

## General Terms and Conditions of Sale and Delivery

### I. General Provisions

Our deliveries and services are subject to the following conditions.

The Purchaser's general terms and conditions shall apply only if expressly accepted by the Supplier in writing.

### II. Conclusion of Contract, Written Form

The scope of delivery shall be determined by congruent mutual written declarations. This applies to all essential elements of the contract.

### III. Prices, Terms of Payment and Offsetting

1. Prices are quoted ex-works exclusive packaging and include the legal sales tax (VAT) applicable at the time.
2. Payments shall be made to the Supplier's account without any deductions and free of transaction charges.
3. The Purchaser may set off only those claims that are undisputed or legally binding. Same applies for the assertion of retention or reduction rights. The Purchaser's right to reclamation of made payments maintains.

### IV. Retention of Title

1. The goods supplied ("Retained Goods") will remain property of the Supplier until full settlement of all claims against the Purchaser arising from the business relationship have been fulfilled. The limit lies at 110 % of the secured demands. If this is exceeded, a release claim exists.
2. The Purchaser is entitled to resell the reserved goods in the ordinary course of business. The claims of the buyer from the resale of the reserved goods shall be handed over directly to us in the amount of the agreed final invoice amount (including VAT). This transfer applies irrespective of whether the purchased goods are resold before or after processing. Once the goods of retention have been processed, the Supplier has the right to joint ownership of the new product in the value of the outstanding demands. The Purchaser shall have the right to collection of claims even after the assignment. Our authorization to collect the receivables ourselves shall remain unaffected by this. However, we will not collect the claim as long as the Purchaser meets its payment obligations from the collected proceeds, is not in default of payment and in particular no application is filed for the commencement of insolvency proceedings or payments.
3. In case of any seizures or acts of intervention by third parties, the Purchaser shall immediately inform the Supplier.
4. If Purchaser's are in breach of their obligations, in particular if they are in default of payment, the Supplier shall be entitled, in addition to taking back the goods, to withdraw from the contract, if the Purchaser has failed to cure the breach within the reasonable time period specified by the Supplier; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obligated to surrender the goods. Taking back, asserting the reservation of title or pledging of the reserved goods by the Supplier shall not be deemed as constituting a withdrawal from the contract unless the Supplier has expressly stated that it is to be understood as a withdrawal.

### V. Delivery, Delay in Delivery

1. Meeting the delivery times shall be subject to clarification of all commercial and technical questions between the Supplier and the Purchaser. In addition to this, the Purchaser must have fulfilled all their obligations, in particular in respect of compliance with the agreed terms of payment. If these preconditions are not satisfied on time, the delivery times shall be extended adequately.
2. If the Supplier's failure to meet delivery times is attributable to Force Majeure, e.g. mobilization, war, riot or similar events such as strike or lock-out, the delivery times shall be extended by a reasonable period. The same shall apply for the case that the Supplier is not supplied on time or properly.
3. At the Supplier's request, the Purchaser shall be obliged to declare within a reasonable period, whether a withdrawal from the Contract due to the delay in delivery, or actual delivery is still desired.  
If the dispatch or delivery is delayed at the Purchaser's request by more than one month after notification of readiness for shipment, storage charges of 0.5 % of the price of the items to be delivered, not more than an aggregated amount of 5 % maximum, however, can be charged to the Purchaser's account. This shall be without prejudice to the right of the contracting parties to furnish proof of higher or lower storage costs.
4. Partial deliveries are permissible if they are reasonable for the customer.

### VI. Transfer of Risk

Even where delivery has been agreed freight free, the risk shall pass to the Purchaser if the Supplies do not include installation or assembly at the time when they were brought to shipment or have been picked up. Upon the Purchaser's request, the Supplier shall insure the Supplies against the usual risks of transport at the Purchaser's expense.

### VII. Receiving Supplies

The Purchaser may not refuse to accept deliveries on the grounds of minor defects.

### VIII. Defects of quality

The Supplier will be liable for defects of quality as follows:

1. Reports of defects and complaints must be made in writing.
2. The customer shall inspect the goods upon receipt according to the requirements of §377 HGB and report any defects immediately. The notice period for open defects is 8 days, for latent defects within 14 days from receipt of the goods by the Purchaser.
3. All parts or services exhibiting a defect of quality shall at the Purchaser's own discretion be rectified, replaced or newly provided free of charge, provided that the cause of the defect had already existed at the time of the transfer of risk.
4. Claims for repair or replacement are subject to a statute of limitations of 12 months calculated upon receipt of the goods by the Purchaser; the same shall apply mutatis mutandis in the case of rescission and reduction.
5. The provisions of §§478, 479 BGB apply only if the buyer has sold the goods unobstructed to an end user.
6. As far as goods were sold to an end user, the Supplier is liable to the end user directly for material defects (excluding the Purchaser). The Purchaser commits himself to immediately notify any such defects in writing without delay. If the Purchaser does not pass on the fault rebuke to the Supplier, the material defect liability of the Supplier is excluded after §478 Civil Code. Agreements which the Purchaser has concluded additional warranty regulations with the end user, do

not bind the Supplier. Notifications of defect by the Purchaser shall be given in written form without undue delay.

7. If the complaint was unjustified, the Supplier is entitled to demand a claim fee of 75 €. The Purchaser has the possibility to prove that damage has not originated to the Supplier in this amount. The assertion of a specifically resulted damage is left to the Supplier.
8. The Purchaser shall not be entitled to warranty claims arising from a defect if the item in question deviates only insignificantly from the agreed quality, if the impairment of usability is affected only insignificantly, in the case of natural wear and tear or damage arising after the passage of risk due to unsuitable or improper use, improper installation or commissioning by the Purchaser or a third party, faulty or negligent treatment, excessive strain, unsuited operating Supplies, as well as non-reproducible software errors. The Supplier will not be liable for improper rectification by the Purchaser or a third party and any consequences arising from it.
9. Claims asserted by the Purchaser for costs necessary for subsequent performance, in particular costs of transportation, travel, labor and material, to the extent that expenses are increased because the subject-matter of the Supplies has subsequently been brought to another location than the Purchaser's branch office, unless doing so complies with the normal use of the Supplies.
10. Claims for damages of the customer due to a defect are excluded unless they are based on an intentional or grossly negligent breach of duty of the user or a grossly negligent or willful breach of duty by a legal representative or vicarious agents of the user. A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions. This does not apply to a violation of cardinal obligations.
11. Claims for damages based on an intentional or grossly negligent breach of essential contractual obligations are limited to the contract-typical, foreseeable damage.

#### **XI. Industrial Property Rights and Copyright; Defects in Title**

1. Cost estimates, drawings and other documents (hereinafter referred to as documents), the Supplier retains its ownership and copyright exploitation rights without restriction. The documents may not without the prior consent of the Supplier be accessible to third parties and, if the contract is not awarded to the Supplier, must be returned immediately upon request. Sentences 1 and 2 shall apply mutatis mutandis to documents of the Purchaser; however, these may be disclosed to third parties to whom the Supplier may rightfully transfer Supplies.
2. Unless agreed otherwise, the Supplier will be obligated to make delivery free from industrial property rights and copyrights of third parties (hereinafter referred to as "Property Rights") only in the country of the place of delivery. If a third party raises justified claims against the Purchaser by reason of an infringement of Property Rights by the Supplies made by the Supplier and used in conformity with the contract, the Supplier will be liable to the Purchaser within the period of time set forth in clause VII. No. 3 as follows:
  - a) The Supplier will at its sole discretion and at own expense either obtain a right to use the Supplies in question, change them in such a way that the Property Right will no longer be infringed, or replace them.
  - b) The Supplier's liability to pay damages is governed by clause X.

3. The obligations of the Supplier set out above shall apply only if the Purchaser promptly notifies the Supplier in writing of the claims being raised by the third party, does not recognize the infringement and if the Supplier retains the right to take all defense measures and enter into composition agreements. If the Purchaser discontinues the use of the supply to minimize losses or for any other important reasons, then obligation to point out to the third party that the discontinuation of use does not mean that recognition of an infringement of a Property Right has taken place.
4. Any claims by the Purchaser shall be excluded, if the infringement of the Property Right is attributable to the Purchaser.
5. Any claims by the Purchaser shall also be excluded, if the infringement of the Property Right has been caused by the Purchaser's specifications, by an application which could not be foreseen by the Supplier or by the fact that the supply has been changed by the Purchaser or has been used together with products which have not been supplied by the Supplier.
6. In case of infringement of Property Rights, the provisions set forth in clause No. 2 shall apply to any claims of the Purchaser. As for the rest the provisions of clause II No. 3 and VII No. 5 shall apply accordingly. The Supplier shall be entitled the right to improvement.
7. If there are any other deficiencies in title, the provisions of clause VIII shall apply accordingly.
8. Any further claims, or any claims other than those set out in clause IX, raised by the Purchaser against the Supplier and or its agents by reason of a deficiency in title shall be excluded.

#### **XII. Impossibility; Amendment**

Insofar as any unforeseeable occurrences within the meaning of clause IV number 2 substantially alter the economic importance of the contents of the Supplies or considerably affect the Supplier's business, the contract shall be suitably revised in compliance with the principle of good faith. Insofar as this is not economically justifiable, the Supplier shall be entitled to withdraw from the contract. If the Supplier intends to exercise the right to rescind from the contract, the Purchaser shall be notified without undue delay upon becoming aware of the implications of this occurrence; this shall also apply even where an extension of the delivery period has previously been agreed with the Purchaser.

#### **XIII. Other Compensation Claims; Statute of Limitations**

In addition to the regulations in clause VII, claims for damages of the Purchaser, for whatever legal reason, including infringement of duties arising from contract or in tort (injury of life, body or health) are excluded if they are not on a negligent breach of duty by the user or intentional or negligent breach of duty by a legal representative or fulfillment-assistant; Except for claims under the Product Liability Act.

To the extent that the Purchaser has a claim for damages, it shall be time barred upon expiration of the statute of limitations pursuant to clause VII number 4. The same shall apply to the Purchaser's claims in connection with actions undertaken to avoid any damage (e.g. callback). In the case of compensation claims pursuant to the Product Liability Act, the prevailing statutory limitation provisions shall apply.

#### **XIV. Jurisdiction, Governing Law**

1. If the Purchaser is a business person, sole venue for all disputes arising directly or indirectly out of the contract, shall be the Supplier's place of business. However, the Supplier may also bring a legal action at the Purchaser's place of business.
2. Legal relations of the parties under this contract shall be governed by the German substantive law to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG).

**XV. Severability Clause**

1. Any changes or amendments to this agreement require written form. Should they not fulfill this, then they are void. This shall also apply to the amendment of this written clause.
2. If individual provisions of the contract are or become ineffective, the remaining parts of the contract shall remain unaffected. The invalid provisions shall be replaced by provisions that are judged to come as close as possible to the original economic intent.

Version dated 18.01.2016, Karlstein