

## **I. General**

All of our goods and services provided to businesses are subject exclusively to our general terms and conditions, mentioned below. General terms and conditions of the customer do not apply even if we do not expressly object to them and nevertheless complete the delivery. Variations and amendments are only binding with our expressed written confirmation and only apply to the business for which they were agreed upon. In the framework of on-going business relationships, the following conditions also apply to future contracts even if no specific reference is made to their applicability.

## **II. Offer, Conclusion of Contract**

1. Our offers are always subject to change.
2. After the customer has ordered, the contract comes into effect upon our written confirmation. Any statements made prior to the order in the course of processing the order, especially those concerning performance, consumption or other specific data, are only to be considered binding if we confirm them as binding in the confirmation of contract or in separate written correspondence.

## **III. Cooperation of the Purchaser**

1. The contractual performance requires that the customer fulfils all his obligations with regards to cooperation, information, consultation as well as custody and safety.
2. The customer is therefore obliged inter alia to timely answer all questions, to provide us with the required or requested drawings and documents, to provide us with all necessary approvals and permits and participate in meetings for discussing the design, and to participate in pre-acceptance and final acceptance tests.
3. The Customer is furthermore obliged to provide us with specification compliant test material in sufficient scope and number. If the test materials have tolerances, the customer is obliged to provide us with test materials of the respective upper and lower tolerance range. We can only warrant the proper function of the equipment for the parts provided to us.

## **IV. Prices**

1. Our prices are valid ex works and exclude packaging (for deliveries abroad, duty not paid).
2. To the extent that no other arrangements are made, payment is due immediately.
3. If unforeseen increases in materials, labour or transport costs, taxes or levies, occur between the conclusion of contract and delivery, we are entitled to adjust our price to reflect these factors, under the condition that delivery is not planned within four months of conclusion of contract.

4. If, after conclusion of contract, the customer makes changes, at any time we can adjust the prices reflecting the added expenses caused by the change.

## **IV. Terms of Payment, Offsetting**

1. If contractually specified payment deadlines are not met, we are entitled to demand liquidated damages in the amount of 8 % above the current prime lending rate reference to the contract value without proof of loss. We reserve the right to claim damages for any additional losses. The customer is entitled to prove that no loss occurred or that any loss was considerably lower than the amount owed as of liquidated damages.
2. The payment deadline is only met if the amounts are credited in full on our accounts and at our unrestricted disposal within the stated period.
3. The customer can only offset or retain claims based on undisputed or legally established claims, unless there is a defect. In the case of retaining payments, the claim must derive from the same contractual relationship.
4. In the case of intra-community deliveries, the customer is obligated to provide its tax ID number to us along with the other information and documentation necessary to establish tax exemption. If the customer does not fulfil these obligations in a timely fashion, we will not treat the delivery as tax exempt.
5. In that case we are entitled to bill and demand the applicable VAT. To the extent that a delivery is incorrectly treated as tax exempt on the basis of incorrect statements from the customer, the customer must hold us harmless from the tax debt and bear any and all associated added costs.

## **V. Delivery Dates and Deadlines**

1. We will honour the delivery dates and deadlines stated in the order confirmation by displaying all commercially reasonable efforts; however, any dates and timelines mentioned are only provisional and do not oblige us to perform to a fixed calendar date or an agreed upon delivery time.
2. Under no circumstances do delivery periods begin prior to the clarification of all details in connection of the requested performance. Performance of deliveries requires that all requests for clarification are answered in due course, all necessary or requested drawings and documents have been supplied, test materials have been supplied in adequate scope and number, all required permits and approvals have been issued and that customer has participated in design review meetings, pre-acceptance tests at our facilities and acceptance test. If these conditions precedent are not fulfilled for reasons for which we are not responsible, the delivery deadline will be extended correspondingly.

3. We are only obligated to perform and deliver if the customer has issued all agreed-upon and/or due payments. If payments are rendered late, all delivery deadlines will be extended correspondingly.

4. The deadline or date is deemed honoured if the shipment is readied for dispatch or picked up before the deadline expires and/or upon the mentioned date.

5. We point out that any resale of the delivered goods can be subject to export regulations. In addition to customer-supplied goods can also contain U.S. components (goods, software, technology) this circumstance may require compliance with U.S. regulations. The buyer undertakes to comply with all relevant national, European and U.S. export and re-export regulations.

6. We are neither responsible nor liable for delays that result from legal or regulatory restrictions on exports or result from the fact that delivery cannot take place because of export restrictions. If a delivery cannot be carried out as foreseen in the contract, due to export regulations or requirements of the authorities the customer can withdraw from the contract. In such a case the customer is not obliged to indemnify us, unless the customer knew or gross negligently did not know that the supplied products were in conflict with law and/or export regulations, prior to placing the order.

7. If failure to meet a deadline or delivery date is attributable to force majeure, mobilisation of armed forces, war, civil unrest, strikes, lock-outs or other unforeseeable events affecting our business, for which we are responsible and which either occurred or became known to us after the conclusion of the of the contract, the deadline or delivery date will be extended accordingly.

8. To the extent that a contractual penalty is agreed upon, it is limited in amount to 5 % of the net total amount of the order. A reservation of contractual penalty is to be individually and expressly mentioned in writing during the process of acceptance. If an imposed contractual penalty is unreasonably high, we can demand that it be reduced to a reasonable amount; § 348 HGB does not apply.

#### **VI. Place of Fulfilment, Transfer of Risk, Insurance**

1. To the extent that we have not arranged anything else, our ordinary place of business is the place of fulfilment for our delivery obligations.

2. Shipping of our products occurs ex works from our manufacturing facility. Costs and risk are borne by the customer. This also applies if we have committed ourselves to assembly and/or commissioning responsibilities.

3. We only conclude insurance policies at the expressed written request of the customer, who in such cases bears the costs.

#### **VII. Reservation of Title**

1. The goods that we deliver remain our property until all claims deriving from the business relationship between us and the customer have been paid in full. This reservation of title also applies to bills of exchange.

2. The customer is not entitled to resell the goods without our written consent until payment is made in full; the customer is not permitted to pledge the item(s) or give it(them) in security.

3. In the event that the good subject to reservation of title is combined with others not belonging to us (installation), we are entitled to a share of co-ownership of the new item thereby created in proportion to the order value of the object under reservation of title at the time it. If the customer obtains sole ownership of the new item, the contracting parties herewith agree that the customer will grant us co-ownership of the new good in proportion to the order value of the combined good under reservation of title to the value of the remaining goods. The customer is obligated, to allow us access to the documents required to determine our share of co-ownership on request. That the customer will hold the items in our co-ownership in safekeeping for us free of charge is agreed to here and now.

4. In the case of payment by bill of exchange, our reservation of title and security rights are unaffected and will remain in place until our liability stemming from the bill of exchange or cheque has ended.

5. In case the customer is in breach of contract, especially in cases of payment default for claims resulting from the business relationship we can, without prejudice to our other rights and after setting a reasonable grace period, withdraw from the contract and demand the return of the goods.

6. The limit of coverage is placed at 120 %. We are obligated to release the securities owed to us to the extent that the realisable value of our securities exceeds the secured claims by more than 20 %. Our reservation of title on a delivered good however persists until our compensation for the delivery of this good has been paid in full.

#### **VIII. Acceptance**

If a different place of fulfilment is agreed to, the following applies to deliveries that require acceptance under a contract of services:

1. The customer is obligated to participate in the preliminary acceptance of the machines in our works. A record of the pre-acceptance will be kept.

2. Acceptance must be completed without undue delay after delivery.

3. The customer is obligated to certify acceptance for us after commissioning is completed.

4. Insignificant defects do not entitle the customer to refuse acceptance.

5. If no formal acceptance is demanded or carried out, the acceptance will be deemed completed at the latest once the customer begins use.

6. On acceptance the risk is transferred to the customer to the extent that the customer does not already bear it. Risk also transfers if the customer comes into default of acceptance.

#### **IX. Inspection of Incoming Goods and Complaints of Defects**

1. The customer is obligated to inspect the good immediately after receipt in order to establish that it conforms to the specifications named in the order and is free of defects (§§ 377, 381 Para. 2 HGB (Commercial Duties to Inspect and Report Defects)).

2. This must be recorded in writing.

#### **X. Warranty**

1. The warranty period is

a.) for purchase contracts 12 months starting from hand-over,

b.) for service contracts 12 months starting from when the service was provided,

c.) for contracted work 12 months from acceptance however at the latest 15 months from delivery insofar as the customer is responsible for any delay in acceptance.

2. In the event that a complaint of defect is registered in a timely fashion, the customer can request remediation or our choice (through correction of the defect or delivery of an item free of the defect). If two attempts of remediation prove fruitless, (failed remediation) or if we refuse to remedy the defect or if it proves unreasonable, the customer can withdraw from the contract, reduce the purchase price or demand compensation for damages according to the provisions of these terms.

3. No warranty is granted for deterioration of the delivered good as a result of natural wear and tear, especially not for parts subject wear and tear, for damage that occur after transfer of risk or for improper handling (e.g. incorrect connection, test material which dimensions exceed or fall short of the agreed upon tolerances).

4. A warranty for certain properties is only granted if it had been expressly confirmed in writing. We do not warrant that the delivered goods are suitable or fit for the customer's purposes.

5. Data concerning performance, consumption, etc., that we have confirmed in writing on conclusion of the contract are never to be seen as individual guarantees according to § 443 BGB.

6. The customer is obligated to grant us the necessary time and opportunity to affect remedy in case of defects. In the case of malfunctions and failures we will send personnel within a reasonable period of time. We cannot however warrant that personnel will be available immediately at any time.

7. Our liability is excluded if the customer or a third party modifies or reworks the delivered good(s) without our prior approval.

#### **XI. Liability for Damages and/or Reimbursement of Futile Expenditures**

1. We are not liable for damages and/or reimbursement of futile expenses— regardless of their basis in law – that are attributable to slight negligence on the part of our organs, our legal representatives or our subcontractors.

2. To the extent that we are liable for direct and immediate damages, our liability is limited for all contractual, extra-contractual and other claims for compensation for damages and expenses, regardless of their legal nature and independent of the number of damaging events, to the amount of damage typically foreseeable at the time of conclusion of contract.

3. Regardless of the claim's basis in contract or in law, our liability for any indirect damages so-called subsequent damages, e.g. loss of profits, stoppage time, production downtime, re-calls, etc., is excluded in cause and amount.

4. The liability exclusions and/or limitations named here do not apply a.) in case injury to life, limb or health or b.) in the case of malicious intent or gross negligence on our part or c.) in the event of a breach of essential contractual obligation on our part on whose fulfilment the proper execution of the contract depends and on whose fulfilment the customer therefore may regularly depend upon or d.) to the extent that we fraudulently concealed a defect, or e.) to the extent that we provided a guarantee of properties or durability, or f.) for claims under the German Product Liability Act.

#### **XII. Assembly, Commissioning, Instruction**

1. Assembly work and commissioning services as well as instructions given to the customer's operating personnel will be billed according to time and expense. Billing will be done at our regular rates. We will bill worked hours, waiting times, travel times, expenses for initiation, overnight costs as well as the necessary expenses for fares and haulage. The material used as well as other expenses for the consumption of materials will be billed at reasonable prices in absence of any agreement on prices.

2. If assigned assembly personal cannot commence work due to reasons for which we are not responsible, the waiting time will be billed as time worked. If, for reasons for which we are not responsible, we must

complete the work at times or under conditions other than those specified in our contract, the customer must also compensate the added expenses we incur due to this. To the extent that the work must be completed at times or under conditions that require higher rates (including overtime), we are entitled to bill added charge on top of our hourly rates in the amount of the percentage rates applicable to us.

The instruction of operating personnel will also be billed if assembly is included in the price.

### **XIII. Documents, Plans, Safety Regulations**

1. An operator's manual and general plans according to EG 42/2006 are included in the scope of delivery. More detailed plans are only provided on the basis of separate agreements and compensation; we are not obligated to conclude such agreements.

2. We can only provide operating instructions and documentation for purchased parts to the extent that we ourselves receive them from our sub-suppliers. To the extent that we are obligated to maintain confidentiality with respect to our sub-suppliers, we cannot be asked to provide such documentation.

3. In the construction of our products, deviations from safety norms, guidelines and recommendations are permitted to the extent that the same safety is guaranteed in some other manner.

### **XIII. Confidentiality**

1. To the extent that nothing else is arranged, all technical or commercial information that we provide remains our exclusive property and must be kept confidential with respect to third parties, and may only be used to fulfil its contractual purpose.

2. We reserve all rights to such information (including copyrights and the right to register for commercial protected rights, such as patents, utility patents, etc.).

### **XIV. Reproduction**

The customer is obligated to refrain from reproducing machines that we especially designed for the customer and to refrain from contracting any third parties to reproduce such machines. Should these obligations be breached, we can – without prejudice to our other claims and rights—demand the customer pay a reasonable licensing fee.

### **XV. Place of Fulfilment, Court of Jurisdiction, Concluding Provisions**

1. Changes and amendments to the contract must occur in writing to be valid. This also applies to any waiver of the requirement of written form.

2. Place of fulfilment for all obligations deriving from this contract, especially for the payment of the purchase price, is our local office in each case as listed below.

3. The parties herewith recognise the courts at the legal domicile of our business offices as the sole responsible courts for any and all legal disputes arising from or in connection with this contract.

However, we are also entitled to assert claims against the customer at its general courts.

4. Should individual provisions of these general terms of sale or the contract concluded on their basis be or become legally unenforceable, this will not affect the remaining provisions. Should a partial clause prove unenforceable, the enforceability of the remaining clause will remain unaffected if it can be severed from the content of the partial clause, is comprehensible in its own right and results in a rule that remains logically sound in the framework of the contract as a whole. The parties are obligated to replace unenforceable clauses with provisions that most closely approximate the commercial purpose of the unenforceable clause. This applies analogously in the case of loopholes as well.

5. The customer is instructed and also gives consent that all data concerning it, including personal data in the sense of the Data Protection Act, will be stored in the framework of our electronic data processing. The customer will make sure that any necessary consent forms from its employees will be on-hand.

6. The laws of the Federal Republic of Germany apply exclusively to the legal relationships deriving from and in connection with this agreement, excluding the Referring Law and the provisions of the UN Convention on Contracts for the International Sale of Goods ("CISG").

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