

# General Terms and Conditions of Business

## I. General

1. In the absence of any explicit and written agreement to the contrary in individual cases, our entire – including future – deliveries, performances and contractual obligations, including advising, suggestions and other ancillary performances, shall be exclusively on the basis of the following terms and conditions of business. Conflicting terms and conditions of business of the customer are hereby explicitly rejected. They will not be recognised even if we do not reject them again upon receipt by us.

## II. Offer

1. Contracts and other agreements, in particular verbal subsidiary agreements and assurances, shall not be binding on us until confirmed by us in writing.

2. All information, such as dimensions, weights, illustrations, descriptions, assembly sketches, pricelists and other printed matter, is approximate only, albeit provided to the best of our ability, and as such non-binding for us.

3. All documents handed to our customer, such as illustrations, drawings, plans, documentation etc., shall remain our property. We reserve copyright to these. The documents must not be used for other purposes, reproduced and/or made accessible to third parties without our explicit, written consent.

## III. Scope of the delivery

1. The supplier's written order confirmation is authoritative for the scope of the delivery; in the event of an offer by the supplier with time restriction and on-time acceptance, the offer shall be authoritative if no on-time order confirmation is available. Subsidiary agreements and amendments are only valid if confirmed in writing.

## IV. Price and payment

1. In the absence of any special agreement, the prices are to be understood as ex-works supplier, including loading in the works, nevertheless excluding packing. The prices are subject to statutory value added tax.

2. In the absence of any special agreement, payment of the total invoice amount shall be due in cash, without any deduction, free supplier's payment office, within 10 days of delivery/date of invoice, strictly net.

3. The withholding of payments or the offsetting of any counterclaims of the customer disputed by the supplier is not permitted.

## V. Delivery period

1. The delivery period shall begin upon sending of the order confirmation, not, however, before provision of the documents, approvals, authorizations to be obtained by the customer and not before receipt of any down payment agreed.

2. The delivery date shall be considered adhered to if the delivered item has left the works or availability for dispatch has been notified before its expiry.

3. The delivery period shall be extended to an appropriate extent in the event of measures within the scope of industrial disputes, in particular strikes and lock-outs, as well as given the occurrence of unforeseen hindrances outside of the will of the supplier, provided such hindrances demonstrably have a significant influence on the completion or delivery of the delivered item. This shall also apply if the circumstances occur with subcontractors. The supplier shall likewise not be responsible for the above mentioned circumstances if they occur during existing default. In important cases, the supplier shall inform the customer as soon as possible of the start and end of any such delays.

4. If dispatch is delayed at the request of the customer, we shall invoice him for the costs resulting from storage, in the event of storage in the supplier's works at least, however, 1.25% of the invoice amount for each month, beginning one month after notification of availability for dispatch. Nevertheless, the supplier is entitled, following setting and unsuccessful expiry of an appropriate deadline, to dispose of the delivered item in another manner and to supply the customer with an appropriately extended deadline.

5. Adherence to the delivery date presupposes fulfilment of the customer's contractual obligations.

## VI. Passing of risk and receipt

1. The risk shall pass to the customer at the latest upon dispatch of the delivered parts, including in the event of partial deliveries or if the supplier has assumed other performances in addition, for example the dispatch costs or transport and setting up. At the request of the customer, the supplier will insure the consignment at the expense of the customer against theft, breakage, transport, fire and water damage as well as against other insurable risks.

2. If dispatch is delayed as a result of circumstances for which the customer is responsible, the risk shall pass to the customer as of the date of availability for dispatch; nevertheless, upon request by the customer, the supplier is obliged to obtain the insurance required by the customer at the customer's expense.

3. Without prejudice to the rights as per Section VIII, the customer must take receipt of items delivered even if they have immaterial defects.

4. Partial deliveries are permitted.

## VII. Retention of title

1. The supplier shall retain title to the delivered items until such time as all claims of the supplier against the customer from the business relation, including future claims from contracts concluded simultaneously or later, have been settled. This shall also apply if individual or all claims of the supplier have been included in a current account and a balance drawn and recognised.

2. In the event of breach of contract by the customer, in particular default on payment, the supplier shall be entitled to take back the delivered item following a reminder and the customer is obliged to hand over the delivered item. Assertion of the retention of title as well as attachment of the delivered item by the supplier shall only constitute withdrawal from the contract if the supplier has declared this explicitly in writing. The customer must inform the supplier immediately in writing in the event of attachment or other intervention by third parties.

3. The customer is entitled to make onward sale of the delivered item within the ordinary course of business. Nevertheless, he hereby assigns henceforth to the supplier all claims, including all ancillary rights, resulting for him against his customer or against third parties from the onward sale. The customer shall remain entitled to collect these claims even following the assignment. The supplier's power to collect the claims himself shall remain unaffected; nevertheless, the supplier undertakes not to collect the claims as long as the customer fulfils his payment obligations correctly. The supplier can demand that the customer advise him of the assigned claims and their debtors, provide all information necessary for collection, hand over the corresponding documents and notify the debtors of the assignment. If the delivered item is sold on together with other goods not belonging to the supplier, the claim of the customer against his customer shall apply as assigned in the amount of the delivery price agreed between the supplier and the customer. The supplier undertakes to release the collateral to which he is entitled in so far as its value exceeds the claims to be secured and not yet settled by more than 20%.

4. The supplier is entitled to insure the delivered item against theft, breakage, fire, water and other damage at the expense of the customer, unless the customer has demonstrably taken out this insurance himself. The customer must not pledge the delivered item or transfer ownership of it by way of security. He must inform the supplier immediately in the event of attachment, confiscation or other disposal by third parties.

5. If bill of exchange liability of the supplier is created in connection with the payment of the purchasing price by the customer, the retention of title, including its agreed special forms, or other collateral agreed to secure payment shall not expire until redemption of the bill of exchange by the customer as drawee.

## VIII. Liability for defects of the delivery

1. Without prejudice to Section X.4, the supplier shall be liable as follows for defects of the delivery - which shall also include the absence of explicitly assured features - subject to the exclusion of further claims:

## General Terms and Conditions of Business

2. All parts that prove to be unusable or whose usability proves to be impaired to a not immaterial extent within 6 months of delivery as a result of circumstances prior to the passing of risk – in particular as a result of defective construction, poor materials or faulty design – must, at the reasonably exercised discretion of the supplier, be repaired or replaced free of charge. The detection of any such defects must be reported to the supplier immediately and in writing. Parts replaced shall become the property of the supplier. The supplier shall only be liable for defects to the material supplied by the customer if the defects would have been recognisable given the application of expert care and attention. In the event of delays in dispatch without culpability on the part of the supplier, liability shall cease to apply at the latest 12 months following the passing of risk. Liability of the supplier for material third-party products shall be limited to the assignment of the liability claims to which he is entitled against the supplier of the third-party product. In cases of production on the basis of the customer's drawings, the supplier shall be liable solely for design in accordance with the drawing.

3. In all cases, the right of the customer to assert claims for defects shall become statute barred 6 months following on-time notification of the defect, at the earliest, however, upon expiry of the warranty period.

4. No warranty is assumed for damage based on the following reasons:

Unsuitable or incorrect use, defective assembly or commissioning by the customer or a third party, natural wear and tear, incorrect or negligent treatment, unsuitable operating materials, substitute materials, chemical, electrochemical or electrical influences, unless these are the result of culpability on the supplier's part.

5. Following consultation with the supplier, the customer must grant the necessary time and opportunity for carrying out all repairs and replacement deliveries considered necessary by the supplier at his reasonably exercised discretion. Otherwise, the supplier shall be released from liability for the defects. The customer shall only have the right to remove defects himself or to have these removed by third parties and to demand compensation of the necessary expense from the supplier in urgent cases of a threat to operational safety, for avoiding disproportionately high damage – in which case the supplier must be informed immediately – or if the supplier is in default with removal of the defects.

6. Of the direct costs resulting from the repair or replacement delivery, the supplier shall bear the costs of the replacement item including dispatch, provided the complaint proves to be justified. In other respects the customer shall bear the costs.

7. The warranty period for the replacement item and the repair is 3 months; nevertheless, it shall run at least until the expiry of the original warranty period for the delivered item. The liability period for defects to the delivered item shall be extended by the duration of the operational interruption caused by the repair work.

8. In the event of any modifications or repair work carried out by the customer or a third party incorrectly or without the prior approval of the supplier, liability for the resulting damage shall cease to apply.

9. Liability for hardware and software. The supplier assumes no liability for damage and consequential damage of any form, incurred in connection with the hardware or software supplied.

10. Further claims of the customer, in particular claims for compensation for damages not incurred on the delivered item itself (consequential damage caused by defects), are excluded. This exclusion of liability shall not apply in cases of intentional conduct or gross negligence on the part of the owner or senior employees, or in cases of liability under the product liability law for damages to persons or property related to privately used items and caused by defects of the delivered item. It shall likewise not apply in cases of the absence of explicitly assured features if the very purpose of the assurance was to protect the customer against damages not incurred on the delivered item itself.

### IX. Liability for accessory obligations

1. If, as a result of culpability on the part of the supplier, the delivered item cannot be used by the customer in the contractual

manner as a result of omitted or defective implementation of suggestions and consultations prior to or subsequent to conclusion of the contract, as well as of other contractual accessory obligations – in particular instructions for operation and maintenance of the delivered item –, the rulings of Sections VIII. and X. shall apply accordingly subject to the exclusion of further claims of the customer.

### X. Customer's right of withdrawal

1. The customer can withdraw from the contract if the entire performance becomes finally impossible for the supplier prior to the passing of risk. The same shall apply in the event of inability of the supplier to perform. The customer can also withdraw from the contract if, with an order for similar items, performance of part of the delivery becomes impossible in terms of numbers and he has a justified interest in refusing to make a partial delivery; if this is not the case, the customer can reduce the counter-performance accordingly.

2. If default on performance as defined in Section V. of the terms and conditions of business applies and the customer grants the supplier in default an appropriate period of grace, coupled with an explicit declaration that he will refuse acceptance of the performance following expiry of this period, and the period of grace is not complied with, the customer shall be entitled to withdrawal.

3. In the event of impossibility occurring during the default on acceptance or as a result of culpability of the customer, the customer shall remain obliged to provide the counter-performance.

4. The customer shall also have a right of withdrawal if the supplier culpably allows an appropriate period of grace, set him for repair or replacement delivery in connection with a defect for which he is responsible under the terms and conditions of business, to pass fruitlessly. The right of the customer to rescind the contract shall also apply in other cases of the failure of the repair or replacement delivery by the supplier.

5. Excluded are all farther-reaching claims of the customer, in particular claims to cancellation, termination or a reduction in price as well as claims for any form of damages, including damages not incurred on the delivered item itself. This exclusion of liability shall not apply in cases of intentional conduct or gross negligence on the part of the owner or senior employees, or in cases of liability under the product liability law for damages to persons or property related to privately used items and caused by defects of the delivered item. It shall likewise not apply in cases of the absence of explicitly assured features if the very purpose of the assurance was to protect the customer against damages not incurred on the delivered item itself.

### XI. General limitation of liability, turnover tax

1. The liability of the supplier shall be based exclusively on the agreements made in the above sections. All claims not explicitly granted there, including claims for damages, irrespective of the legal ground, likewise claims in connection with warranty rights of the customer, are excluded, unless liability of the supplier is mandatory in cases of intentional conduct or gross negligence.

2. All claims against the supplier, irrespective of the legal ground, shall become statute barred 1 year after the passing of risk to the customer, unless the statutory limitation period or that agreed under these terms and conditions of business is shorter.

3. In the event of claims against the supplier as a result of turnover tax offences of the customer, the supplier can claim full recourse against the customer.

### XII. Place of performance, place of jurisdiction and applicable law

1. Place of performance for deliveries and services is the supplier's works. Place of jurisdiction is the registered office of the supplier provided this is admissible. The supplier is also entitled to take legal action against the customer at his place of jurisdiction.

2. The Substantive Law of the State of Illinois in the United States of America is applicable for all legal relations between the supplier and the customer. Provisions of the UN Sales Convention as well as of the Hague Sales Convention are excluded.

### XIII. Partial invalidity

1. Should individual provisions of these terms and conditions of business be invalid, either in part or in full, the validity of these terms and conditions as a whole shall remain unaffected. The parties agree that the invalid provision shall be substituted by a valid ruling, reasonable for both contracting parties, that corresponds as closely as possible economically to the purpose striven for through the invalid ruling.