

# International General Terms and Conditions of Sale and Delivery for Machines, Systems and Components

- Status: March 2014 -

## for application in dealings with:

1. a person who pursues their commercial or self-employed professional activity when entering into the contract (entrepreneur);
2. legal persons under public law and special assets of the federal government within the meaning of Section 310, Para. 1, BGB [German Civil Code]

## I. Scope

The following conditions apply to all our offers and contracts regarding our deliveries and other services, and to pre-contractual obligations in that respect, provided nothing to the contrary is expressly agreed upon in writing.

Under no circumstances shall the terms and conditions of business of the contracting party, hereinafter referred to as the buyer, to the contrary be deemed the content of a contract – including if an order is accepted.

The buyer acknowledges the exclusive validity of these terms and conditions of business by way of awarding a contract. These general terms and conditions of business apply to this business transaction, ongoing and all future business transactions, including if reference is not made to these conditions again.

## II. Offers and entering into contracts

1. The information about our services in price lists, catalogues and advertising vehicles does not constitute an offer. Verbal information, subsidiary agreements and assurances of any kind shall not be valid insofar as we have not confirmed them in writing as agreed. The details and information contained in general product documentation and price lists in electronic or other form shall only be valid insofar as the contract expressly refers to these.
2. Our offers are subject to change without notice at all times provided they are not limited. In the absence of a separate agreement, a contract shall only be brought about following our written confirmation of order by letter, facsimile or e-mail. The documents that form part of the offer such as diagrams, drawings, weight and measurement details are subject to change without notice provided they are not expressly described as binding.
3. We reserve ownership and copyright to all documents surrendered to the buyer in conjunction with awarding a contract. Without our express, written approval these documents may not be used for a purpose other than that for which they have been supplied, and without our approval may not be made available to third parties. On request, these documents are to be returned to us without delay.
4. We reserve the right to make minor technical and design changes a part of quantity and/or quality tolerances that are customary in the trade provided this is acceptable for the buyer and, in particular, it does not have a detrimental effect on the function and value of the ordered goods.
5. If import and/or export licenses, foreign exchange authorisations or similar licenses are required to execute the contract, the buyer undertakes to make every reasonable effort to provide the necessary licenses or authorisations in good time.

## III. Prices and payment

1. The prices apply ex works or ex local sales warehouse and include loading provided nothing to the contrary is agreed. All prices and remuneration are net prices plus the respective, valid statutory value added tax and other statutory charges that may apply in the delivery country, and plus travelling costs, expenses, customs duties, packaging, shipping, offloading and, where applicable, transport insurance. Services additionally requested by the buyer shall be invoiced according to the costs incurred.
2. Payments are to be made in accordance with the agreed terms and conditions of payment. In the absence of a separate agreement, the invoice amount shall fall due for payment within 10 days at a 2 % trade discount or net and without deductions within 30 days.
3. We are entitled to deliver goods subject to advance payment only if the buyer is a new customer or does not have an adequate credit standing.
4. If nothing to the contrary is agreed, payments in the case of projects, special productions, machines and systems are to be transferred without any deduction to our stated account as follows:
  - 1/3 advance payment following receipt of the confirmation of order,
  - 1/3 as soon as the buyer is informed that the main parts are ready for dispatch,
  - the residual amount within one month following the passing of risk.
5. The buyer shall only be entitled to retain payments or set-off using counter-claims insofar as its counter-claims are not disputed or have become res judicata.
6. We are entitled to initially count payments towards the respective, oldest liabilities including if the buyer's conditions specify the contrary.
7. If the buyer defaults with its payments, we may postpone the honouring of our own obligations up until the outstanding payments have been settled unless the payment arrears are attributable to an act or failure to act on our part.
8. Our price details are based on the cost bases that apply at the time the contract is entered into provided nothing to the contrary was agreed in individual contracts. If the wage or material costs or pricing of our suppliers increase, we shall be entitled to increase the prices accordingly; this does not apply if the service is to be rendered within 4 months after the contract is entered into.
9. If the buyer is in arrears with its payments, it shall be required to pay default interest from the due date. An interest rate of 8 percent above the rate of the marginal lending facility of the European Central Bank applicable at the time of the payment due date is deemed agreed upon. This does not affect the right to assert a claim for damages that extends above and beyond this.
10. If the buyer's default last longer than 30 calendar days, if the buyer allows bills of exchange or cheques to be dishonoured or if an application is filed for the institution of insolvency proceedings, we shall be entitled to call all claims against the customer immediately due, hold back all deliveries and services and assert all rights resulting from the reservation of title.

11. We are entitled to request a bank guarantee or other suitable security measures at any time to secure all claims against the buyer. We may render the delivery condition on the provision of a bank guarantee or other security instruments, including after forwarding confirmation of order.

## IV. Delivery scope

1. Our written confirmation of order is authoritative with regard to the delivery scope, while in the event of an offer to which we are bound in terms of time and such an offer is accepted by the buyer in good time provided the order has not been confirmed in good time this shall be authoritative. Subsidiary agreements and amendments are subject to the written form.
2. We retain all ownership rights and copyrights to samples, cost estimates, drawings and similar documents and information in physical and non-physical form – including in electronic form; these may not be made available to third parties and are to be returned on request if the contract is not brought about or ends early. The buyer undertakes to make offers, plans or construction drawings issued by us available to third parties only following our approval.
3. We reserve the right to make minor performance changes provided these are insignificant performance changes that are acceptable to the buyer.

## V. Delivery time, delivery delay

1. Details about delivery and performance times are non-binding unless we have described them in writing as binding. The delivery time is stated in the agreements between the contracting parties. Adherence to these by us presupposes that all commercial and technical matters involving the contracting parties have been clarified, and the buyer has honoured all its obligations such as furnishing documents and information or the necessary official certificates or licenses or making an advance payment. If this is not the case, the delivery time shall be extended accordingly. This shall not apply insofar as we are responsible for the delay.
2. In the absence of an agreement to the contrary, the delivery period shall commence on the latest of the following dates:
  - Date on which the contract is entered into
  - Date on which we are informed of the granting of a required import license,
  - Date on which we receive an advance payment as per agreement.
3. All delivery and performance periods are subject to correct and timely deliveries made to us. We shall provide notification of emerging delays as soon as possible.
4. Similarly, all deliveries and services are subject to the reservation that honouring these is not hampered by national or international requirements, in particular export control provisions and embargos or other sanctions.
5. The delivery period is deemed adhered to if the delivery item has left our factory within the delivery period or notification of readiness for dispatch has been provided. Insofar as acceptance is agreed, the acceptance date shall be authoritative – apart from justified refusal to accept, alternatively notification of readiness for acceptance. If the shipping or acceptance of the delivery item is delayed for reasons that are the buyer's responsibility, the buyer shall be charged for the cost of the delay starting one month following notification of readiness for shipping or acceptance.
6. If the failure to adhere to the delivery time is attributable to force majeure, industrial disputes or other events that are beyond our sphere of influence, the delivery time shall be extended accordingly. We shall provide notification of the start and end of such circumstances as soon as possible. This also applies if the circumstances affect subcontractors. Furthermore, the above-mentioned circumstances shall not be deemed our responsibility if they occur during an existing case of default. The buyer may withdraw from the contract without setting a period if the entire performance becomes ultimately impossible for us prior to the passing of risk. The buyer may furthermore withdraw from the contract if making a partial delivery of an order becomes impossible, and the buyer has a justified interest in rejecting the partial delivery. If this is not the case, the buyer is to pay the contractual price applicable to the partial delivery. In other respects, Para. XII.2 applies.
7. If the impossibility or the inability to perform occurs during the refusal to accept, or if the buyer is solely or largely responsible for such circumstances, the buyer remains bound by its undertaking to provide counter-performance.
8. If we default, and the buyer sustains a loss as a result, the buyer shall be entitled to request flat-rate compensation for default. For each complete week of the delay it shall be 0.5 %, but overall at most 5 % of the value of the part of the overall delivery that cannot be used in good time or not as per agreement as a result of the delay.
9. If the buyer sets us a reasonable period in which to perform after the due date – with consideration given to the statutory exceptions – and if the period is allowed to lapse in vain, the buyer shall be entitled to withdraw as part of the statutory requirements. Additional claims resulting from default in delivery are exclusively determined in accordance with Para. XII.2 of these conditions.
10. If the shipping is delayed at the buyer's request, the buyer shall be charged for the costs incurred as a result of the storage, in the case of storage at our factory at least however 0.5 percent of the invoice amount, for each month starting one month after notification of readiness for dispatch. After we have set a reasonable period that is allowed to lapse in vain we shall be entitled to otherwise dispose of the delivery item, and supply the buyer by way of a reasonably extended period.

## VI. Delivery, passing of risk, acceptance

1. The agreed delivery clauses are to be interpreted in accordance with the international regulations for interpreting commercial clauses of the International Chamber of Commerce (Incoterms) valid at the time at which the contract is entered into as stated in the version that is valid on the day on which the contract is entered into.
2. In the absence of separate delivery clauses in the contract, the delivery item shall be deemed delivered "ex works" (EXW).
3. In that respect if we undertake, at the buyer's request, to dispatch the delivery item to the buyer's place of destination, risk shall pass at the latest at the time at which the first forwarding agent accepts the delivery item, including if partial deliveries are made or if we have assumed other services such as shipping costs or delivery and setting up.
4. In the absence of an agreement to the contrary, partial deliveries are permitted where acceptable for the buyer.
5. Insofar as acceptance is agreed, this shall be authoritative for the passing of risk. It must be conducted without delay on the acceptance date, alternatively after our notification of the readiness for acceptance. The buyer may not refuse the acceptance in the case of an insignificant defect.
6. At the buyer's request we shall insure the consignment at the buyer's cost against theft; breakage and transport, fire and water damage as well as other insurable risks.
7. If shipping is delayed or goods are not shipped and acceptance is not conducted as a result of circumstances that are not attributable to us, risk shall pass to the buyer from the day of notification of readiness for shipping or acceptance. We undertake to enter into the insurance policies requested by the buyer at the buyer's cost.
8. The buyer is to accept delivered goods, including if they contain insignificant defects, irrespective of the rights resulting from Para. X.

## VII. Review and acceptance check

1. If the contract contains express conditions about the buyer's controlling rights, the buyer shall be entitled during and following the end of the production to make arrangements to have the quality of the used material and the manufactured parts reviewed by authorised representatives. The review and check are to be conducted, following a prior agreement regarding the date and time, during normal working hours at the manufacturing plant.
2. If the buyer believes certain materials or parts of the delivery item are faulty or in breach of contract as a result of the review, the buyer shall be required to set out its objections in writing and justify them.
3. Acceptance checks shall only be conducted if they are expressly agreed upon in the contract. In the absence of an agreement to the contrary, these shall be conducted at our plant during normal working hours. If the contract does not contain a provision regarding the technical details, the general practice of the affected branch of industry in place in the country of manufacture shall be authoritative for the reviews.
4. Where applicable we shall inform the buyer as soon as possible so that the buyer can make arrangements for its representatives to take part in the reviews. If the buyer is not represented, the seller shall forward to the buyer the review record, which the buyer may not contest.
5. If the delivery item proves to be faulty or in breach of contract during a review (apart from a review at the set-up location as proposed in the contract), we shall rectify the defect as quickly as possible or restore the condition as per agreement. A review is to be repeated at the buyer's request.
6. In the absence of an agreement to the contrary, all costs in relation to reviews conducted at our plant shall be borne by us but not, however, the expenses of the buyer's representative.
7. If acceptance reviews at the set-up location are set out in the contract, the conditions that apply in this respect shall be agreed upon separately.

## VIII. Export clause

1. As a general rule our deliveries and services are intended to remain in the country of delivery agreed upon with the buyer. We reserve the right to review export law provisions and to deliver subject to an official license that may be required (e.g. an export license). The buyer undertakes to furnish all information and documents required for the export/shipment. Delays due to export checks or licensing procedures shall render periods and delivery times inapplicable. If the necessary licenses are not granted, the contract shall be deemed not entered into regarding the affected parts; claims for damages are excluded insofar as and because of the above-mentioned failure to honour periods.
2. Procuring import licenses that may be necessary is incumbent upon the buyer. Re-exporting contractual products may be subject to a license for the buyer. It is subject, in particular, to German, European and American export checks and embargo provisions. The buyer must independently obtain information about these requirements from the appropriate authorities. We do not accept any liability for the appropriateness or suitability of exports in the case of the further delivery of our products to third parties by the buyer.

## IX. Reservation of title

1. We reserve ownership to the delivery item up until receipt of all payments – including for additional services that may be due – resulting from the delivery contract and up until satisfaction of all claims against the buyer to which we are entitled on other legal grounds.
2. We are entitled to insure the delivery item, at the buyer's cost, against theft, breakage, fire, water and other damage provided the buyer has not furnished proof of taking out such insurance.
3. The buyer may neither sell, pledge nor transfer ownership of the delivery item by way of security. In the case of seizure or confiscation or other intervention by third parties, the buyer is to inform us in that respect without delay.
4. In the case of conduct in breach of contract on the part of the buyer, in particular in the case of default in payment, we shall be entitled to take back the delivery item after issuing a warning, and the buyer undertakes to surrender.
5. The buyer is to inform us at all times of the quantity and condition of our reserved goods in its possession.
6. In the case of conduct in breach of contract on the part of the buyer, in particular in the case of default in payment, we shall be entitled to take back the delivery item after issuing a warning, and the buyer undertakes to surrender.
7. An application filed for the institution of insolvency proceedings shall entitle us to withdraw from the contract and request the immediate return of the delivery item.

8. Asserting the reservation of title shall not be deemed a withdrawal from the contract, and shall not release the buyer from its obligations.

## X. Warranty claims

We provide the following guarantee for material defects and defects in title regarding the delivery by way of exclusion of further claims – subject to Para. XII:

### Material defects

1. All parts that prove to be faulty within 12 months from the passing of risk as a result of a circumstance that existed prior to the passing of risk are to be subsequently improved, or replaced by fault-free items. We are to be notified without delay in writing of the identification of such faults, and the fault is to be described. The buyer shall be responsible for damage resulting from a failure to provide notification. Section 377 HGB [German Commercial Code] applies accordingly.
2. Replaced faulty parts are to be made available to us and ownership of these shall pass to us.
3. With regard to key external products, our liability is limited to assigning liability claims against the supplier of the external product to which we are entitled on condition that such claims have not fallen under the statute of limitations and are not significantly lower than the claims made against us.
4. Following a written arrangement, the buyer is to give us ample time and opportunity to make all the subsequent improvements and replacement deliveries that we deem necessary; otherwise, we shall be released from the liability for the resulting consequences. The buyer shall only be entitled to rectify a defect itself or arrange for this to be performed by a third party and request compensation for the required expenses in urgent cases in which the operational safety is at risk or to ward off disproportionate damage.
5. Of the direct costs incurred as a result of the subsequent improvement or replacement delivery, we shall carry the cost of the replacement part, including shipping (excluding rapid or express shipping or shipping abroad) – provided the objection proves to be justified. In addition, we shall carry the dismantling and installation costs and the cost of providing the necessary fitters and assistants, including travelling expenses, where necessary provided this does not lead to a disproportionate burden. In other respects, the costs shall be borne by the buyer.
6. The guarantee period is three months for the replacement item and the improvement. It shall run at least up to expiry of the original guarantee period for the delivery item. The period for liability for defects in the delivery item shall be extended by the duration of the interruption of operations caused by the subsequent improvement work.
7. The guarantee obligation does not apply to defects based on materials supplied by the buyer or a construction specified by the buyer.
8. As part of the statutory requirements, the buyer is entitled to withdraw from the contract if – with consideration given to the statutory exceptions – we allow a reasonable period set by the buyer for the subsequent improvement or the replacement delivery regarding a material fault to lapse in vain. If a defect is merely insignificant, the buyer shall merely be entitled to reduce the contractual price. Otherwise, a right to reduce the contractual price is excluded.
9. The guarantee obligation only applies to defects that occur under the operating conditions as proposed in the contract and in the case of appropriate use. It does not apply to defects the cause of which only arises following the passing of risk. In particular, it does not apply to defects that are based on: unsuitable use; faulty assembly or putting into operation or inappropriate setting up by the buyer or third parties; poor maintenance; unsuitable foundation; unsuitable operating resources; faulty building work; inappropriate servicing or poorly performed repairs by the buyer; normal wear-and-tear; chemical, electro-chemical or electrical influences – provided these are not our responsibility.
10. If the buyer or a third party inappropriately performs subsequent improvement, we shall not be liable for the resulting consequences. The same applies to our alterations to the delivery item made without our approval.

### Defects in title

11. If use of the delivery item leads to an infringement of commercial proprietary rights or copyrights, as a general rule we shall, at our cost, grant the buyer the right to continued use or modify the delivery item in a manner that is acceptable to the buyer such that the proprietary right infringement no longer applies. If this is not possible at reasonable economic conditions or within a reasonable period, the buyer shall be entitled to withdraw from the contract. Under the stated circumstances we are also entitled to withdraw from the contract. Furthermore, we shall render the buyer exempt from undisputed or res judicata claims of the respective proprietary rights owners.
12. Our obligations set out in Para. X. 11 are conclusive subject to Para. XII. 2 in the event of proprietary right or copyright infringement.
13. These shall only exist if
  - The buyer informs us without delay of asserted proprietary right or copyright infringements,
  - The buyer provides us with reasonable support in warding off the asserted claims or enables us to perform the modification measures in accordance with Para. X. 11 ,
  - We are permitted to take all defence measures, including out-of-court regulations,
  - The defect in title is not based on an instruction issued by the buyer, and
  - The infringement of a right was not caused by the buyer altering the delivery item at its own responsibility or using it in a manner that is in breach of contract.

## XI. Events frustrating the execution of contract

1. The following circumstances are deemed to constitute relief if they occur after the contract is entered into and they conflict with executing the contract: industrial dispute (strike, lock-out), criminal acts, decrees and all circumstances that are independent of the parties' will such as fire, mobilisation, confiscation, embargo, ban on foreign exchange transfers, unrest, lacking means of transport, general lack of supplies and materials, restrictions on energy consumption and lacking or delayed deliveries by subcontractors due to the circumstances set out here.
2. The party citing force majeure is to inform the other party without delay and in writing of the occurrence and end of such circumstances. If force majeure prevents the buyer from honouring its contractual obligations, it is to compensate us for incurred costs to secure and protect the delivery item.
3. Irrespective of regulations to the contrary in these general conditions, each party is entitled to discontinue honouring its obligations if the circumstances mean without doubt

that the other party will not be able to honour its obligations. A party that stops honouring its obligations is to inform the other party without delay and in writing in that respect.

4. Subject to provisions to the contrary in these general conditions, liability for production downtime, loss of expected profit, loss of use, contractual losses or any other consequential damage or indirect damage is excluded.

## **XII. Liability**

1. If the delivery item cannot be used by the buyer due to culpability on our part as a result of the failure to implement, or lacking implementation of, proposals and advice prior to or after entering into the contract or as a result of violating other contractual collateral obligations – in particular a guide for operating and servicing the delivery item – the provisions set out in Para. X and Para. XII.2 shall apply accordingly by way of exclusion of further claims on the part of the buyer.
2. We shall only be liable for damage that does not affect the delivery item itself – on whichever legal grounds –
  - a) In the case of intent,
  - b) In the case of gross negligence by the proprietor/executive bodies or managerial staff,
  - c) In the case of culpable loss of life, physical injury or detrimental effects on health,
  - d) In the case of defects that we have fraudulently concealed,
  - e) As part of a guarantee assurance
  - f) In the case of defects in the delivery item provided liability applies in accordance with the Product Liability Act for personal or material damage regarding privately used items.

In the case of culpable violation of key contractual obligations, we shall furthermore be liable in the case of gross negligence on the part of non-managerial staff and in the case of minor negligence. With regard to the latter case, liability is limited to typical contractual damage that can be reasonably foreseen.

In all other cases that are not otherwise provided for in these conditions of business, in particular in the case of inferior performance, violation of pre-contractual and contractual and collateral obligations etc., claims for damages, based on whichever legal grounds, in particular claims resulting from unlawful acts, are excluded. This also applies, in particular, to claims resulting from product liability.

## **XIII. Period of limitation**

Any claims asserted by the buyer – based on whichever legal grounds – shall fall under the statute of limitations in 12 months. The statutory periods apply to claims for damages in accordance with Para. XII. 2.a) – d) and f). They also apply to defects in a building structure or to delivery items that were used for a building structure in line with their customary method of use, and which were the cause of the faultiness.

## **XIV. Secrecy, obligation to furnish information**

1. The buyer undertakes to treat in absolute confidence all information, know-how and other business secrets in conjunction with executing the respective order, and not to forward to third parties or otherwise make available any information, documents, documentation, drawings, sketches or other papers without express approval by us. We similarly treat our customers' documents in confidence.
2. The buyer shall comply with all applicable laws or requirements to avoid bribery and corruption and regarding export restrictions in conjunction with our deliveries and/or our business operations. The buyer is to inform us without delay of violation of the above-mentioned requirements by its executive body members, managerial staff, employees or representatives or other persons acting on the buyer's behalf.
3. The buyer is to inform us in good time of any statutory and official requirements that are required to properly execute the contract.

## **XV. Software use**

1. Insofar as software is included in the delivery scope, the buyer is granted a non-exclusive right to use the supplied software, including documentation in that respect. It is surrendered for use on the delivery item specified accordingly. Using the software on more than one system is prohibited.
2. The buyer may only use, duplicate, revise, translate or convert the software from the object code to the source code to an extent that is permitted by law (Sections 69 a et seq. UrhG [German Copyright Act]). The buyer undertakes not to remove manufacturers' details – in particular copyright notices – or amend these without our prior, express approval.
3. We or the software supplier shall retain all other rights to the software and the documentation, including copies. Sublicenses may not be issued.

## **XVI. Applicable law, place of jurisdiction**

Solely the governing law of the Federal Republic of Germany applies to any legal relations between us and the buyer. The UN Sales Law is applicable to international business. The provisions of the standardised laws on the international acquisition of movable items and on entering into international sales contracts shall not apply providing they do not correspond with our conditions.

Ravensburg Local Court ("Amtsgericht") is deemed agreed upon as the place of jurisdiction for legal disputes between us and the contracting party, whereby we are additionally entitled to bring an action at the buyer's principal place of business.

Any dispute arising out of the Contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (Geneva), by one or more arbitrators designated in conformity with those Rules.

## **XVII. Data protection**

We draw attention to the fact that to execute business transactions we shall store and process the buyer's data in accordance with the Data Protection Act.