

## Terms and Conditions of Sale and Delivery

### I. General

1. All deliveries and performances are subject to these conditions as well as to any separate contractual agreements. Any contrary conditions of purchase of the buyer shall not become subject matter of the contract even through acceptance of order. A contract is reached with the written order confirmation of the supplier.
2. The supplier retains title and copyright to samples, quotations, drawings and similar information of tangible and intangible kind - even in electronic form. These may not be made accessible to third parties. The supplier undertakes to make accessible to third parties plans and drawings declared confidential by the buyer only after consent of the buyer.

### II. Price and payment

1. Unless agreed otherwise, the prices are ex works including loading in the factory, but exclusive of packing and unloading. To the extent that we deem this necessary, the goods will be packed according to the customary commercial practice. To these prices is added the value-added tax at the statutorily specified rate at that date.
2. Unless agreed otherwise, the payment has to be effected on account of the supplier as follows:  
50% upfront payment at order of goods  
50% of payment with notification of readiness for dispatch of goods by the manufacturer  
100% of Services (i.e.: Installation, Start-Up and Training) with notification of readiness for dispatch of goods by the seller upon commercial invoice signed  
Note: Services are payable upfront proportionally. This means, with every notification of readiness for dispatch of goods by the seller, the proportional amount according to the number of goods to be delivered is to be paid for Services.  
Partial billing will be made for partial deliveries.  
To the payment of these bills, the quoted payment terms and due dates apply. Payable upon commercial invoices signed.  
Due date: Payable within 14 days from date of commercial invoice, strictly net. Invoices for catalogue items, after sales services and spare parts shall be paid with 30 days net.
3. The buyer is only entitled to withhold payments or to set them off with any counterclaims if its counterclaims are uncontested or found legally binding.
4. In case of failure to pay on due date we shall levy default interests at the, for us, ruling lending rate of interest of a major German bank, though at a rate of not less than 4.5 % above the particular EURIBOR.

### III. Time of delivery, delivery delay

1. The delivery time results from the agreement between the parties. Compliance with the delivery time through the supplier is given only provided that all commercial and technical questions are clarified and the customer has fulfilled all duties incumbent on him as e.g. the provision of the required administrative certificates or permits, approval of installation drawings or the payment of a deposit. If this is not the case the delivery time shall be extended reasonably. This does not apply as far as the supplier is responsible for the delay.
2. The compliance with the agreed delivery time is subject to the correct delivery of self-supply in due time.
3. The delivery time is met, if by the agreed date of delivery the good has left the works or notice of its readiness for dispatch has been given. As far as acceptance has to be given, the date for the acceptance - alternatively the notice of readiness for dispatch - is decisive.
4. If dispatch or the acceptance of the good is delayed at the buyer's instruction, the buyer will be charged the costs for warehousing, commencing one month from notice of readiness for dispatch or acceptance, on storage at the works of the supplier at a rate of at least 0.5 % of the invoice amount for each month. However, the supplier is entitled, after granting of a reasonable grace period and lapse of this set period without result, to dispose otherwise of the good and to deliver to the buyer only with a reasonably extended period.

5. The delivery period shall be reasonably extended in case of events in connection with force majeure, industrial disputes, and other events which are beyond the control of the supplier. The supplier shall inform the buyer as soon as possible about the commencement and the end of such circumstances.
6. The buyer may withdraw from the contract if the delivery of the total performance before transfer of risk is definitely made impossible to the supplier. The same applies in case of inability of performance of the supplier. In addition, the buyer may withdraw from the contract, if, in case of ordering similar goods, the performance of a part of the delivery becomes impossible and the buyer has a justified interest in the refusal of the partial shipment. If this is not the case, the buyer has to pay the contract price payable for the partial shipment. If impossibility or inability occurs during the delay in acceptance or by fault of the buyer, the buyer remains obliged to make counter-performance.
7. If the supplier is in default and if damage arises from this to the buyer, it is entitled to claim compensation for default. It amounts for each week of delay to 0.5%, but to a maximum of 5% of the value of such part of total delivery which, due to the delay, cannot be used in due time and in accordance with the contract. If the buyer grants to the supplier in default an additional grace period of reasonable length with the explicit declaration that it rejects the acceptance of the performance after expiration of the aforesaid period, and if such grace period is not kept, the buyer is entitled to withdraw from the order. The granting of the grace period is not required provided that the interest in the fulfilment of the contract no longer applies for the buyer due to the delay. Further claims resulting from the delay in delivery are exclusively governed by section VII.2 of these conditions.

### IV. Dispatch, transfer of risk, acceptance

1. In case of delivery and unless agreed otherwise the supplier will insure the goods against breakage at the buyer's expense on the terms and conditions customary for its company. As fee, the supplier will invoice 1% of the net invoice amount, however at least EUR 0.50 per consignment.
2. Risk shall pass on to the buyer immediately when the good has left the works, also if partial deliveries are made or if the supplier has assumed still other performances, e.g. cost of carriage or the delivery and installation. Provided that acceptance has to be made it must be carried out immediately after notification of the supplier about readiness for acceptance. The buyer cannot refuse the acceptance in case of a minor defect, provided that the supplier explicitly recognizes its duty to remedy the defect.
3. In case dispatch is delayed or does not take place for reasons for which the supplier is not responsible, the risk shall pass to the buyer starting the day on which the good is ready for dispatch. However, the supplier is obliged at the buyer's instruction to take out at the buyer's expense the insurance requested by the buyer.
4. Partial shipments are allowed.

### V. Retention of title

1. The supplier retains title of the good supplied until receipt in full of all payments from the supply contract.
2. The supplier is entitled to ensure the good to be supplied at the buyer's expense against theft, breakage, fire, water and other damages, provided that the buyer does not furnish the evidence that it has arranged such insurance itself.
3. The buyer may neither pledge the good nor assign the good by way of chattel mortgage. The buyer shall notify the supplier without delay in the event of seizure, attachment or other dispositions by third parties.
4. On failure by the buyer to conform with the terms of contract, particularly in case of default in payment, the supplier is entitled following notice of reminder to retake possession and the buyer shall be obliged to surrender the good. Assertion of the right of retention and attachment of the good by the supplier shall not be deemed as a withdrawal from the contract.
5. The application for the commencement of an insolvency proceedings relating to the assets of the buyer shall entitle the supplier to withdraw from the contract and to require the immediate return of the supplied good.

## VI. Warranty

The supplier warrants for material defects and defects in title of delivery which also include the lack of guaranteed properties, with the exclusion of further claims, subject to section VII., as follows:

### Material defects

1. All parts which prove unfit for use or whose fitness for use is significantly impaired within a period of 6 months from the time of taking into service as a result of a circumstance originating before the time of transfer of risk shall, at the option of the supplier, be either repaired or replaced free of charge. The supplier is to be notified in writing without delay after determination of such defects. Replaced parts shall become the property of the supplier.  
In case dispatch, installation or taking into service is delayed by no fault of the supplier, warranty shall end at the latest 12 months after transfer of risk.
2. The right of the buyer to assert warranty claims from defects shall lapse in all cases within 6 months from the time of due complaint, at the earliest, however, upon expiration of the warranty period.
3. For the performance of all repairs and replacements deemed necessary for the supplier, the buyer shall allow the supplier the necessary time and opportunity after consultation with the supplier, otherwise the supplier shall be freed from its warranty liability. Only in urgent cases of risk to operating safety and to avoid disproportionately large losses, in which cases the supplier is to be notified immediately, or if the supplier is in default in remedying the defect, the buyer shall be entitled to remedy the defect itself or cause it to be remedied by third parties and to claim reimbursement of the necessary costs from the supplier.
4. Of the direct costs for repair or replacement the supplier shall bear in the case of justified claims the cost of the replacement part including carriage on national territory as well as the reasonable cost for dismantling and installation and further, if this may be reasonably required in the circumstances, the cost of any necessary delegation of its fitters and assistants.
5. The warranty period for the replacement part and the repair shall be 3 months. It shall run at least until expiration of the original warranty period for the good supplied. The period for the liability for defects for the good supplied shall be extended by the period of interruption of operation required by the rectification work.
6. No warranty is assumed for damages arising in particular from the following reasons:  
Unsuitable or incorrect use, faulty installation or starting up by the buyer or third parties, natural wear and tear, incorrect or negligent treatment, no maintenance according to the instructions, unsuitable running materials, faulty construction work, unsuitable foundation, chemical, electrochemical or electrical influences - provided that these are not due to the fault of the supplier.
7. In the event of any rectification of defects made incorrectly by the buyer or third parties, the supplier is not liable for any resulting consequences. The same applies for modifications of the supplied good made without the prior approval of the supplier.
8. The buyer shall be entitled to annul the contract (rescission) if a grace period of reasonable length granted to the supplier for the rectification work or the replacement delivery with regard to a defect, it is responsible for, elapsed due to its fault. The right of the buyer to annul the contract also exists in other cases, in which the supplier fails to remedy defects or to make replacement delivery.

### Defect of title

9. In case the use of the delivered good results in the infringement of industrial property rights or copyrights within the terms mentioned in section VI.1 and 2, the supplier basically shall get for the buyer the right for the further use or modify the delivered good to such an extent, that the infringement of the property right does not exist anymore. If this is not possible on economically reasonable conditions, the supplier takes back the supplied good and reimburses the contract prices less the amount to be taken into consideration with regard to the benefit due to its use and the state of preservation of the good supplied.  
In addition, the supplier shall exempt the buyer from uncontested claims or claims which have become res judicata of the owner of

property rights in question.

10. Subject to section VII.2, these obligations of the supplier are final for the case of infringements of property rights or copyright. They only exist if

- the buyer informs the supplier without delay of the asserted infringement of property rights and copyrights,
- the buyer supports the supplier to a reasonable extent in the defence of the asserted claims or enables the supplier to carry out modification measures according to VI.9,
- all defence measures including amicable settlements are left to the supplier,
- the supplied good was not produced or modified on the instructions of the buyer and
- the infringement of the right was not caused by the fact that the buyer modified the supplied good without the permission of the supplier or used not in conformity with the contract.

## VII. Liability

1. If, for reasons for which the supplier is responsible, the good supplied cannot be used by the buyer according to the terms of the contract as a result of failure to perform or deficient performance of proposals and advice prior or subsequent to the conclusion of the contract or other collateral contractual obligations - in particular in respect of instruction on the operation and maintenance of the good supplied, the provisions of section VI and VII.2 shall apply accordingly with the exclusion of all further-reaching claims of the buyer.

2. The supplier is liable for damages which did not occur at the good supplied itself

- in case of intent,
- in case of gross negligence of the owner / institutions or senior staff, in case of lacking assured properties if the assurance was aiming at hedging the buyer against the occurred damages,
- in case of defects of the good supplied, as far as liability is given for personal injuries and damages to property for privately used goods according to the Product Liability Act.

In case of culpable infringement of essential contractual duties the supplier is liable even in case of gross negligence of staff having no managerial functions and in case of slight negligence, however, such liability is limited to the damage which is typical for such contract and reasonably predictable. Further claims - independent from any legal reasons - are excluded.

## VIII. Use of software

1. Provided that software is contained in the delivery, the buyer is conferred the non-exclusive right to use the delivered software including its documentation. The use for the specified good supplied is permitted. The use of the software on more than one system is prohibited.

2. The buyer may copy, revise, translate or change the software from the object code to the source code only with the approval of the supplier. The granting of sub-licenses is not allowed. The buyer undertakes not to remove or change in particular copyright-notes without the prior written approval of the supplier.

3. All other rights in the software and the documentation including the copies remain with the supplier or the software supplier.

## IX. Applicable law, jurisdiction

1. All legal relations between the supplier and the buyer shall be governed exclusively by the law of Austria relevant for the legal relation between international parties among each other, with the exclusion of the UN-convention on Contracts for the International Sale of Goods.

2. Place of jurisdiction is the competent court for the place of business of the supplier. However, the supplier is entitled to bring action at the place of domicile of the buyer.

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