



## General Terms

### Terms of Sale and Payment

as at 01.07.2010

#### I. Conclusion of the Contract

1. The documents belonging to the supplier's offer and in particular the illustrations, drawings, plans, calculations, tables and weight information are reference values insofar as these are not explicitly declared as being binding. Warranted characteristics are indicated as such. The Supplier reserves the property and copyright for all of the offer documents; these are not to be disclosed to third parties.
2. The contract shall come into existence with regard to these terms of sale with the written confirmation of the supplier, unless the Contracting Parties sign a deed.
3. The terms of the Ordering Party are binding only if and to the extent in which these are acknowledged in writing by the Supplier.
4. As regards electronic equipment, the "General Terms of Sale for Electronic Products and Services" in the version currently in force are to be applied. These shall be made available at the request of the Ordering Party.
5. Collateral agreements and amendments require the written form.

#### II. Scope of the Supply/Service

1. As regards the scope of the supply and service the written order confirmation of the Supplier is authoritative.
2. The Supplier reserves the right to make any modifications to the article of sale in terms of construction and production technology as well as owing to legal provisions, insofar as the article of sale is modified only in an irrelevant manner and said modifications are reasonable for the Ordering Party. The Supplier is to be informed of said modifications as soon as possible by the Ordering Party.
3. If the article of sale is subject to particular provisions in countries other than the Federal Republic of Germany, the Ordering Party is liable for compliance with these. Should the Supplier entertain doubts on the envisaged type of execution, he shall notify the Ordering Party of these immediately - if possible already before the start of the works.

#### III. Prices

1. The prices are ex works inclusive of loading and exclusive of packaging. The VAT rate in force at the moment of the supply shall be applied.
2. Should a substantial change in the cost factors relevant for the pricing occur - material costs, salaries, freight rates, energy costs, duties under public law - the Supplier can request from the Ordering Party that the latter enter into negotiations on the price adjustment corresponding to the effect of the major cost factors as soon as he has been notified thereof.

#### IV. Terms of Payment

1. Payments inclusive of the indicated VAT are to be settled without delay upon the receipt of the request for payment and, in particular, unless otherwise agreed, as follows: 1/3 advance payment upon the receipt of the order confirmation; 1/3 of the value of the supply or of each partial delivery upon delivery or notice of the readiness for dispatch, the remaining amount at the issue of the invoice.
2. If the payment deadlines are exceeded, interests at the current bank interest rate (the interests applied by banks for short-term credits) and at least at an annual rate of 2% higher than the current discount rate of the German Central Bank inclusive of VAT shall be applied following the demand for payment.

3. Any counterclaim contested by the Supplier or which has become res judicata does not entitle the Ordering Party to retention or offset.
4. If at the moment of the conclusion of the contract facts detrimental to the creditworthiness of the Ordering Party are known, all of the accounts receivable by the Supplier including any bill-based claim shall be due immediately. Similar circumstances also entitle the Supplier to provide outstanding services only against payment in advance or on security.
5. Should the Ordering Party fail to meet his payment commitments, the Supplier can terminate the contract after the expiry of a period set for the performance of the contract, withdraw from the contract or demand damages owing to nonperformance as well as withdraw the supply..

## **V. Reservation of Title**

1. The Supplier shall retain title over the deliveries until the complete payment.
2. The handling and processing of the deliveries shall take place on the part of the Supplier free from the Ordering Party's acquisition of ownership.
3. As regards a property of the Ordering Party to be considered as main object as understood in art. 947, para. 2, of the German Civil Law Code, the Ordering Party and the Supplier agree that the Ordering Party shall grant the co-ownership of the related property to the Supplier and to retain possession over it on behalf of the latter.
4. The receivables of the Ordering Party resulting from the resale of the reserved assets or from their installation in a third party's property are transferred as from now to the Supplier. At the request of the Supplier the Ordering Party must notify the transfer to his debtors.
5. The Ordering Party is entitled to the collection of the sums due. The Supplier's power to collect sums remains unaffected by the Ordering Party's right to collection. At its request the Ordering Party shall notify the debtors of the receivables transferred to the Supplier as well as provide any information or documents necessary for the collection. The Supplier undertakes to unblock on demand the available securities insofar as their value exceeds the receivables yet to be secured by more than 25%.
6. The Ordering Party is not allowed to pledge and transfer by way of security the deliveries . The Ordering Party must notify the Supplier immediately of any attachment of property and other orders on the part of third parties.
7. The claim for return put forward with regard to the reservation of title is not tantamount to the termination of the contract.

## **VI. Delivery Deadlines**

1. The delivery deadlines starts with the date of the order confirmation from the Supplier or with the signing of a deed, but neither before the receipt and discussion of the documents, authorizations and disclaimers to be obtained by the Ordering Party nor before the receipt of the agreed advance payment. In case of the delayed performance of the contractual obligations of the Ordering Party and of the suspension of the execution on the part of the Ordering Party the delivery deadline shall be extended accordingly.
2. The delivery deadline shall be postponed accordingly in the case of industrial disputes and in particular strikes and lockouts, in cases of force majeure as well as in the event of other obstacles such as operational breakdowns, scrapping, delays of subcontractors or other delays not ascribable to the Supplier, insofar as these events affecting the timely performance of the contract lie outside of the will of the Supplier and are beyond the control of the Supplier. The occurrence and expected duration of such events is to be notified immediately by the Supplier to the Ordering Party, regardless of whether these events occur in the premises of the Supplier or of one of his subcontractors.
3. Should the Supplier fall in arrears, the Ordering Party can claim compensation for damage occasioned by delay to be evidenced - with the exclusion of other claims and rights save for the right to rescind as per item 10.4 herein - for each full week of delay in the amount of 0.5% of the contract price of the supply in arrears, but as a whole no higher than 5% of said contract price. Should an event as understood in item 6.2. herein liable of causing a delay in the delivery occur subsequently, further compensation for default shall not be applicable until the cessation of this event.
4. The delivery deadline is met if the article of sale has left the factory by its expiry or if the readiness for delivery has been notified.
5. Should the delivery be delayed for reasons not ascribable to the Supplier for more than a month from the notification of the readiness for delivery, the Supplier can store the supply parts at the expenses and risk of the Ordering Party. When storing these in his own premises the Supplier can charge at least 0.5% of the contract price of the stored parts per month.

## **VII. Passing of Risk**

The risk passes to the Ordering Party if the supply parts have left the plant. If the dispatch is delayed without fault on the part of the Supplier, the risk passes to the Ordering Party as of the date of the receipt of the notice of readiness for delivery.

## **VIII. Abnahme und Erfüllung**

1. The contractually agreed acceptance of the supply parts is to be provided immediately after the notice of readiness for delivery.
2. The relevant acceptance costs shall be borne by the Supplier, while the individual acceptance costs and fees of the acceptance agency shall be borne by the Ordering Party.
3. If the acceptance does not take place within two weeks from the notice of readiness for delivery or is not completed within this period, the Supplier is entitled to deliver the goods without acceptance. The supply parts are to be considered as contractually delivered with the delivery or, if the dispatch is delayed for reasons not ascribable to the Supplier, with the notice of readiness for delivery. This does not apply if the acceptance is rejected owing to substantial shortcomings.
4. Partial deliveries are permissible.
5. The supply parts - even these if these should reveal insignificant defects - are to be accepted by the Ordering Party without prejudice to the rights resulting from the warranty for defects of the supply.

## **IX. Warranty**

1. The Supplier shall guarantee that his services meet the acknowledged state of the art at the moment of the acceptance and are not marred by defects liable of voiding or reducing the value or fitness for the ordinary or contractually envisaged purpose.
2. The Supplier is not liable for any defects that are ascribable to the specification of services or to the instructions of the Ordering Party, to the materials or components supplied or required by the latter or to the quality of the advance performance of a company required by the Ordering Party unless he has failed to perform a test expected from him or, if necessary, to provide a notice on a feared defect owing to gross negligence.
3. For services and supplies provided by subcontractors and used by the Supplier without any further and substantial processing, the warranty is limited to the assignment of his claims arising with the subcontractor. If it is not possible for the Ordering Party enforce the arising claims against the subcontractor, the claims against the Supplier are revived.
4. The warranty is limited to the rectification of defects or replacement at the choice of the Supplier's choice. The Supplier shall bear the direct costs therefrom resulting for repair or spare parts including those for the shipping as well as the relevant costs for the installation and removal. Otherwise the Ordering Party shall bear any other cost.
5. Warranty claims are to be asserted immediately in writing with the provision of an adequately precise description of the defect within a period of 24 months from the acceptance of the delivery. These claims are subject to a statute of limitations on the expiry of a period of 12 months from the receipt of the claim in writing and at the earliest, however, with the end of the warranty period. The same applies for any warranty claim with regard to the removal of defects.
6. If a defect is not eliminated within a reasonable period, the Ordering Party can lower the purchase price accordingly.
7. Other claims on the part of the Ordering Party and in particular claims for damages not occurring on the article of sale are excluded. This does not apply for consequential harm caused by a defect against which the Ordering Party should be covered owing to the warranty on specific characteristics. In this case, however, the claim for damages is limited to 5% of the order total without VAT..

## **X. Withdrawal**

- a) Withdrawal on the part of the Ordering Party
  1. The Ordering Party can withdraw from the contract if it is ultimately impossible for the Supplier to fulfil the contractual obligations owing to reasons for which the latter is liable before the risk is passed. In the case of partial impossibility of performance the right to withdraw subsists if the partial performance is of no interest for the Ordering Party. If this is not the case, the Ordering Party can request an appropriate reduction in the price.
  2. If the impossibility is ascribable neither to the Supplier nor to the Ordering Party, the Supplier is entitled to the relevant partial remuneration for his expenses.
  3. If the impossibility arises through the fault of the Ordering Party or without the gross negligence of the Supplier owing to the delay in acceptance by the Ordering Party, the latter is obliged to provide undiminished consideration.

4. In the case of delay in delivery, the Ordering Party can withdraw from the contract if he has set in writing an additional period of time of reasonable length for the Supplier and he wishes to withdraw from the contract after the elapse of this period in vain.

b) **Withdrawal of the Supplier**

In the case of unforeseeable events or inevitable circumstances lying beyond the control of the Supplier, the Supplier can withdraw either wholly or in part, insofar as and to the extent in which the events or circumstances alter substantially the financial relevance or the contents of the performance or have considerable effects on his business.

## **XI. Liability**

1. 1. The Supplier is liable with the Ordering Party regardless of the legal grounds to the extent in which the existing manufacturer's liability insurance provides compensation. Insofar as this is not the case, he is liable only for his own gross negligence as well as for the gross negligence of his managerial employees and vicarious persons; no liability subsists for consequential damage. Liability is excluded beyond the foregoing.
2. All of the liability claims against the Supplier, regardless of the legal grounds, are subject to a statute of limitations of no more than one year from the passing of risk to the Ordering Party, if the period of limitation envisaged by the law is not shorter.

## **XII. Place of Performance/Jurisdiction**

1. The place of performance for the supply and the place of jurisdiction for any dispute resulting from the contractual relationship is the place where the supplying plant is located.
2. The Supplier can file a lawsuit also at the principal place of business of the Ordering Party.
3. Venue shall be the city of Osnabrück.

## **XIII. Arbitral Tribunal/Procedure**

In case of the agreement to resort to an arbitral tribunal the procedure shall follow the Rules of Arbitration of the German Committee for Arbitration.

## **XIV. Miscellaneous**

The invalidity of any single provision or part of a provision herein shall not affect any part of the remaining provisions. An ineffective provision is to be replaced by an admissible regulation, which comes as close as possible to the financial purpose of the ineffective provision.