

General Terms and Conditions

§ 1 General

- (1) The terms and conditions set out below shall form part of the agreement concluded with us.
- (2) Our General Terms and Conditions shall apply in accordance with the most recent version and to all subsequent transactions without any need of express reference thereto or agreement thereon at the conclusion of such transaction.
- (3) We hereby object to any counter confirmation, counter offer or other reference by the Customer to its general terms and conditions; any dissenting terms and conditions of the Customer shall only apply if we have confirmed the same in writing.
- (4) The Customer may not assign any claims arising from transactions with us without our written approval.

§ 2 Offers, Orders

- (1) Our offers shall not be binding; in particular with reference to price and delivery time.
- (2) Orders placed by the Customer shall not be regarded as accepted before these have been confirmed to us in writing. If the Customer does not object to a confirmation of order sent by us within 5 (five) working days, then the contents shall be deemed to have been approved, even if said confirmation of order should deviate from prior offers. This shall not apply in the event of deliberate deviations from the original contents of negotiation to the detriment of the Customer. If we should fail to confirm an agreement in writing which we have entered into verbally or in a telephone conversation, then our invoice shall be regarded as confirmation.
- (3) The Customer is obliged to notify all necessary information on the climate and other conditions of application; in absence of this information our offer is based on the conditions of application at our place of work.

§ 3 Documentation

- (1) The drawings, specifications and all other documentation that shall have been and will be prepared by us in conjunction with this agreement shall remain the property of us who shall retain the copyright therein. The Customer has only the right to use those for the operation and maintenance of the technical plant and for the procurement of spare parts.
- (2) None of the offer or project documents may be duplicated or made available to any third party without our consent. They can be recalled at any time.

§ 4 Information on Law Changes or Amendments

We agree to notify the Customer in a timely manner of any adoption or change of any existing laws or other regulations, in particular security regulations that shall come into force after the signing of this agreement and are relevant for the performance of this agreement.

§ 5 Prices

- (1) Prices are “ex-works“, i.e. excluding packing, freight, customs duty, import, ancillary charges, bank charges and statutory value-added tax, if not quoted otherwise.
- (2) Should economic factors such as the prices of raw materials and auxiliary materials, wages, or other economic factors clearly having an effect on prices alter between conclusion of the contract and delivery, we have the right to adjust prices in line with such changes. The same shall apply to any fees for examination.

§ 6 Shipment, Delivery

- (1) The technical goods are transported insured. The costs for the insurance are at the expense of the Customer (corresponding to § 5), if not quoted otherwise. The transport insurance will only be relinquished upon express demand of the Customer. In this case the transportation happens on the risk of the Customer. The Customer has the right to insure the transportation by its own hand.
- (2) The selection of the place of dispatch and the transport route and the means of transport shall, in the absence of any written arrangement dictating otherwise, be subject to our reasonable discretion and be without liability for the cheapest and fastest transport.
- (3) If the Customer provides the means of transport, then it shall be responsible for its availability on time. We shall immediately be informed of any delays. Any costs arising therefrom shall be at the expense of the Customer.
- (4) We shall have the right to reasonable delivery in instalments.
- (5) Our delivery obligation shall at all times be subject to timely and orderly receipt of the technical goods from our own suppliers.
- (6) Unless otherwise expressly agreed in writing, any indicated time of delivery or installation shall be non-binding.

§ 7 Unforeseen Barriers, Force Majeure

- (1) Any inability to supply as a result of force majeure or other unforeseen incidents outside our and our reservation of timely supply from our own supplies in accordance with subsection § 6 (5) above shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed time for delivery and installation.
- (2) If any agreed time of delivery shall be exceeded and there shall be no incident referred to in subsection (1) above, then the Customer must specify to us a reasonable cure period of minimum four weeks. If we shall fail to meet such deadline also, then the Customer shall have the right to rescind the agreement but shall have no right to seek compensation for breach of contract or default unless in cases of wilful misconduct or gross negligence on our part.
- (3) Delivery times for devices with individual technical specifications, laid out on Customer's request (Customer specific device/layout), are only given with reservation and only valid if no larger and at the time of ordering unforeseeable technical difficulties arise, which increase the delivery time significantly.
- (4) If, during the development of the technical plant, we encounter unforeseen physical or other barriers that may hinder or delay the performance of the agreement, then it shall notify the Customer thereof by no later than 15 (fifteen) working days after it has become aware thereof. This shall apply only to such barriers that any experienced we could not have reasonably foreseen. These circumstances relieve us from the obligation to comply with any agreed time for delivery or installation.

- (5) If, during the development of the technical plant, a case of force majeure should occur, then the affected party to this agreement shall immediately notify its counterpart of such event in writing; by no later than 15 (fifteen) working days after becoming aware thereof. It shall describe the event in detail and specify which contractual duties cannot be discharged or discharged without delay as a result of such incident. The affected party to this agreement shall not be responsible for the delay or inability caused by such incident.
- (6) If the suspension of the development of the technical plant according to the projecting situations above can be expected to exceed 2 (two) months then the deliveries and services performed until such date including any uncompleted deliveries or services may, upon demand of us, be invoiced and paid in accordance with the price specifications.
- (7) Only those incidents shall be regarded as a case of force majeure under this agreement that are beyond the control of the parties to this agreement and where the impacts on the performance of this agreement cannot be avoided by reasonable efforts of the parties to this agreement. This shall include, without limitation, acts of war (whether declared or undeclared), a state of quasi war, insurrection, revolution, rebellion, military or civil coup, revolt, uproar, riot, blockade, embargo, government act, sabotage, strike, goslow, lock-out, epidemic disease, fire, flood, storm, flood, hurricane, heavy storm or other thunderstorm with disastrous effects, earthquakes, landslide, lightning, general shortage of fuel, heavy transport accidents, any destruction or new production of material parts of the plant due to reasons outside the control of us.

§ 8 Passage of risk

- (1) Delivery shall be at the expense of the Customer. Risk shall in all cases pass to the Customer once the shipment has been handed over to the party responsible for consignment or has left our warehouse for the purpose of shipment, irrespective of whether the shipment originated from the place of performance. As a rule, the choice of the manner in which shipment is effected shall be incumbent on us.
- (2) Should shipment not be possible for reasons beyond our control, risk shall pass to the Customer upon its receipt of a notice stating that we are ready to effect shipment.
- (3) The Customer is obliged to take delivery of the goods on the confirmed date. The Customer is otherwise obliged to pay the warehousing costs and shipment is deemed to have been effected. This shall not constitute any changes to the terms of payment agreed.

§ 9 Payment

- (1) Our invoices are due for payment net without discount within 30 days of the invoice date. All payments to us are to be made exclusively in Euros, unless special terms of payment have been agreed.
- (2) We have the right to issue invoices for part deliveries and part performances in successive instalments. In the event of partial deliveries and default in payment, we shall be entitled, contrary to prior payment agreements, to make subsequent deliveries only against cash in advance.
- (3) We shall accept promissory notes and cheques only upon specific arrangement and only on account of payment. Any fees for discount bills or promissory notes shall be at the expense of the Customer and immediately payable.
- (4) If the invoice amount shall not have been settled within 30 calendar days after the date of invoice or as at another due date, then we shall without the need to a separate warning notice have the right to recover default interest in a proven amount but in any event an amount equalling 5 Points of Percent above the base rate of the European Central Bank.

We reserve the right to collect expenses in the amount of EURO 5.00 in case of a dunning. We have the right, notwithstanding any provisions to the contrary on the part of the Customer, to credit payments to the oldest

amounts owed. Should costs and interest have already been incurred, we have the right to credit payments first against the cost, then against the interest and only subsequently against the principal that is owed

- (5) If the Customer's business shall be operated beyond the ordinary course of business which shall include, without limitation, acts of seizure or a situation where a protest in relation to promissory notes or cheques has been made, payments shall be delayed or even discontinued or judicial or out of court settlement or insolvency proceedings shall have been petitioned or opened or proceedings in accordance with the German Insolvency Act shall have been petitioned, then we shall have the right to declare all our claims arising from the business relationship as immediately payable, even if we shall have accepted promissory notes or cheques. The same shall apply if the Customer shall be in payment default towards us or other incidents shall surface which give rise to doubts about its creditworthiness. Moreover, we may in such event demand prepayments or a security deposit or rescind the agreement.
- (6) In the event of shortages or defects in the delivered goods or services, the Customer is not entitled to withhold payment unless the shortages or defects are immediately obvious at delivery (e.g. shipping damage), in which case the Customer has the right to refuse to accept the goods. Where there are shortages or defects in the delivered goods or services the Customer is only entitled to withhold payment of an amount proportional to the value of the missing or defective items or services plus the anticipated costs of correcting the delivery (in particular the replacement and repair of missing or defective items). The Customer is not entitled to obtain replacement or repair of missing or defective items if payments by the Customer which have become due remain unpaid. The value of due payments may be up to the total contract value but will be reduced in proportion to the missing or defective items.

§ 10 Retention of title to ownership

- (1) We reserve retention of title to ownership in respect of all goods supplied by us until invoices plus interest and costs have been settled in full. Transfer of individual payments credited to a current account, or reconciliation of balances and recognition thereof shall not constitute setting aside of the retention of title to ownership.
- (2) No acquisition of ownership on the part of the Customer or a third party in the case of processing or treatment of our conditional goods to form a new object will be taken into consideration. Processing or treatment shall entirely be on our behalf without this leading to any obligations on our part. This processed object shall entirely serve as collateral for the payment claims named above. Insofar as processing includes goods of other suppliers, we shall, as a minimum, acquire joint ownership of the new object equivalent to the share which, in pro rata terms, corresponds to the value of the other processed objects billed by the other supplier. If the conditional commodity is combined, mixed or merged with goods not belonging to us, we shall become joint owner in accordance with statutory provisions in law. Should the Customer become sole owner as a result of combining, mixing or merging, it hereby transfers to us joint ownership on the basis of the proportional value of the conditional goods to the other goods at the time of combination, mixing or merging. In order to protect our purchase price claim, the Customer hereby undertakes to assign its claims arising from resale of the conditional goods along with all ancillary rights and with the priority over other claims to us with present effect, and to make corresponding note in its bookkeeping records and invoices. We hereby accept the aforesaid assignment. In the case of an attachment or implementation of a claim in another form, the Customer is obliged to make reference to our right of ownership and to notify us without delay. Only in the case that the supplier has also claimed extended reservation of ownership with legal force shall the claims to payment be assigned to us to the extent of our pro-rated share of ownership of the goods sold.
- (3) If the payment claims of the Customer based on resale of our conditional good or goods of which we are joint owners are included in a current account, the Customer is obligated to assign these payment claims to us.
- (4) The Customer has the right to collect payment claims even after assignment and reservation of the right of revocation. Our right to collect payments ourselves shall not be affected by the aforesaid. However, we undertake not to collect outstanding payments as long as the Customer discharges its payment obligations and other obligations in the agreed manner.

- (5) The Customer is, in the case of payment default or discontinuation of payment on its part, institution or insolvency proceedings, or other factors jeopardising payment, obliged to show third parties that the conditional goods are our property. It shall provide us with a list of conditional goods still in its possession - also insofar as the goods in question have been treated or processed – as well as a list of payment claims pursuant to the above aforesaid against third-party debtors. Irrespective of this, our authorised representatives have the right at any time to obtain from the Customer the information necessary to protect our interests and be provided with the pertinent records etc.
- (6) The Customer shall bear the risk in connection with all goods supplied by us. It has the obligation to take due and proper care of the goods and insures them adequately against loss, theft, fire, etc. It hereby assigns any claim against an insurance company in the event of loss or damage to us, namely as a first ranking part amount which is the equivalent of the purchase price of the goods supplied by us on the condition of retention of title to ownership. The same shall also apply if the insurance company does not cover the claim in full, with the result that we could be required to render pro-rated compensation.
- (7) The Customer has the right to sell our goods in the form of a customary and due and proper business transaction, albeit only on the provision that payment claims do in fact pass to us. No pledging or transfer of ownership as collateral will be accepted. The Customer shall notify us immediately of any attachment or other impairment of our rights by a third party and support us in asserting our rights with a view to avoiding any obligation to pay damages. The Customer shall be liable for all and any costs of court or out-of court proceedings.
- (8) The Customer undertakes to do everything, in particular to make any and all contractual declaration vis à vis us or a third party with a view of aiding the agreed retention of ownership and the advance assignment to have legal force according the laws of the foreign place of performance or the domicile of the Customer.

§ 11 Warranty, Limitation of Liability

- (1) The warranty term, within which warranty claims may be raised shall be 24 (twenty four) months and shall begin as of the time of passage of risk pursuant to section 8.
- (2) Defects which are obvious or recognisable following a due and proper examination shall be reported by the Customer in writing immediately without undue delay - latest within 7 (seven) working days - after receipt of the goods. Defects that could not have been detected within such a period, even in the case of due and proper examination shall be reported to us immediately after their detection. The same shall apply in the case of complaints based on delivery of goods other than those stipulated and quantity variances. No warranty claims or any other claims shall exist in the case of failure to observe the period for filing objections.
- (3) Upon justified objections which shall have been raised in accordance with the procedures and deadlines hereunder, the Customer shall have the right to claim a reduction in the price which shall be without prejudice to our right, to provide the return of the objected technical goods.
- (4) The Customer shall not be entitled to any further rights or remedies. In particular, we shall not be responsible for any compensation based on breach of contract or default unless the technical goods shall lack a characteristic that we shall have expressly guaranteed or in cases of wilful misconduct or gross negligence on our part. This limitation of liability shall also include the personal liability of employees, legal representatives and vicarious agents. Any liability according to § 1 of the German Product Liability Act shall not be affected,
- (5) Insubstantial deviations, for example in dimensions and quality, do not give the right to lodge a complaint.
- (6) The warranty shall expire if the goods supplied are altered or processed. Fulfilment of the contractual obligations of the Customer shall be a prerequisite of the warranty, in particular with regard to the agreed terms of payment. Returns may not be affected without prior mutual agreement.

- (7) We do not undertake any guarantee for the unsuitable or improper usage, defective erection and/or initial operation by the Customer or third party, natural wearing, defective or negligent handling, chemical, electro-chemical or electrical influences – in so far as these cannot be justified by us.
- (8) In the event of deliveries of goods prepared by third parties and only traded in transit trade by us, then the warranty rights that we have vis-à-vis the manufacturer shall be deemed to have been assigned to the Customer at the moment of delivery. Above and beyond this, we undertake no warranties except as described above and in the event that the Customer is unable to attain warranty from the manufacturer extra-judicially. If, following a warranty claim on us, it is established that no defect existed or that the defect claimed was not under warranty, the Customer shall reimburse our expenses insofar as the claim was for reasons not beyond its control.

§ 12 Applicable Law

- (1) For our benefit, the courts of Mainz, Germany shall have jurisdiction over all disputes arising from this Agreement. However, we may also select a different place of jurisdiction.
- (2) The laws of Germany shall apply. International purchase laws shall not apply. This shall, in particular, refer to the UN Convention (CISG) on the International Sale of Goods.
- (3) The place of performance in respect of all liabilities arising from the sale is Mainz, Germany.

§ 13 Changes, Validity, Data Protection

- (1) Amendments or supplement to this agreement shall be in writing; they shall be recorded in a document and signed by both parties with numbering of any supplement; each party shall receive one copy thereof.
- (2) If a provision of this agreement shall be or become invalid, then this shall not affect the validity of the other provisions. The parties of this agreement shall co-operate to replace the invalid provision by a legally permissible and valid provision that shall achieve the result that should have been achieved by the invalid provision. This shall apply accordingly to any gaps in the agreement.
- (3) We have stored data of the Customer on accordance with the German Data Protection Act.

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