

## **Terms and Conditions of Sale and Delivery //** **General Terms and Conditions of Deliveries and Services (as of 1/12)**

In each case the German version of our terms and conditions of sale and delivery shall prevail.

### **General**

The following terms and conditions shall apply to all our goods and services. Other terms and conditions shall only be binding on us if we have recognised them in writing. Separate supplementary service terms and conditions shall apply for assembly and repair work. As a supplement, our separate usage agreements for "electronic documentation" shall apply for software even if this software is an integral element of a product supplied by us.

### **I. Offer and Conclusion of Contract**

1. Our offers are subject to change at any time. Dimensions, packed measurements, weights, diagrams, simulation results and drawings shall only be binding for the model if this has been expressly confirmed in writing.
2. We shall retain ownership rights and copyrights to drawings and other documents. They must not be passed on to third parties nor may access to them be allowed in any other way.
3. Orders based on one of our offers shall constitute an offer by the party dispatching it and shall only result in a contract if it is confirmed by us in writing. Every supplement or amendment to agreements made at the wish of the party ordering will require our confirmation in writing in order it to be effective.

### **II. Prices**

1. Provided that nothing has been agreed to the contrary, the invoice shall be raised in Euro on the basis of the prices valid at the time of delivery.
2. Provided that no notes have been made to the contrary in the offer, the prices for goods and services shall be ex works, excluding packaging, transport, insurance, assembly and start-up of the party ordering plus the rate of legal turnover tax at the time of delivery.

### **III. Delivery**

1. Delivery periods shall only be binding in those cases in which they have been agreed in writing. In cases of doubt the delivery periods stated in the order confirmation shall apply. The delivery period shall commence to run when the contract is signed, however, not prior to the fulfilment of existing duties of co-operation the party ordering may have, in particular the furnishing of documents, provision of materials, approvals, clearances to be obtained by the party ordering and if necessary, agreed down payments or after a letter of credit has been opened.
2. The agreed deadlines shall also apply as having been complied with when notification has been made that the products are ready for dispatch, if the goods are not delivered in due course through no fault of ours, or if it has not been possible to render the services on time.
3. If the non-compliance with delivery periods is attributable to force majeure and other disruptions for which we are not to blame, e.g. war, terrorist attacks, import and export restrictions, labour disputes, including those affecting our suppliers, the agreed delivery periods shall be extended accordingly. This shall also apply in those cases in which the disruptions occur at a point in time at which we are in default.
4. In the event of culpable non-compliance with a binding delivery period for reasons other than named in number III 3, the party ordering can withdraw from the contract following the expiry of an appropriate period of time set in writing.
5. Any other rights the party ordering may have, in particular compensation for damages, shall be ruled out as stated in number VII.
6. If dispatch is delayed at the wish of the party ordering, we shall consequently be entitled, beginning one month from notification that the goods are ready for dispatch, to invoice the actual costs incurred by storage or 1% of the invoiced amount for every month started (subject to the proof that the costs incurred have been much less). After an appropriate period has expired to no avail, we shall, over and above this, reserve the right to withdraw from the contract. The costs incurred by us in doing so shall be invoiced to the party ordering.
7. Part deliveries and invoices for part deliveries shall be allowed.

### **IV. Transfer of risk; Dispatch**

1. The delivery shall be ex-works, provided nothing else has been expressly agreed.
2. If the goods are dispatched to a different place at the request of the party ordering, the method of dispatch shall be left to our discretion if nothing to the contrary has been specified by the party ordering. A transit insurance policy shall only be taken out at the instruction and cost of the party ordering.
3. Unless included by liability for defective parts, appropriate dispatch and packing costs plus the remuneration of the work performed by us shall be invoiced. Return packages to us as well as packages containing repair work shall have to be at the expense of the party ordering as a matter of principle – unless we are liable for a defect.

4. If dispatch is delayed as a result of circumstances for which we are not to blame, the risk shall be transferred to the party ordering on the day it is notified that the goods are ready for dispatch.

#### **V. Warranty**

1. Claims for defects shall become time-barred after 12 months. The period in which a claim under warranty may be made shall begin to run when the goods are handed over or when notification is made that the goods are in our works ready for dispatch.
2. If there should be a defect within the period covered by warranty, the cause of which already existed at the point in time at which risk was passed over, we can, at our choice, either remedy the defect as subsequent fulfilment or supply fault-free goods. The product about which a complaint has been made is to be sent in to us for repair. The cheapest method of sending in the product to us and back out to the party ordering at the original delivery address in Germany for the products agreed by the party ordering shall be at our expense, provided that the complaint turns out to be justified. The defect shall be remedied either by exchanging the goods or by repairing the faulty products at our premises. Defects will only be remedied at the location where they are mounted as part of special agreements in accordance with our valid terms and conditions of service.
3. Our warranty obligation shall expire if the product is modified by a third party or if parts from other parties are installed, unless the defect is not in causal connection with the modifications, as well as if regulations for dispatch, packaging, installation, treatment, use or maintenance are not obeyed, or if faulty assembly or start-up by the party ordering or third party are extant.
4. Natural wear and tear, and changes in materials caused with the passage of time (for gaskets and seals in particular), and damage as a result of improper handling shall not be covered by the warranty. In particular, we shall not be liable for changes in the condition or the method of operation of our products as a result of improper storage or unsuitable machinery materials as well as climatic or other effects. The warranty shall not cover defects attributable to design faults or the choice of inappropriate materials, provided that the party ordering has specified the design or material in spite of us drawing its attention to the unsuitability of them in advance. We shall not assume any liability for parts furnished by the party ordering.
5. The party placing the order has to allow us or a third party responsible for the warranty the time and opportunity required to carry out the work under warranty. Except in cases prescribed by § 637 of the (German) Civil Code, [BGB], it shall only be entitled to carry out such work itself with our written consent. The expenditure required to render subsequent fulfilment shall be borne by us within limits and must be in suitable proportion to the value of the goods in perfect condition, the importance of the defect and / or the option existing for rendering subsequent fulfilment by other means; any costs over and above this shall be borne by the party ordering.
6. The period covered by warranty shall be stopped for the period of time necessary for subsequent fulfilment. It will not start from the beginning.
7. If the subsequent fulfilment should fail, the party ordering can withdraw from the contract or reduce the remuneration.
8. Rights over and above this based on defects – in particular contractual or non-contractual claims to compensation for damages which have not been sustained on the goods themselves – are excluded in the extent defined in number VII.
9. If a complaint about a defect should turn out to be unjustified, we shall consequently be entitled to invoice the party ordering for all expenditure we incur as a result.
10. The terms and conditions of number V shall apply accordingly for defects in title not based on the breach of third party property rights.
11. § 377 German Commercial Code (HGB) shall apply.

#### **VI. Property Rights**

1. For claims arising from the breach of property rights and copyrights, we shall only be liable in those cases in which the property right or copyright is not owned by the party ordering and / or a company in which it holds or held a majority of the capital or which belongs or belonged to him as a result of him holding a majority of the votes, and the party ordering notifies us straight away of risks of breach becoming known and claimed cases of breach and hands over to us at our request – as far as possible - the management of legal disputes (also those conducted out of court) and for property rights at least one property right from the genre of property rights has been published either by the European Patent Office, or by one of the following states: the Federal Republic of Germany, France, Great Britain or USA.
2. At our choice we shall be entitled to acquire a licence for the party ordering for the product (allegedly) in breach of a property right or copyright or to modify the product in question in such a way that it is no longer in breach of the property right or copyright, or to replace the product with the same type of product which is no longer in breach of the property right or copyright.
3. The liability in accordance with number VI and 2 regulates the liability for the freedom from property rights and copyrights conclusively and shall end five years following the delivery of the product concerned. This shall not apply if the product was manufactured in compliance with the specifications of the party ordering or the alleged breach of the property right or copyright follows from it being used together with another object not coming from us or the products are used in such a way which could not have been foreseen by us.

#### **VII. Liability**

Provided that nothing has been decided to the contrary in these terms and conditions of delivery, we shall be liable for compensation for damages and the replacement of the alleged expenditure within the meaning of § 284 BGB (hereinafter known as "compensation for damages") on account of breach of contractual or non-contractual duties only in cases in which our legal representatives or assistants are guilty of intent or gross negligence, loss of life, personal injury or damage of health, as a result of taking over a guarantee, or a procurement risk, the breach of significant contractual duties, as a result of compulsory liability in accordance with the (German) Product Liability Act or other compulsory liability. Compensation for damages for breach of vital contractual duties is however limited to damages which were foreseeable for this type of contract, provided that our legal representatives or assistants have not been guilty of intent or gross negligence or if there is liability for loss of life, personal injury or damage of health, as a result of taking over a guarantee, or a procurement risk. There is no change in the burden of proof to the detriment of the party ordering associated with the above regulations.

#### **VIII. Reservation of Title**

1. We reserve the title to the delivered goods until all the claims to which we are entitled in connection with this business relationship, regardless of their legal basis, have been fulfilled in full.
2. The party placing the order shall be entitled to process or combine our products together with other products in the course of its normal business operations. To secure our claims named in section VIII 1 we shall acquire co-ownership in the objects being created by processing or combining; the party ordering shall assign the co-ownership to us here and now. The party placing the order has to look after the objects subject to our co-ownership as a subsidiary contractual duty free of charge. The amount of our co-ownership proportion shall be determined by the proportion of the value which our product to that of the object created by combination of our product with another product at the time at which they are combined.
3. The party placing the order shall be entitled to resell (our products) in the normal course of its business transactions against cash payment or subject to the reservation of title. The party placing the order assigns to us here and now all the claims and subsidiary rights to which it is entitled from resale. If products belonging to us are resold together with other goods, the purchase price demanded shall consequently be assigned to us for the amount of the price of our product. The assigned claims shall serve as a security of all claims in accordance with section VIII 1. The party placing the order shall be entitled to collect the assigned claims.  
The rights created in this section can be revoked if the party ordering fails to fulfil its contractual duties to us properly, in particular if it should find itself in arrears with payments. These rights shall also expire without express revocation if the party ordering stops making payments for longer than just a temporary basis. At our request the party ordering shall have to notify us straight away in writing to whom it has sold goods owned or co-owned by us and which claims it is entitled to from the resale, as well as prepare at its expense publically certified documents on the assignment of the claims.
4. The party placing the order shall not be entitled to dispose otherwise of the objects subject to our retention of title or co-ownership or of claims assigned to us. The party placing the order shall have to notify us without delay of pledges or other legal impairments of objects or claims belonging to us in full or in part.  
The party placing the order shall bear all costs which have to be made to cancel the access of third parties to our reservation of title or title transferred as a security.  
In the event that there is a default in payment or other culpable breach of contractual duties by the party ordering, we shall be entitled to demand the surrender of the goods subject to our retention of title or co-ownership.

#### **IX. Payments**

1. Provided that nothing has been agreed to the contrary in writing, payment must be made in cash, without any deductions within 30 days from the date of invoice. However, we may make the delivery dependent upon payment being made concurrently (e. g. by cash on delivery) or on payment in advance.
2. We shall be entitled to set off payments against our earliest claim due.
3. Payment by draft will not be accepted.
4. If the party ordering should fall into arrears with making payments, we shall be entitled to demand that all claims from the business relationship due to which there are no objections are paid in cash without delay. This right shall not be ruled out by a deferment of payment or by the acceptance of cheques. Moreover, in those cases we shall also be entitled to carry out deliveries which are still outstanding only on the basis of payment in advance or against the provision of securities.  
If the financial status of the party ordering should deteriorate significantly after the contract is signed, we can also withdraw from the contract, provided that the party ordering is not prepared to pay concurrently upon delivery or to furnish a security in spite of being called upon to do so.  
If the party ordering is in default with payments or part payments, it shall be as a result be obliged to pay interest on our claim for the period that it is in default. This rate of interest shall amount to 2% above the base rate charged at that time by the European Central Bank, however no less, than 6% p.a.
5. The party placing the order can only offset against such claims which are uncontested or which have been declared final and absolute in a court of law.

#### **X. Place of Jurisdiction: Applicable Law**

The place of jurisdiction shall be the local court in Mettmann or the regional court in Wuppertal.



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German substantive law shall govern all legal relationships between us and the party ordering. The United Nations convention on the international sale of goods (CISG) shall be ruled out.

**XI. Partial Validity Clause**

If one or more provisions in these Terms and Conditions of Sale and Delivery or of the delivery transaction are or become invalid, the validity of the remaining provisions shall not be affected as a result.

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