

# General terms and conditions

## § 1 Validity

1. All goods, services and offers of the seller take place exclusively subject to these general terms and conditions. These are part of all contracts that the seller concludes with his sales partners (hereinafter called „client“) regarding the goods and services he offers. They also apply to all future goods, services or offers to the client, even if they are not agreed separately again.
2. Terms and conditions of the client or third parties shall not apply, even if the seller does not separately disagree with their validity in each case. Even if the seller refers back to a letter containing the terms and conditions of the client or a third party or refers to such a letter, this shall not constitute an agreement with the validity of those terms and conditions.

## § 2 Offer and Contract Conclusion

1. All offers of the seller are without obligation and non-binding, unless they are expressly marked as binding, or contain a certain acceptance period. Orders may be accepted by the seller within fourteen days after receipt of the order confirmation or delivery.
2. Only the concluded written purchase agreement is decisive for the legal relationships between the seller and buyer, including these general terms and conditions. This completely reflects all agreements between the contract parties regarding the subject matter of the contract. Oral promises of the seller prior to concluding this agreement are legally non-binding and verbal agreements between the contract parties shall be replaced by the written agreement, provided it is not explicitly clear from them that they remain in force. Additions and modifications to the agreements made, including these terms and conditions, require the written form to be effective. With the exception of managing directors or authorised representatives, the seller's employees are not authorised to make deviating verbal agreements. Transmission by fax suffices as the written form. Incidentally, telecommunication transmission, in particular by e-mail, is not sufficient.

3. Information about the seller regarding the subject matter of delivery or performance (e.g. technical data, weights, dimensions, practical values, capacity, tolerances, etc.) as well as our representations of the same (e.g. drawings and illustrations in catalogues or similar) is only approximately decisive, provided the usability for the contractually intended purpose does not require an exact conformity. It is not any guaranteed quality characteristic, but rather a description or identification of goods or services. Commercial deviations and deviations that take place due to legal provisions or represent technical improvements, as well as the replacement of components by equivalent parts, are permissible, provided they do not impair the usability for the contractually intended purpose.
4. The seller retains ownership or copyright on all of the offers and cost estimates he offers as well as the drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the client. The client may not make these objects accessible to third parties, disclose them, use them for themselves or third parties or duplicate them as such or as regards their contents without the express consent of the seller. At the request of the seller, the client shall return all of these objects to the seller and possibly destroy any copies if the client no longer needs them in the course of ordinary business or if negotiations do not lead to the conclusion of a contract.

## § 3 Prices and Payment

1. The prices apply for the scope of supply and service listed in the order confirmation. Additional or special services are charged separately. The prices are in euros ex works, plus packaging, the legal VAT, duties for export deliveries as well as fees and other public charges.
2. If the agreed prices are based on the list prices of the seller and the delivery is only to take place four months after conclusion of the agreement, the list prices of the seller valid upon delivery shall apply (each minus

an agreed percentage or fixed discount). If no fixed prices have been agreed, the seller is entitled to reasonable price changes for substantially changed prime costs for delivery commitments exceeding four months. The seller may require prepayment or immediate payment upon delivery. For order values over EUR 15,000, the seller may demand 30% of the order value as a deposit before the start of work.

3. Invoice amounts are to be paid at the latest 10 days after the invoice date without any deduction, unless otherwise agreed in writing. The receipt by the seller is decisive for the date of payment. Checks are only considered payment after redemption. A cash discount deduction requires an express agreement as well as a full and timely payment. A cash discount deduction is not permissible if the client is in arrears with the payment of other invoices of the seller. If the client does not pay when the payment is due, the outstanding amounts are to be charged interest at a rate of 8% per annum from the due date. Claiming higher interest rates and additional damages in the case of default shall remain unaffected.
4. Subsequent changes to confirmed orders or orders already set up in production require the express consent of the seller. For this purpose, a change or conversion fee of 3% of the net order or change amount or the costs incurred, but at least EUR 100, shall be imposed. In the event of an order cancellation by the client, the seller shall at his discretion charge a flat distance fee for 10% of the cancelled net order value or the actual incurred costs, but at least EUR 1,000.00. The client shall each be entitled to prove that the seller incurred less damage.
5. The offsetting with counterclaims of the client or the withholding of payments due to such claims is only permitted if the counterclaims are undisputed or legally enforceable.
6. The seller is entitled to carry out or provide still outstanding goods or services only against advance payment or the provision of a security if circumstances become known to the seller after conclusion of the contract

that are likely to significantly reduce the creditworthiness of the client and through which the payment of the seller's outstanding claims by the client from the respective contractual relationship (including from other individual orders, for which the same framework agreement applies) is at risk.

#### § 4 Delivery and Delivery Time

1. Deliveries take place ex works.
2. Deadlines and dates for deliveries and services set in advance by the seller shall always only be approximate, unless a fixed date or time has been expressly promised or agreed. If shipment has been agreed, the delivery dates and times refer to the time of handover to the carrier, freight forwarder or other third party commissioned with the transportation.
3. The seller can - without prejudice to his rights arising from the default of the client - request from the client an extension of delivery and performance deadlines or a postponement of the delivery and performance dates by the time period in which the client fails to meet his contractual obligations to the seller.
4. The seller is not liable for the inability to deliver or for delivery delays, provided these were caused by force majeure or other events not foreseeable at the time of the conclusion of the agreement (e.g. operational disturbances of any kind, difficulties in material or energy procurement, transport delays, strikes, lawful lock outs, shortage of labour, energy or raw materials, difficulties in procuring the necessary official approvals, governmental actions or missing, incorrect or late delivery by suppliers) for which the seller is not responsible. If such events make it significantly more difficult or impossible for the seller to make deliveries or provide services, and the hindrance is not merely temporary in nature, the seller is entitled to withdraw from the agreement. In the event of hindrances which are temporary in nature, the delivery or service deadlines are extended or postponed by the period of the hindrance, plus a reasonable start-up period. If the client is unable to accept the delivery or provision of services as a result of the delay, the client can withdraw from the agreement by immediately sending a written declaration to the seller.

5. The seller is entitled to make partial deliveries if the partial delivery is useful for the client within the framework of the intended contractual purpose and the client does not incur significant additional expenditure or additional costs thereby (unless the seller is ready to assume these costs).
6. If the seller is in default with a delivery or service or if a delivery or service, regardless of the reason, is impossible for the seller, the liability of seller is limited to compensation according to the stipulation of § 8 of these general terms and conditions.

#### § 5 Place of Fulfilment, Shipping, Packaging, Transfer of Perils, Acceptance

1. The place of fulfilment for all obligations from the contractual relationship is Mittweida, unless otherwise stated. If the seller also owes the installation, the place of fulfilment is the location where the installation is to take place.
2. The type of shipping and packaging are subject to the dutiful discretion of the seller.
3. The risk shall pass to the client at the latest with the transfer of the delivery item (whereby the start of the loading process is decisive) to the carrier, freight forwarder or other third party commissioned to carry out the shipment. This also applies if partial deliveries are made or the seller has taken on other services (e.g. shipping or installation). If the shipment or transfer is delayed due to circumstances whose causes lie with the client, the risk is transferred to the client from the day on which the seller is ready for shipment and has notified the client of this.
4. Storage costs after the passage of risk are borne by the client. When stored by the seller, the storage costs are 0.25% of the invoice amount of the delivery items to be stored per full elapsed week. The assertion and proof of additional or lower storage costs remains reserved.
5. The shipment shall only be insured by the seller at the express request of the client and at his own expense against theft, breakage, transport damage, fire damage, water damage or other insurable risks.
6. If an acceptance is to take place, the purchase item shall be deemed accepted
  - once the delivery and, provided the seller also owes the installation, the

installation are complete,

- the seller has communicated this to the client with reference to the assumed acceptance according to this § 5 (6) and has asked him to accept,
- twelve working days have passed since the delivery or installation or the client has begun to use the purchased item (e.g. the delivered system has been put into operation) and in this case six working days have passed since the delivery or installation, and
- the client has refrained from acceptance within this time period for any other reason than a defect of which the seller has been notified, which makes the use of the purchased item impossible or significantly impairs its use.

#### § 6 Warranty

1. The warranty period is one year from delivery or, if acceptance is required, from acceptance.
2. The delivered items are to be carefully inspected immediately after delivery to the client or to the third party designated by the client. They are considered approved if the seller does not receive a notice of defect in the form determined in § 2 (2) sentence 6 with regard to obvious defects or other defects that were noticeable upon an immediate and careful inspection within seven days after delivery of the delivery item, or otherwise within seven working days after discovery of the defect or the time when the defect was recognizable by the client during normal use of the delivery item without closer inspection. At the request of the seller, the rejected delivery item is to be returned to the seller with freight paid. In the event of a justified complaint, the seller shall compensate the costs of cheapest shipping method. This does not apply if the costs increase, because the delivery item is located at a location different from the location of the intended use.
3. In the case of material defects of the delivered items, the seller is initially obligated and entitled to rectify the defect or provide a replacement delivery at his discretion within a reasonable time period. In the case of failure, i.e. the impossibility, unacceptability, refusal or unreasonable delay of the defect rectification or replacement delivery, the client may withdraw from the contract or reduce the purchase price accordingly.

4. If a defect is the fault of the seller, the client may request compensation for damages pursuant to the provisions determined in § 8.
5. In the event of defects of components from other manufacturers, which the seller cannot eliminate for licensing or factual reasons, the seller shall at his discretion make warranty claims against the manufacturers and suppliers for billing the client or transfer this to the client. Warranty claims against the seller only exist with such defects under other conditions and in accordance with these general terms and conditions if the legal enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful or hopeless, for example due to an insolvency. During the duration of the legal dispute, the limitation of the relevant warranty claims of the client is inhibited by the seller.
6. The warranty is void if the client changes the delivery item without the approval of the seller or has it changed by third parties and the defect removal is made impossible or unreasonably difficult thereby. In any case, the client shall bear the additional costs of the defect removal caused by the change.
7. A delivery of used items agreed individually with the client takes place under the exclusion of any warranty.

### § 7 Property Rights

1. In accordance with this § 7, the seller agrees that the delivery item is free of industrial property rights or copyrights of third parties. Each sales partner shall immediately notify the other contract partner in writing if claims are being made against him due to the violation of such rights.
2. In the case that the delivery item violates an industrial property right or copyright of a third party, the seller shall amend or replace the delivery item at his own discretion and his own expense so that third party rights are no longer violated, but the delivery item continues to meet the contractually agreed functions, or the seller shall provide the buyer with the right of use by concluding a license agreement. If the seller does not succeed at this within a reasonable period of time, the client is entitled to withdraw from the contract or to reduce the purchase price accordingly. Any claims for damages by the client are subject to the restrictions of § 8 of these

general terms and conditions.

3. In the event of rights violations by products supplied by the seller that are made by another manufacturer, the seller shall at his discretion make his claims against the manufacturer and preliminary suppliers on behalf of the client or shall cede to the client. Claims against the seller only exist in these cases according to this § 7 if the legal enforcement of the aforementioned claims against the manufacturers and preliminary suppliers was unsuccessful or hopeless, for example due to an insolvency.

### § 8 Liability for damages due to negligence

1. The seller's liability for compensation, regardless of the legal reason, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contract negotiations and tort is, provided it concerns a fault, restricted in accordance with this § 8.
2. The supplier is not liable
  - a) in the case of ordinary negligence of his bodies, legal representatives, employees or other agents;
  - b) in the case of gross negligence of his non-executive employees or other agents; insofar as it is not a breach of contractual obligations. Essential to the contract are the obligation of timely, defect-free delivery and installation as well as consultation, protection and care obligations that should allow the client the proper use of the delivery item or are intended to protect the life or health of the client's or third party's personnel or to protect the property of the client from significant damage.
3. Insofar as the seller is liable for compensation on the merits of § 8 (2), this liability is restricted to damage that the seller has foreseen upon the contract conclusion as a possible consequence of a breach of contract or should have foreseen with due diligence considering the circumstances that were known to him or that he should have known. Indirect damage or consequential damage that results from defects of the delivery item are also only reimbursable if such damage is typically to be expected with proper use of the delivery item.
4. In the case of liability for simple negligence, the seller's duty of replacement for property damage or personal injury is limited to an

amount of EUR 5,000,000 per case of damage (corresponding to the current coverage of his product liability insurance or liability insurance), even if it is a breach of contractual obligations.

5. The above liability exclusions and restrictions apply to the same extent in the favour of the institutions, legal representatives, employees and other agents of the seller.
6. Insofar as the seller provides technical information or provides advice and this information or consultation is not part of the owed, contractually agreed scope of service, this is done free of charge and without any liability.
7. The restrictions of this § 8 shall not apply for the liability of the seller due to intentional behaviour, for guaranteed characteristics, due to injury to life, body or health or under the Product Liability Act.

### § 9 Retention of Title

1. The goods delivered to the buyer by the seller remain the property of the seller until the full payment of all secured receivables. The goods as well as the goods in lieu of these goods according to this clause, which are covered by the retention of title, are hereinafter called reserved goods.
2. The buyer shall store the reserved goods for the seller, free of charge.
3. The buyer is entitled to process and sell the reserved goods until the occurrence of the enforcement event (paragraph 8) in the ordinary course of business. Pledging and transfers by way of security are not permitted.
4. If the reserved goods are processed by the buyer, it is agreed that the processing takes place on behalf of and for the account of the seller as the manufacturer and the seller immediately acquires the ownership or – if the processing of materials takes place by several owners or the value of the processed item is greater than the value of the reserved goods – the co-ownership (fractional ownership) of the newly created item in the proportion of the value of the reserved goods to the value of the newly created item. For the case that no such acquisition of ownership should occur with the seller, the buyer transfers his future ownership or – in the aforementioned case – co-ownership that is already his of the newly created item to the security of the seller. If the reserved goods

are combined or inseparably mixed with other items to form a uniform item and if one of the other items is regarded as a main item, the seller shall transfer to the buyer (provided the main item belongs to him) the co-ownership of the uniform item in the ratio named in sentence 1.

5. In the case of the resale of the reserved goods, the buyer already now cedes to the seller the resulting claim against the buyer – in the case of co-ownership of the seller on the reserved goods, pro rata according to the co-ownership share. The same applies for other claims that take the place of the reserved goods or otherwise result with regard to the reserved goods, such as insurance claims or claims from tort with loss or destruction. The seller authorises (revocable) the buyer to collect the claims ceded to the seller on behalf of and for the account of the seller. The seller may only revoke this collection authorisation in the case of liquidation.
6. If third parties access the reserved goods, especially through seizure, the buyer shall immediately indicate the ownership of the seller and inform the seller of this in order to allow him to enforce his property rights. If the third party is not able to reimburse the seller for the judicial and extrajudicial costs resulting in this context, the buyer is liable for the seller here.
7. The seller shall release at his discretion the reserved goods as well as the items or claims taking their place by request, provided their value exceeds the amount of the secured claims by more than 20%.
8. If the seller withdraws from the contract (enforcement case) in the event of behaviour by the buyer that is contrary to the contract, in particular default of payment, the seller is entitled to demand the reserved goods.

#### § 10 Final Provisions

1. The jurisdiction for any disputes arising from the business relationship between the seller and the client is, at our discretion, the competent court for Mittweida or the headquarters of the client. For lawsuits against the seller, the competent court for Mittweida is the exclusive place of jurisdiction. Mandatory statutory provisions regarding exclusive places of jurisdiction remain unaffected by this regulation.
2. The relationships between the seller

and the client are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

3. If the contract or these General Terms and Conditions contain loopholes, in order to fill these loopholes the legally effective provisions apply that the parties would have agreed regarding the economic objectives of the contract and the purpose of these General Terms and Conditions had they been aware of the loophole. **(Status as of October 2016)**