

General Terms and Conditions of Delivery to be used in Dealings with Enterprises

§ 1 Scope

- (1) All deliveries, services and offers of the vendor are made solely on the basis of these General Terms and Conditions of Delivery. They form an integral part of all agreements concluded by the vendor with its contract partners (hereinafter "customer") for the deliveries or services offered by the vendor. They also apply to all future deliveries, services or offers to the customer, even if they are not the subject of a further separate agreement.
- (2) Business terms and conditions of the customer or of third parties do not apply, even if their validity has not been contradicted separately by the vendor in each individual case. Even if the vendor refers to a letter containing or referring to the business terms and conditions of the customer or of third parties, this does not constitute an agreement to the validity of said business terms and conditions.

§ 2 Offer and agreement conclusion

- (1) All offers made by the vendor are non-binding and non-committal unless marked explicitly as being binding or unless they contain a certain acceptance date. The vendor can accept purchase orders or commissions within fourteen days of receipt.
- (2) The legal relationships between vendor and customer are governed solely by the concluded written purchase agreement, including these General Terms and Conditions of Delivery. The purchase agreement reproduces all understandings between the contracting parties concerning the subject matter of the agreement. Oral statements made by the vendor prior to conclusion of the agreement shall not be considered binding. Oral understandings between the contracting parties are replaced by the written agreement unless they explicitly indicate that they continue to apply in each case.
- (3) Additions and amendments to the agreements reached including these General Terms and Conditions of Delivery must be made in writing to come into effect. With the exception of managing directors or authorised signatories, the vendor's employees are not entitled to reach any deviating oral understandings. To comply with the written form, transmission by telecommunication is sufficient, particularly by fax or e-mail, as long as a copy of the signed declaration is submitted.
- (4) Details given by the vendor regarding the subject matter of the delivery or service (e.g. weights, dimensions, practical value, load rating, tolerances and technical data) together with our visualisations thereof (e.g. drawings and illustrations) are only approximate unless using the subject matter for the contractually stipulated purpose presumes precise compliance. These are not guaranteed quality features but descriptions or distinctive features of delivery or service. Variations which are usual in the trade and discrepancies which arise from statutory provisions or constitute technical improvements together

with the replacement of parts with equivalent parts are permitted insofar as they are not detrimental to usability for the contractually stipulated purpose.

- (5) The customer can only pass on the rights and obligations arising from this agreement to a third party with the vendor's consent.
- (6) The vendor retains the ownership or copyright to all offers and cost estimates issued by the vendor, together with documents made available to the customer such as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids. Without obtaining the vendor's explicit consent, the customer is not allowed to make such documents available to third parties as such nor in terms of content, to reveal them, or to have them used or reproduced, either by the customer or by third parties. At the vendor's request, the customer shall return these items completely to the customer and destroy any copies made if no longer needed for the ordinary course of business or if negotiations do not result in the conclusion of an agreement. Exceptions to this refer to the storage of electronically provided data for the purposes of normal data backup procedures.

§ 3 Prices and payment

- (1) The prices apply to the scope of services and delivery stated in the order confirmation. Additional or special services shall be charged separately. The prices apply in EURO ex works plus packaging, statutory value added tax, and customs duties for export deliveries together with fees and other public charges.
- (2) Insofar as the agreed prices are based on the vendor's list prices and the delivery is to take place more than four months after concluding the agreement, the vendor's list prices valid at the point in time of delivery shall apply (after deducting any agreed percentage or fixed discount in each case).
- (3) Invoice amounts shall be paid within thirty days without deductions unless otherwise agreed in writing. Payment is deemed to be made on the date when received by the vendor. Payment by cheque is ruled out unless agreed separately in each individual case. If the customer does not pay by the due date, interest shall be charged at 5% p.a. on the outstanding amounts counting from the due date; this does not affect the right to assert higher interest and other compensation in the case of default.
- (4) Offsetting from counterclaims of the customer or withholding payment because of such claims is only permitted insofar as the counterclaims are undisputed or have been established in law.
- (5) The vendor is entitled to make or perform any still outstanding deliveries or services only against payment in advance or provision of security if, after concluding the agreement, the vendor should learn of circumstances that are of a nature to considerably reduce the customer's creditworthiness and which jeopardise the payment of the vendor's outstanding claims on the customer from the respective contractual relationship (including individual orders under the same framework agreement).

(6) Special separate agreement is required for the deduction of discount.

§ 4 Delivery and delivery time

(1) Deliveries are made ex works.

(2) Delivery periods and deadlines proposed by the vendor in advance are always only approximate unless a fixed period or fixed deadline has been explicitly promised or agreed. If shipping has been agreed, the delivery periods and delivery deadlines refer to the point in time of handover to the forwarder, haulier or other third party assigned to transport the goods.

(3) Notwithstanding the vendor's rights regarding default on the part of the customer, the vendor can demand from the customer an extension of delivery and service periods or a postponement of delivery and service deadlines by the period of time in which the customer fails to fulfil its contractual obligations to the vendor.

(4) The vendor is not liable for impossibility of delivery or for delays in delivery caused by Acts of God or other events that were not foreseeable at the point in time of concluding the agreement (e.g. all kinds of disruptions in business operations, difficulties in the supply of materials or energy, transportation delays, strikes, legal lockouts, shortages of labour, energy or raw materials, difficulties in procuring necessary official permits, measures imposed by the authorities or in the event of failure to deliver or incorrect or untimely delivery by suppliers), for which the vendor is not responsible. Insofar as such events make it essentially difficult or impossible for the vendor to proceed with delivery or service and the hindrance is not just of a temporary nature, the vendor is entitled to withdraw from the agreement. Where hindrances are of a temporary nature, the delivery or service periods are extended or the delivery or service deadlines postponed by the period for which the hindrance lasts plus a reasonable start-up period. If the customer can no longer be expected to accept the delivery or service on account of the delay, the customer can withdraw from the contract by submitting immediate written notice to the vendor.

(5) The vendor is only entitled to make partial deliveries if

- the customer can use the partial delivery in the framework of the contractual purpose
- the delivery of the remaining ordered items is assured and
- the customer incurs no major additional work or costs (unless the vendor agrees to bear such costs).

(6) If the vendor defaults with a delivery or service or if a delivery or service becomes impossible for the vendor for any reason whatsoever, the vendor's liability is limited to compensation pursuant to § 8 of these General Terms and Conditions of Delivery.

§ 5 Place of fulfilment, shipping, packaging, transfer of risk, acceptance

- (1) The place of fulfilment for all obligations arising from the contractual relationship is unless stated otherwise. If the vendor is also responsible for installation, the place where installation is to take place is the place of fulfilment.
- (2) The shipping method and packaging are subject to the vendor's due discretion.
- (3) Risk is transferred at the latest on handing over the delivery item (whereby the start of loading is authoritative) to the forwarder, haulier or other third party assigned with the task of handling shipment to the customer. This also applies when partial deliveries or made or if the vendor has also taken on other services (e.g. shipping or installation). In the event of delays to shipping or handover on account of circumstances caused by the customer, risk is transferred to the customer from the day on which the delivery item is ready for shipping and the vendor has notified the customer accordingly.
- (4) Storage costs incurred after the transfer of risk are paid by the customer. When stored by the vendor, the storage costs amount to [0.25]% of the invoice amount for the delivery items in storage for each completed week. The right to claim for additional storage costs or request proof of lower storage costs remains reserved.
- (5) The vendor shall only take out insurance for theft, breakage, transportation, fire and water damage or any other insurable risks at the explicit request of the customer.
- (6) Insofar as an acceptance procedure is to take place, the purchased item is deemed to be accepted if:
 - delivery is completed and installation has finished insofar as the vendor is also responsible for installation,
 - the vendor has informed the customer accordingly with reference to assumed acceptance pursuant to this § 5 (6) and instructed the customer to proceed with acceptance
 - a period of [twelve] working days has expired since delivery or installation or the customer has started using the purchased item (e.g. has proceeded with initial commissioning of the delivered purchased item) and in this case more than [six] working days have expired since delivery or installation and
 - the customer has failed to proceed with acceptance during this period for any other reason apart from a defect reported to the vendor which makes it impossible to use the purchased item or which significantly impairs such use.

§ 6 Warranty, material defects

- (1) Claims asserted by the customer on account of material defects are struck by the statute of limitations one year after delivery or after acceptance if an acceptance procedure is necessary.

- (2) The statute of limitations shall not apply insofar as the vendor has assumed a guarantee or has maliciously concealed a defect. The statute of limitations shall not apply to damages claims from material defects liability resulting from intentional or grossly negligent breach of duty by the vendor, an executive organ, a legal representative or vicarious agent of the vendor. Nor does the statute of limitations apply to compensation resulting from injury to life, body or health resulting from intentional or negligent breach of duty by the vendor, an executive organ, a legal representative or vicarious agent.
- (3) The delivered items are to be carefully examined immediately after delivery to the customer or to a third party appointed by the customer. They shall be regarded as approved by the purchaser in terms of obvious defects or other defects which would have been apparent during immediate, careful examination unless the vendor receives a written notice of defects within seven working days after delivery. In terms of other defects, the delivered items shall be regarded as approved by the purchaser if the notice of defects is not received by the vendor within seven working days from the point in time at which the defect was revealed; however, if the defect was apparent for the customer during normal use already at an earlier point in time, this earlier point in time is authoritative for the start of the complaint period. A delivered item subject to complaint shall be returned freight paid to the vendor at the vendor's request. If the defect complaint is justified, the vendor shall refund the costs of the cheapest dispatch route; this does not apply insofar as the costs increase on account of the delivered item being at another location than the location of intended use.
- (4) In the event of material defects in the delivered items, the vendor is obliged and entitled to proceed initially with rectification or replacement delivery at the vendor's choice which is to be made within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or inappropriate delay to rectification or replacement delivery, the customer can withdraw from the agreement or reduce the purchase price by an appropriate amount.
- (5) If a defect is attributable to the vendor, the customer can demand compensation under the conditions set out in § 8.
- (6) In case of defects in components from other manufacturers, which the vendor cannot remedy for reasons of licensing law or factual reasons, the vendor shall assert its warranty claims against the manufacturers and suppliers for the customer's account or assign these claims to the customer, at the vendor's choice. In the case of such defects, warranty claims exist against the vendor under the other conditions and on the basis of these General Terms and Conditions of Delivery only if enforcement in court of the above-mentioned claims against the manufacturer and supplier was unsuccessful or futile on account of insolvency, for example. The statute of limitations for the customer's warranty claims against the vendor is suspended for the duration of the legal dispute.
- (7) The warranty becomes null and void if the customer changes the delivered item or has it changed by third parties without the vendor's consent so that defect rectification becomes impossible or unreasonably difficult. In any case,

the customer shall bear the additional costs for defect rectification incurred by the change.

- (8) The delivery of used items agreed in individual cases with the customer shall be made with the exclusion of all warranties for material defects.
- (9) This does not affect the claims and rights of the customer arising from § 478 and § 479 German Civil Code (BGB) (supplier regress).

§ 7 Industrial property rights

- (1) In accordance with this § 7, the vendor vouches for the delivered item being free of industrial property rights or copyrights of third parties. Each contracting partner shall inform the other contracting partner immediately in writing in the event that claims are made due to the infringement of such rights.
- (2) In the event that the delivered item violates an industrial property right or copyright of a third party, the vendor shall change the delivered item or replace it at the vendor's choice and costs to the extent that third party rights are no longer violated but the delivered item still fulfils the contractually agreed functions, or obtain or procure the right of use for the customer by concluding a licence contract. If the vendor fails to do so within a reasonable period of time, the customer is entitled to withdraw from the agreement or to reduce the purchase price by an appropriate amount. Any compensation claims by the customer are subject to the restrictions of § 8 of these General Terms and Conditions of Delivery.
- (3) In case of infringements caused by products from other manufacturers which were supplied by the vendor, the vendor shall assert its claims against the manufacturers and suppliers for the customer's account or assign these claims to the customer, at the vendor's choice. In such cases, claims exist against the vendor on the basis of this § 7 only if enforcement in court of the above-mentioned claims against the manufacturer and supplier was unsuccessful or futile on account of insolvency, for example.

§ 8 Liability for compensation caused by fault

- (1) The vendor's liability for compensation, for any legal reason whatsoever, particularly for impossibility, delay, faulty or incorrect delivery, violation of contract, breach of obligations during negotiations and torts is restricted pursuant to this § 8, insofar as there is a question of fault in each case.
- (2) The vendor shall not be liable in the event of simple negligence of its executive organs, legal representatives, employees or other vicarious agents, insofar as this does not refer to infringement of material contract duties. Material contract duties refer to the obligation to make punctual delivery and installation of the delivered item, which is free from defects in title and other material defects that impair its functional capability or usability to more than an insignificant extent, together with advice, protection and care obligations which should make it possible for the customer to proceed with contractual use of the delivered item

or are intended for the protection of life or limb of the customer's employees or for the protection of the customer's property from considerable damage.

- (3) Insofar as the vendor is liable for compensation pursuant to § 8 (2), this liability is limited to damages which the vendor foresaw as a possible consequence of contract violation on concluding the agreement, or should have been able to foresee in applying due business diligence. Indirect damages and consequential damages resulting from defects in the delivered item are also only liable for compensation if such damage can be typically expected when using the delivered item for its intended purpose.
- (4) In the case of liability for simple negligence, the vendor's obligation to make compensation for material damage and resulting further pecuniary loss is limited to an amount ofEURO per occurrence (corresponding to the current coverage sum of the vendor's product liability insurance or liability insurance), even if this refers to the infringement of material contract duties.
- (5) The liability exclusions and restrictions stated above apply to the same extent to the executive organs, legal representatives, employees and other vicarious agents of the vendor.
- (6) Insofar as the vendor provides technical information or acts as an advisor and this information or advice is not part of the contractually agreed scope of services owed by the vendor, this is done free of charge and with the exclusion of any liability.
- (7) The liability limitations and exclusions of liability do not apply to claims resulting on account of a guarantee assumed by the vendor or for defects maliciously concealed by the vendor. Nor do they apply to claims resulting from intentional or grossly negligent breach of duty by the vendor, an executive organ, a legal representative or vicarious agent of the vendor, or to compensation resulting from injury to life, body or health resulting from deliberate or negligent breach of duty by the vendor, an executive organ, a legal representative or vicarious agent. Nor do the limitations and exclusions apply to claims under the product liability law.

§ 9 Reservation of title

- (1) The following agreed reservation of title serves to secure all existing current and future claims of the vendor against the customer arising from the delivery relationship between the contracting partners for (including balance claims from a current account limited to this delivery relationship).
- (2) The item supplied by the vendor to the customer remains the vendor's property until complete payment of all secured claims. The item and the item supplied in its place according to the following provisions and covered by the reservation of title is referred to hereinafter as "reserved item".
- (3) The customer stores the reserved item free of charge for the vendor.

- (4) The customer is entitled to process and sell the reserved item in normal business transactions up to the point of instigation of recovery (paragraph 9). Pledging and assignment as security are not allowed.
- (5) If the reserved item is processed by the customer, it is agreed that the processing takes place in the name and for the account of the vendor as manufacturer, and that the vendor procures the direct title; if the processing involves materials provided by a number of owners or the value of the processed item exceeds the value of the reserved item, the vendor procures joint title (co-ownership) of the newly created item in ratio of the value of the reserved item to the value of the newly created item. In the event that there is no such acquisition of ownership on the part of the vendor, the customer now already transfers its future ownership or, in the above mentioned ratio, co-ownership of the newly created item to the vendor as security. If the reserved item is combined or inseparably mixed with other items to form a unit and if one of the other items is considered the main constituent, the vendor transfers to the customer pro rata co-ownership to the unit in the ratio mentioned in sentence 1, insofar as the main item belongs to the vendor.
- (6) In the event of resale of the reserved item, the customer assigns the resulting claim against the purchaser to the vendor now already by way of security, or in case of the vendor's co-ownership of the reserved item, the claim is assigned pro rata according to the co-ownership share. The same applies to other claims taking the place of the reserved item or which incur with respect to the reserved item, such as e.g. insurance claims or claims from tort in the event of loss or destruction. The vendor shall give the customer revocable authorisation to collect in its own name the claims assigned to the vendor. This collection authorisation can only be revoked in the case of instigation of recovery.
- (7) If third parties take hold of the reserved item, particularly by seizure, the customer shall draw their attention immediately to the vendor's ownership and shall inform the vendor accordingly to make it possible for the vendor to assert its ownership rights. If the third party is not in a position to refund the vendor with the costs incurred in court or out of court, the customer shall be liable to the vendor accordingly.
- (8) The vendor shall release the reserved item and the items or claims taking place of the reserved item insofar as its value exceeds the amount of the secured claims by more than 50%. The choice of subsequently released items is made by the vendor.
- (9) If the vendor withdraws from the agreement (instigation of recovery) in the event of breach of contract by the customer, particularly default of payment, the vendor is entitled to demand surrender of the reserved item.

§ 10 Final provisions

- (1) If the customer is a businessman, a public law body or a public law fund or has no general place of jurisdiction in the Federal Republic of Germany, then the place of jurisdiction for any disputes arising from the business relationship

between vendor and customer shall be (place) or the customer's head office, at the vendor's choice. However, in the event of claims against the vendor, ... (place) is the exclusive place of jurisdiction. Mandatory statutory provisions about exclusive place of jurisdiction remain unaffected by this provision.

- (2) The relationships between the vendor and the customer are subject only to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 does not apply.
- (3) Insofar as the agreement or these General Terms and Conditions of Delivery contain any loopholes, these legally effective provisions shall apply which the contracting partners would have agreed with respect to the commercial aims of the agreement and the purpose of these General Terms and Conditions of Business if they had known of the loopholes.

Note:

The customer takes note of the fact that the vendor saves data from the contractual relationship in accordance with §28 Federal Data Protection Act for the purpose of data processing and reserves the right to transfer the data to third parties (e.g. insurance companies) where necessary for fulfilment of the agreement.