

## **Standard Terms & Conditions of Sale**

### **§ 1**

#### **General Information – Validity**

- (1) Our Standard Terms & Conditions of Sale override all others. We do not recognise customer's conditions which deviate from or create obstacles to our standard terms unless we have confirmed our prior acceptance in writing. Our terms & conditions remain in force, therefore, even if we unconditionally deliver goods in the knowledge that customer's conditions deviate from or create obstacles to our standard terms.
- (2) All agreements that may be made between us and the customer for the purpose of carrying out a contract will be set down in the writing in the contract
- (3) Our Standard Terms & Conditions apply only to traders as defined in § 24 of the German AGBG regulations. Our Standard Terms & Conditions will also apply to all future business with the customer.

### **§ 2**

#### **Quotations – Quotation Inclusions**

- (1) In accordance with § 145 of the German BGB, the order will qualify if we accept it within 4 weeks of the quotation. We will retain ownership of copyright on all illustrations, drawings, calculations and special attachments. You may not make these available to third parties. This is especially valid in the case of confidential information, which may not be passed on to third parties without our express permission in writing.

### **§ 3**

#### **Prices - Payment Conditions**

- (1) Unless it is stated otherwise in our order confirmation, all prices are quoted 'ex-works', excluding packing, which will be itemised separately on the invoice. We reserve the right to change prices for deliveries made 3 months or later after contract conclusion, should changing of salary costs, material or distribution for deliveries necessitate this.
- (2) The relevant sales tax is not included in our prices. Sales tax will be added at the rate in force on the date of the invoice
- (3) Deductions/discounts from the sum invoiced will require special written agreement.
- (4) Unless the order confirmation states otherwise, all purchase prices are stated net (excluding discount) and are to be paid within 30 days of the invoice date. If the purchaser falls behind in payment, we will be entitled to charge interest at the rate legally prescribed according to German law. In case we can prove that we have incurred a higher penalty due to the arrears, then we would be within our rights to pass on the costs. The customer has the right to prove to us that we have incurred no or significantly less penalty as a result of the arrears.
- (5) The customer is only entitled to make a charge to the invoice if it is established that his counter claims carry the force of law and if this is undisputed by us or established by us.

### **§ 4**

#### **Delivery**

- (1) Our quoted delivery period commences only when all outstanding technical questions have been clarified.
- (2) If the customer grants us an extension following advice of a delay in fulfilling the order, the customer has the right to withdraw from the contract if the order is still not fulfilled after the agreed extension period. Claims for compensation due to non-fulfilment of the order will only be entertained if the customer has taken all possible steps to minimise potential damages and the delay is based on negligence or deliberate intent. In any case, the compensation claim will be limited to a maximum of 50% of the resultant damages.

- (3) The limits of liability in paragraphs (2) only apply if a commercial agreement has been entered, giving a fixed delivery date and if the customer can prove that his interests in the completion of the relevant project have been terminated as a direct result of our advice if a delay.
- (4) The fulfilment of our delivery obligations presupposes, and is in accordance with, the punctual and performance of the customers own obligations.
- (5) If the customer delays acceptance of our delivery or breaks any cooperation obligations, then we will be entitled to demand damages or recover additional costs. This includes any worsening or reduction of the trading situation during the time following the advice of the delay to the accepted delivery.

## **§ 5 Clarification Points**

- (1) Unless otherwise stated in the order confirmation, all deliveries are stated 'ex-works'.
- (2) Unless specifically advised otherwise, all deliveries will be covered by transport insurance, the cost of which will be borne by the customer.

## **§ 6 Guarantees & Warranty**

- (1) The Guarantee rights of the customer are set out in, and will be fulfilled in accordance with, the German §§ 377, 378 HGB Regulations.
- (2) As long as the fault is made known to us, we will be within our rights to choose to either repair the fault or supply a replacement part. In the case of a repair, we will be obliged to bear the resulting costs - in particular transport, labour and parts as long as these costs are not increased by the transport of the faulty part to a place other than the original delivery location of the equipment.
- (3) If we are unable to carry out repairs or supply replacement parts within a specified period, or if the repair/replacement is unsuccessful, the customer has the right to choose between cancelling the order or reducing the invoice value by an agreed amount.
- (4) Unless previously agreed, we will not be liable for any additional consequences to the customer, for whatever reason. We will not, therefore, be liable for any damages other than those already outlined in section 4 - 'Delivery'. In particular, we will not be liable for any lost profit or special penalties of the customer.
- (5) We are not liable for any costs when the damage has been caused deliberately or is due to negligence. Our liability does not apply, therefore, if the customer fails to provide a promised item, service or information under §§ 463, 48 section 2 of the BGP.
- (6) If we, through our negligence, fail to carry out our contractual duty, our liability for compensation for damage to property or person is limited to the amount of our product liability insurance cover. This is available for customers to study on demand.
- (7) The notice period for completion of warranty work amounts to 12 months, starting at the first advisement of the problem. This limitation period also applies to replacement parts as long as there is no dispute over inappropriate handling.
- (8) Defects due to faulty mounting or initiation, respectively unsuitable or inappropriate use or changes, repairs executed by the purchaser or third parties, natural wearing, faulty or negligent treatment, excessive strain, unsuitable operating material, substitute material, chemical, electrochemical or electrical influence exclude any guarantee, unless they are due to the seller's fault.
- (9) Complaints based on faults according to the conditions listed in section (8) will only be accepted, if they are asserted to us in written form within 2 weeks after receipt of the goods or when the fault should not be recognisable immediately, then within 2 weeks time of obtaining knowledge of the fault.

## **§ 7 Overall Liability**

- (1) Entertainment of any compensation claims as outlined in § 6 sections (4) to (6) above, is out of the question until the full consideration has been given to the damages and their legality.
- (2) The conditions outlined in section (1) above do not apply in the case of claims for damages made under clauses §§ 1 & 4, product liability. The same applies in the case of initial inability or representative impossibility.
- (3) Insofar as our liability is disproved or reduced, the same must apply to the personal liability of our staff, employees, colleagues, agents and collaborators.

## **§ 8 Property/Ownership Rights**

- (1) We will retain the ownership of products sold until all payments have been received by our bank. In the event of a breach of contract by the customer, especially a hold up or delay in payment of more than 10 working days, we will be entitled to withhold the items sold. The recovery or withholding of items by us does not indicate an abandonment of the contract unless we have so stated in writing. The seizure of goods by us always indicates an abandonment of the contract. In the event of a recovery of products which are already in use, we are entitled to any proceeds of the utilisation due to the customer, minus any utilisation costs.
- (2) The customer is obliged to take good care of the goods. In particular, he is obliged to insure the goods, at his own cost, against fire, flood and theft, up to the full replacement value of the goods. In the event of maintenance or inspection work being required, the customer is obliged to carry this out at his own cost.
- (3) In the event of seizure or other form of possession of the goods by any third party, the customer is required to inform us promptly so that we may instigate the complaints procedure described in the German ZIO regulations, § 771. If the third party is not in a position to cover our legal and other costs as laid out in the ZPO regulations, § 771 ZPO, the customer is liable for any shortfall.
- (4) The customer is entitled to sell the goods on in the course of his business. In that event, he will be prepared to transfer to us all rights to claims, in full and final value (including sales tax), that he may make against the recipient or third parties as a result of this onward disposal. This is regardless of whether or not the goods have been sold on in their original state or following a modification. The customer will remain responsible for collection of this debt even after the transfer. We retain the option to collect the debt ourselves if necessary. We undertake, however, not to collect the debt as long as the customer is able to fulfill his payment obligations to us from the proceeds of the debt collection and as long as he is not in payment arrears and has made no application for bankruptcy or insolvency proceedings or is not about to abandon the debt. If, however, this is the case, we can insist that the customer transfers the outstanding claim to us, advises his debtor and passes over to us with all possible haste, all information relating to the debt.
- (5) We should always be advised about modification or rebuilding of the equipment by the customer. If the goods are modified using objects not belonging to us, we automatically acquire the joint ownership of the new item in proportion to the value of the goods and added objects at the time of the modification. The same terms apply to the modified goods as to the original goods.
- (6) If the goods are combined with objects not belonging to us, in a way that is not separable, we automatically acquire the joint ownership of the new goods in proportion to the value of the objects at the time of the combination. If the goods are combined in a way that makes the customer's equipment is clearly the main component, the customer will transfer a part ownership to us. The customer will safeguard the resulting sole ownership or part ownership on our behalf.
- (7) The customer will also transfer to us, the claims for the safeguarding of our claims against him, which arise against a third party, as a result of the fixing of the goods to the ground.
- (8) We are obliged to release our security, on demand by the customer, when the amount of our security reaches 20% over the assured claim. The selection of the released securities is incumbent on us.

## **§ 9 Legal Jurisdiction**

- (1) As long as the customer is a registered business, our own registered place of business will be the place of jurisdiction; we are also entitled to sue the customer within the jurisdiction of his own business.
- (2) Unless otherwise stated in the order confirmation, our registered place of business will be the place to which payment must be made.
- (3) The contract is subject to German law.