

# General Terms and Conditions of Business

## I. Scope of conditions

1. The seller's deliveries, services and offers are made solely on the basis of these terms and conditions of business. They also apply to any future business relationships, even if these conditions are not agreed again expressly at the time. These conditions are deemed to be accepted at the latest upon receipt of the goods or services. The purchaser's counter attestations with reference to his own general conditions or purchasing conditions are hereby rejected.

2. All agreements reached between the seller and purchaser in relation to the execution of this contract must be in writing.

## II. Offers and conclusion of contract

1. Offers made by the seller are non-binding and subject to change. To be valid, declarations of acceptance and any orders must be confirmed in writing or electronically by the seller.

2. The seller's sales personnel are not authorised to conclude verbal ancillary agreements or to give verbal assurances which go beyond the content of the written contract.

## III. Prices

1. Unless otherwise stated, the seller shall remain bound by the prices quoted in his offer for 42 days from the date of the offer. The relevant prices are those named in the seller's order confirmation plus the statutory VAT in force. Unless otherwise agreed, additional deliveries and services shall be invoiced separately.

2. Unless otherwise agreed, the prices include EXW our warehouse (post code 92670 Windischeschenbach) excluding packaging and insurance, plus the statutory VAT applicable at the time. The costs of packaging and insurance are invoiced separately.

3. Provided that no fixed price has been agreed, reasonable price changes arising from changes of the wage, material and sales costs of deliveries which take effect 3 months or more following conclusion of the contract are reserved.

#### IV. Delivery and time of performance

1. In order to be binding, delivery dates or deadlines agreed must be in writing.
2. The seller is not responsible for delays in delivery and performance caused by force majeure and events which make the delivery more difficult or impossible for the seller on more than just a temporary basis – these include strikes, lock-outs, official ordinances etc., including when these occur with the seller's suppliers or their sub-contractors; this applies equally to deadlines and dates agreed with binding effect. They entitle the seller to extend the delivery or performance period by the duration of the hindrance plus a reasonable lead time or to withdraw fully or partly from the contract in respect of the part of the contract not yet performed.
3. If the hindrance lasts for longer than one month, the purchaser is entitled to withdraw from the non-fulfilled part of the contract following a reasonable grace period of one month. If the delivery time is extended or if the seller is released from his obligations, this shall not operate to give the purchaser any compensatory damage claims. The seller may only invoke the above-mentioned circumstances if he notifies the purchaser immediately.
4. In the case of delayed deliveries, the purchaser may – provided he can demonstrate credibly that he has suffered consequential damages– demand compensation for each full week of the delay in the sum of 0.5 % per week, but with a maximum total of 5 % of the price for the part of the delivery which could not be commissioned for the intended purpose as a result of the delay.
5. Compensation claims by the purchaser for delivery delays and compensation claims in lieu of performance which go beyond the limits described in no. 4 above are excluded in all cases of delayed delivery, even after expiry of any delivery period that may have been set by the purchaser. This does not apply if liability is legally mandated in cases of intent, gross negligence or in cases of death, bodily injury or harm to health. The purchaser may only withdraw from the contract within the framework of statutory provisions if the supplier is responsible for delay in delivery. The above regulations do not constitute any change in the burden of proof to the disadvantage of the purchaser.
6. The seller shall be entitled to make part deliveries and render part services unless the part delivery or part service is not of interest to the purchaser.
7. Adherence to the seller's delivery and service obligations cannot be discharged without the timely or proper fulfilment of the purchaser's obligations.
8. Where there is a delay of acceptance on the part of the purchaser, the seller has the right to require reimbursement of the damages incurred by him; upon commencement of a delay in acceptance, the risk of accidental deterioration and accidental loss or destruction of the goods transfers to the purchaser.
9. The purchaser may not refuse to accept delivery on account of insignificant defects.

## **V. Transfer of risk**

1. Risk transfers to the purchaser as soon as the goods are available and packaged ready for transportation on the factory premises. If dispatch is delayed at the request of the purchaser, the risk transfers to him as soon as he is notified that the goods are ready for dispatch.

2. If the delivery involves installation or assembly, the risk transfers once there has been a trouble-free test run (acceptance), at the latest however at the time of operational integration/use.

## **VI. Installation and assembly**

Unless otherwise agreed in writing, the following provisions shall apply for installation and assembly:

1. The purchaser/client must provide the following at his own cost and in good time:

a) all excavation work, construction work and other ancillary work which does not fall within the scope of work provided by this sector, including any necessary specialists and auxiliary workers, building materials and tooling

b) the equipment and consumables necessary for installation and commissioning, such as scaffolding, hoists and other devices, combustion materials and lubricants, for example energy and water, including the appropriate connections

c) sufficiently large, suitable, dry and lockable rooms at the place of assembly to store machine parts, apparatus, materials, tools etc., and appropriate rooms for assembly personnel including sanitary facilities appropriate for the circumstances; moreover, measures are to be taken on the construction site for the protection of the parts delivered etc. and the property of the assembly personnel to the extent that the purchaser / client would take to protect his own property

d) Protective clothing and equipment necessary for the particular circumstances of the assembly site

2. Before commencement of assembly work, the purchaser / client shall voluntarily make available the necessary information concerning the location of sub-surface electricity, gas, and water conduits or similar installations, as well as the required data on statics.

3. Before commencement of installation or assembly work, the provisions and items required for starting the work shall be at the place of installation or assembly and all preliminary work prior to the commencement of construction must have progressed far enough for the installation or assembly work to begin in accordance with the contract and be carried out without interruption. Entrance ways and the assembly or installation site must be levelled and cleared.

4. If the installation, assembly or start-up is delayed as a result of circumstances for which the seller/contractor is not responsible, the purchaser/client shall bear the reasonable costs of waiting time and any additional travelling required.

5. The purchaser/client shall certify promptly and on a weekly basis the time worked by the assembly personnel – unless a lump sum price has been agreed – as well as when the installation, assembly or start-up finishes.

6. If the seller/contractor requires acceptance of performance following completion, the purchaser/client shall provide this immediately, at the latest however within two weeks. If this does not occur, acceptance is deemed to have taken place. Acceptance is also deemed to have taken place if the performance – where appropriate following completion of a test phase – has been put to use.

## **VII. Rights of the purchaser in relation to defects**

1. Obvious defects with the goods in terms of the volume, weight, charging or nature of the goods, as well as incorrect deliveries, are to be notified in writing by the purchaser with immediate effect, at the latest however within 24 hours of receipt of the goods, although once further processing has begun, there is no right of complaint. The date we receive the complaint is the criterion used to determine if the complaint is received in time. Defects which cannot be discovered within this period even with careful examination are to be notified in writing to the seller immediately following discovery. Should the purchaser not notify in accordance with the time limits set, the goods shall be deemed as confirmed and accepted.

2. Following receipt of the defect complaint, the good is to be sent to us at our request for checking provided this can be done at a cost which is not disproportionate or we do not agree in writing a different course of action. In the case of an unsubstantiated defect notification, the purchaser shall bear any costs incurred by us as a result of the examination. Where the complaint is substantiated, the purchaser has the right to receive supplementary performance. The type of supplementary performance is to be determined by us (the right to rectify at two attempts or delivery of a defect-free object). Incorrect volumes shall be rectified subsequently. We have the right to refuse replacement delivery if the purchaser does not fulfil his obligations to us. The purchaser's right to a claim based on the warranty for defects and the corresponding right to refuse/withhold payment due to defects are not prejudiced hereby. The aforementioned warranty restrictions do not apply to damages arising from death, bodily injury or harm to health which are based on an intentional or negligent breach of duty on our part. The aforementioned warranty restrictions also do not apply to other damages which are based on an intentional or grossly negligent breach of duty on our part.

3. Defect claims do not apply if there is only a minor deviation from the agreed nature of the goods or only a minor impairment of usability, in cases of normal wear and tear or damages that have occurred after transfer of risk due to incorrect or negligent handling, excessive stress or unsuitable operating equipment, etc. or which arise as a result of special external influences that are not assumed under the contract, as well as of non-reproducible software errors. If improper changes or repair work is undertaken by the purchaser or by third parties, there shall in any event be no defect claims for these or the consequences thereof.

4. Only the direct purchaser may make defect claims against the seller; this right is not transferable.

5. The period of limitation for claims shall be 12 months after delivery of the goods supplied by us to the customer.

### **VIII. Reservation of propriety rights**

1. Until all payment claims to which the seller is entitled from the purchaser for any legal reason now or in the future have been met (including all current account balance amounts), the seller will be provided with the following security which the seller will release upon request at his discretion, provided that the value of such security exceeds the claims by more than 20 % on a long-term basis.

2. The goods remain the property of the seller. Processing or reshaping will always be performed for the seller as manufacturer, but without obligation. If the (co-)ownership of the seller lapses as a result of combining, it is hereby agreed that the purchaser's (co-)ownership of the complete object shall pass to the seller on a pro rata value basis (invoiced value). The purchaser shall store the seller's co-owned object free of charge. Goods which are co-owned by the seller are referred to hereafter as reserved goods.

3. The purchaser is entitled to process and sell the reserved good in the course of orderly business provided that he is not in arrears of payment. Pledging or assignment as security is not permitted. Claims pertaining to the reserved good (including all current account balance claims) arising from the onward sale or on any other legal basis (insurance, tortuous act), are hereby assigned in full by the purchaser to the seller to serve as security. The seller grants the revocable authorisation to the purchaser to collect the claims assigned to the seller on his own behalf for the seller's account. The authority to collect the claims may only be revoked if the purchaser fails to meet his payment obligations in a proper manner.

4. If the reserved good is seized by a third party, in particular as the result of a pledge, the purchaser shall make the co-ownership of the seller known and notify the latter immediately so that the seller may exercise his rights of ownership. If the third party is not in a position to reimburse the seller with the judicial or extra-judicial costs arising from this, the purchaser shall be liable in this respect.

5. In the event that the purchaser behaves contrary to the contract – in particular in respect of late payment – the seller is entitled to withdraw from the contract and demand the return of the reserved good.

## **IX. Payment**

1. Unless otherwise agreed, the seller's invoices are payable 30 days following invoicing without deductions. The seller shall be entitled, irrespective of any contrary terms and conditions of the purchaser, to assign any payments first of all to any older debts of the purchaser and shall inform the purchaser about the manner of the assignment. If costs and interests have accrued already, the purchaser is entitled to set the payment off first of all against the costs, then against the interest, and finally against the main debt.

2. A payment is only deemed effected when the seller has access to the money. In the case of cheques, the payment is only deemed effected when the cheque has been cleared.

3. If the purchaser falls into arrears, the seller has the right to demand interest with effect from the relevant point in time in the sum of 8 percentage points above the relevant bank base rate, paid as a lump sum. The interest rate shall be lower if the purchaser can show a lower level of loss; the seller shall be entitled to prove that the loss is greater.

4. If the seller becomes aware of circumstances which call the credit worthiness of the purchaser into question, in particular if the latter does not honour a cheque or stops payment, or if the seller becomes aware of other circumstances which call credit worthiness into question, the seller shall be entitled to declare that the whole of the outstanding debt is immediately due even if the seller has previously accepted cheques. In this case, the seller is also entitled to require payments in advance or the provision of a security.

5. The purchaser is only entitled to offset claims, withhold or reduce payment, including when defect notifications or counter claims have been asserted, if the counter claims have been established at law or are undisputed. However, the purchaser is only entitled to withhold payment for counter claims arising from the same contractual relationship.

## **X. Documents provided**

1. We reserve copyright and ownership rights for all documents handed over to the purchaser/customer in connection with the award of the contract, for example, calculations, drawings, etc. These may not be made available to third parties unless we grant our express permission in writing to the purchaser/customer to do this. If an offer is not accepted, the documents are to be returned to us without delay.

2. The purchaser has the non-exclusive right to use standard software and firmware, with the agreed performance characteristics, in an unmodified form and within the agreed devices. The purchaser may create a backup copy of the standard software without express agreement.

## **XI. Liability**

1. Regardless of the nature of the violation of duty or whether it involved a tortious act, claims for damages are excluded unless they arise from damage caused intentionally or through gross negligence.

2. In the event of a breach of fundamental contractual obligations, the seller is liable for all negligence, but only up to the amount of the foreseeable damage. Claims for loss of profit from third party indemnity claims and for other direct damages and consequential damages cannot be asserted, unless one of the characteristics guaranteed by the seller has the purpose of protecting the purchaser against such damages.

3. The liability restrictions and exclusions in paragraphs 1 and 2 do not apply to claims which have arisen due to the seller's fraudulent action, to any liability for guaranteed characteristics, to claims arising from the German Product Liability Act or to loss or damage arising from death, bodily injury or harm to health.

4. Where the seller's liability is excluded or restricted, this shall also apply to the seller's staff, employees, representatives and vicarious agents.

## **XII. Applicable law, court of jurisdiction, partial invalidity**

1. German law shall apply for these terms and conditions of business and all legal relations between the seller and the purchaser. The provisions of the UN Convention for the International Sale of Goods shall not apply.

2. Where the purchaser is a merchant, a legal entity under public law or a special fund under public law, 92637 Weiden shall be the exclusive court of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.

3. The place of performance for both parties is Windischeschenbach.

4. Should a provision in these terms and conditions of business or a provision of other agreements be or become invalid, the validity of all other provisions or agreements shall not be affected by this. The parties undertake to replace the invalid provision or fill the loophole contained within it by agreeing on a legally permissible regulation which comes closest to the commercial purpose of the invalid provision.