If the ordering party is in payment default with an accounts receivable, any and all other receivables existing against the ordering party, may be declared due and payable.
3. The ordering party shall bear any and all fees, costs and expenses accrued in connection with any successful legal prosecution outside of Germany.

#### **XIII. The place of jurisdiction / place of performance**

1. For all disputes arising under the contract, if the Customer is a business, a legal entity under public law or a special public fund legal action must be taken before the court which has jurisdiction in the place where the Supplier has its principal place of business. The Supplier shall also be entitled to take legal action in the place where the Customer has its principal place of business.
2. If the Customer is a business, a legal entity under public law or a special public fund, the place of performance shall be the place where the Supplier has its principal place of business.

#### **XIV. Final provisions**

1. This contract shall be governed by the law of the Federal Republic of Germany. The UN Sales Convention shall not apply.
2. If any provision of these Standard Terms of Delivery should be void, this shall not affect the remaining provisions. The Parties promise to replace the void clause by an agreement which comes closest in commercial terms.