

## Standard Terms and Conditions for Sale of Equipment and Services

01. January 2019

### § 1 (Offer)

- (1) Except where our written offer or our order confirmation expressly provides differently any offer from our side shall remain unbinding.
- (2) We reserve the right to property and copyright with regard to any and all pictures, drawings, calculations, and other documentation. They shall not be made available to third parties. The above shall particularly but without limitation apply to any and all documents marked "secret", "confidential" or analogical. Our prior written consent shall be required before such documents are handed out to third parties.

### § 2 (General – Application)

- (1) Our Standard Terms for Sales and Deliveries shall apply exclusively. Except where expressly confirmed by us in writing we shall not accept any conflicting terms and conditions of the customer. Our Standard Terms for Sales and Deliveries shall apply exclusively even where despite of positive knowledge of such conflicting terms and conditions of the customer we did not expressly object to them.
- (2) This agreement contains the entire agreements of the parties regarding the performance hereof. The entire agreement is made in writing.
- (3) Our Standard Terms for Sales and Deliveries shall only apply as towards public corporations, public special estates, and enterprises within the meaning of section 310 para 1 German Civil Code.
- (4) Our Standard Terms for Sales and Deliveries shall also apply for any and all future transactions with the customer.

### § 3 (Prices, Payment)

- (1) Except where our order confirmation states differently our prices shall be "ex works" (EXW Incoterms). We reserve the right to change our prices accordingly if after the entering into this agreement cost reduction or cost increases particularly but without limitation based on collective wage agreements or raw material prices occur. We will prove such price changes to the customer upon request
- (2) All prices quoted are exclusive of VAT. VAT shall be added in the statutory amount as of the date of the day of invoicing and shall be quoted separately on the invoice.
- (3) The deduction of discounts shall only be allowed where expressly agreed in writing.
- (4) Except where expressly stated differently in the order confirmation the purchase price shall become due for payment without deduction within 10 days after the dispatch of the invoice (date of the invoice). Where the customer fails to pay within this time he shall be in delay of payment. Where the customer is in delay of payment we shall be entitled to claim interest in an amount of 8 % above the statutory base rate per annum. We shall furthermore be entitled to claim any higher damage caused by customer's default.

(5) Payments shall be made free our office. Except where expressly stated differently in the order confirmation payments shall be fulfilled in EURO. The customer bears all costs and disagio which are caused by payments in another currency.

#### **§ 4 (Passing of the Risk – Packaging Costs)**

(1) Where the order confirmation does not state differently the delivery shall be “ex works” (EXW Incoterms).

(2) Except for pallets transportation packaging and all other packing material as defined in the German Verpackungsverordnung shall not be taken back. The customer undertakes to provide for disposal of such materials at its own expense.

(3) If the customers so requests we will cover the delivery by a transport insurance. The costs for such insurance shall be born by the customer.

#### **§ 5 (Delivery Time)**

(1) The indicated delivery time shall not begin until and unless any and all technical questions have been agreed upon.

(2) The fulfilment and adherence to our delivery obligation shall depend upon the correct and timely pre-supply to us.

(3) Where delivery becomes impossible subject to circumstances for which we are not responsible the delivery time shall be extended for the time of impossibility. A shortage in raw materials, inability for which we are not responsible and other cases of Force Majeur shall relieve us from the delivery time. In such cases we shall be entitled to withdraw from the agreement partly or completely.

(4) Where the customer is in delay of acceptance or where the customer is in breach of any other obligation to co-operate we shall be entitled to claim restitution for any damages incurred insofar including without limitation additional expenditures on our side. Additional claims remain reserved.

(5) In cases of para (4), above, the risk of coincidental destruction or delay of the goods shall pass to the customer in the time in which he comes into delay of acceptance or payment.

(6) We shall be liable according to the statutory provisions insofar as the underlying purchase agreement is a transaction for delivery by a fixed date in the meaning of sections 286 para 2 no. 4 German Civil Code, 323 para 2 no. 2 German Civil Code or section 376 German Commercial Code. We shall furthermore be liable according to the statutory provisions where, as a consequence of the delay in delivery which we are liable for, the customer is entitled to claim that he is no longer interested in the performance of the agreement. In all other respects our liability for delay or default in delivery shall be subject to section 11 of these Standard Terms for Sales and Deliveries.

(7) We shall be entitled to partial delivery or partial performance where such partial delivery or partial performance is reasonably acceptable to the customer. Where the customer is entitled to withdraw from this agreement based on our delay in delivery but after having received a partial delivery or partial performance he shall only be entitled to withdraw from the whole agreement where a partial delivery or partial performance is of no interest to him.

#### **§ 6 (Warranty)**

(1) Any warranty pre-supposes that the customer has met all his duties regarding inspection of the goods and notice of defects pursuant to section 377 German Commercial Code (HGB). Goods delivered shall immediately be examined by the customer. Complaints, including complaints regarding guaranteed

qualities, have to be received by us no later than within 3 days after delivery in any case, however, prior to processing or delivery to third parties. In case of hidden defects complaints have to be filed within 3 days of the time of detection of the defect.

(2) Our warranty does not cover damages resulting from normal wear and tear, unsuitable or inappropriate storage, use or treatment or neglect of the processing and use references. In the case of deliveries based on designs, specifications, samples etc. provided by the customer the customer shall bear the risk of the suitability for the intended purpose. The contractual performance of our products can only be achieved by the utilisation of flawless materials of high quality. We do not warrant compatibility or contractual performance of our products insofar as the material used by the customer or a third party does not match the aforesaid requirements.

(3) Subject to our choice and at our expense the customer shall be obliged to send the goods in question to us for our examination or performance or to keep the goods available for. In the case of unjustified complaints the customer shall have to refund any costs incurred in that regard.

(4) We shall be entitled to replacement delivery or repairs at our choice. In deciding about the kind of performance we shall have regard to the nature of the defect and to the customer's reasonable requirements. Any and all costs and/or expenses required for the performance shall be born by us. Any extra costs based on the fact that the goods have been transported to a different place than the commercial headquarters of the customer shall not be born by us except where such transportation has been made in conformity with the intended use of the goods.

(5) Where within a reasonable period of time performance (Nacherfüllung) fails, the customer shall be entitled at his choice to claim reduction of the purchase price, damages or to withdraw from the agreement. Where the customer decides to withdraw from the agreement he shall not be entitled to additional claims for damages. Where only a part of the total delivery of goods is defective the customer shall only be entitled to withdraw from the total agreement where he is not interested in the remaining part of the goods delivered. If the customer chooses to claim damages the goods shall where reasonable remain with him. Except where we are liable for damages based on our own guilt damages shall be limited to the difference between purchase price and the value of the defective goods.

(6) Claims based on the defect of goods can only be made within a warranty period of twelve months starting from the date of delivery of the goods. This shall not apply with regard to claims for which the statutory periods under section 438 para 1 no. 2 BGB for buildings and building materials, in section 479 para 1 BGB for claims for recourse and in section 634 a para 1 no. 2 BGB for buildings and planning and supervision services in regard thereto provide for a longer warranty period.

## **§ 7 (Limitation of Right to set off)**

The customer shall only be entitled to set off if and insofar as his counterclaims are based on a final and binding court order, are undisputed or have been accepted by us. Furthermore, he shall only be entitled to a right to retention insofar as his counterclaim is based on the same contractual relationship.

## **§ 8 (Credit Worthiness)**

Circumstances which cast doubts on the credit worthiness of the customer entitle us to refuse performance until the customer has performed his obligations hereunder or has provided appropriate securities. This shall also apply where the circumstances casting doubt on the credit worthiness of the customer become known only after entering into this agreement. Information provided by a reputable

inquiry agency or bank shall suffice as evidence for such circumstances. The customer shall not be entitled to claim a copy of such information.

## **§ 9 (Retention of Title)**

(1) We retain property in the goods delivered until such time as any and all payments due from the customer under the existing business relationship have been received ("Retention Goods"). With regard to a business relationship based on a current account the retention of title shall extend to the accepted balance from time to time. If and insofar as we have agreed with the customer on a payment of the purchase price based on the exchange of a cheque and a bill of exchange the retention shall last until such time as the bill of exchange has been paid and shall not end upon collection of the cheque received by us. Where the customer is in breach of contract, particularly but without limitation where he is in delay of payment, we shall be entitled to collect and take back the goods. The collection or the attachment of the Retention Goods by us shall be deemed a withdrawal from the agreement. Upon collection of the Retention Goods we shall be entitled to their liquidation. The return from such liquidation shall after deduction of appropriate liquidation costs be set off against the liabilities of the customer. Costs for collection of the goods shall be born by the customer.

(2) The customer shall be obligated to handle the Retention Goods with care. Particularly but without limitation he shall be obligated to take out usual insurance coverage against fire, water and theft based on the original value of the goods. If and insofar as maintenance and inspection work is necessary the customer shall carry these out at his own expense.

(3) In case of the seizure or other interferences by third parties the customer shall be obligated to immediately inform us so as to enable us to raise complaint in accordance with section 771 ZPO or corresponding action in the respective jurisdiction. If and insofar as the third party is not able to refund the judicial and extra judicial costs of a complaint under section 771 ZPO or for a corresponding action in the respective jurisdiction the customer shall be liable for such amounts.

(4) The customer shall be entitled to sell the Retention Goods in the ordinary course of business. He does, however, now and in advance assign to us any and all claims that he receives out of such sale in the amount of the end amount of our invoice including VAT. The above shall apply irrespective of whether or not the Retention Goods have been sold prior to or after processing. The claim assigned to us in advance by the customer shall furthermore cover the accepted balance of a current account and, in case of the customer's insolvency, the then existing causal balance (kausaler Saldo). The customer shall remain entitled to collect the assigned claim even after assignment. Our right to collect the assigned claim ourselves remains unaffected. We will, however, not collect the claim as long as the customer meets his payment obligations from the collected amounts, is not in delay of payment and no application has been filed regarding the opening of insolvency or composition proceedings or payments have been suspended. If, however, such is the case the customer shall be obligated to inform us about any and all claims assigned and about the respective debtors, provide any and all information and documents required to collect such claims and shall inform the debtors (third parties) about the assignment.

(5) Any processing of the Retention Goods shall be made on our behalf. Where the Retention Goods are processed together with other goods which are not our property we shall automatically acquire co-ownership in the new goods in the ratio of the values of the Retention Goods as compared to the other processed goods at the time of processing. The provisions contained herein shall also apply with regard to the new goods resulting from the processing.

(6) If the Retention Goods are inseparably mixed with other goods not belonging to us we shall automatically acquire the co-ownership in the resulting mixed product in the ratio of the Retention Goods as compared to the other goods at the time of the mixing. Where the mixing takes place in the way that the Retention Goods can be viewed at as main item of the resulting product it shall be agreed that the customer shall transfer to us pro rata property in the resulting product. In this case the customer shall hold the sole property or the co-ownership on our behalf.

(7) We undertake to release securities from the customer available to us if and insofar as the realisable value of such securities exceeds the total amount of the securitised claims by more than 10 %. The choice of the securities to be released is on our side.

(8) The customer has to take all steps necessary and useful under the applicable laws to ascertain and award ownership in the Retention Goods to us. Particularly but without limitation the customer undertakes to register with the competent patent and registers office that the Retention Goods are in the ownership of us and that they are not subject to any enforcement or attachment out of or in connection with any mortgage or other securities of the real estate or the business of the customer.

## **§ 10 (Place of Performance, Jurisdiction, Applicable Law)**

The place of performance for all deliveries and payments is Karlsruhe, Germany. If the customer is a business professional the venue for any and all disputes out of or in connection with this agreement shall be Karlsruhe, Germany. We shall, however, be entitled to sue the customer at his common place of jurisdiction (commercial headquarters). This agreement shall exclusively be subject to the laws of the Federal Republic of Germany. The provisions of the United Nations Convention on the International Sale of Goods (CISG) shall not be applicable.

## **§ 11 (Joint and Several Liability)**

(1) The preceding provisions and these Standard Terms for Sales and Deliveries contain the entire basis for liability and warranties regarding any and all goods, they entirely describe our duties hereunder and they exclude any further reaching warranty claims or claims for damages of whatever kind and irrespective of their legal nature particularly but without limitation claims based on the breach of duties deriving from a contractual relationship, liability in tort and claims for restitution of lost earnings or other mere financial losses. The limitation contained in this subparagraph shall not apply with regard to the assumption of a guaranty or a procurement risk, a liability under products liability statutes, or for the liability for damages based on negligent injuries to life, body, health or major contractual obligations. Except for cases of intentional acts or gross negligence and for cases of liability for injuries to life, body or health our liability for the negligent breach of major contractual obligations shall be limited to the amount of damages which can be typically expected in these kinds of damages and which can reasonably be foreseen. A change of the burden of proof to the detriment of the customer shall not be contained herein.

(2) The above limitation of liability shall also apply to the personal liability of our employees, legal representatives and persons assisting in our performance.