

#### **I. General**

1. These General Terms, as well as separate agreements, if any will apply to all supplies and services of Supplier. Purchaser's general terms of purchase which are at variance to these General Terms shall be non-binding even if we accept any order where Purchaser's general terms of purchase are included. Unless agreed otherwise, any contract will only become effective with Supplier's written confirmation of the order.
2. Supplier reserves all title and property rights and rights originating from copyright in respect of samples, cost estimates, drawings and similar information whether tangible or intangible – as well as in electronic form; they may not be disclosed to third parties. Supplier may disclose to third parties information and documents which are expressly marked as confidential by Purchaser only with Purchaser's prior consent.

#### **II. Prices and Payments**

1. Unless agreed upon otherwise, prices are ex works including loading on our premises, excluding packaging and unloading. Prices are subject to value added tax/VAT at the statutory rate.
2. Unless agreed upon otherwise in writing, payment conditions shall be stipulated as follows: in case of delivery of machinery, payment conditions shall be as contained in the order confirmation; in case of delivery of spare parts, payment conditions shall be as contained in the invoice.
3. If the purchaser does not meet his payment obligations, he will be charged with default interest at a rate of 2% per month (pro rata for commenced months) of the outstanding amount.
4. The Purchaser may set off or exercise a right of retention only with regard to such claims which are undisputed or have become res judicata.

#### **III. Time of Delivery**

1. The time of delivery shall be determined by mutual declarations of the parties. Timely supply is conditional upon clarification of all commercial and technical questions between the parties and upon fulfillment of all obligations of Purchaser as, for example, delivery of necessary licenses or releases or a down payment. If these conditions are not fulfilled on time, the time of delivery shall be extended correspondingly. This shall not apply if Supplier is responsible for the delay.
2. Observance of the time of delivery is made subject to correct and timely delivery by Supplier's suppliers. Purchaser will be informed by Supplier about any delay of said delivery as soon as possible.
3. The time of delivery shall be deemed to have been met if the goods have left the plant of Supplier within the agreed period or notice that goods are ready for shipment has been given within the agreed period. If a formal acceptance of the completed work is agreed upon the date of said formal acceptance shall be the decisive date, in the alternative the notice of readiness for the formal acceptance of the completed work. This shall not apply in cases of legitimate denial of said formal acceptance.
4. If shipment or formal acceptance of the completed work is delayed for reasons for which Purchaser is responsible, he may be charged with all costs resulting from the delay, beginning one month after notice has been given that goods are ready for shipment or the formal acceptance of completed work should be performed.
5. If the time of delivery has not been met because of force majeure, strike, mobilization, war or in the event of other unforeseeable circumstances for which Supplier is not responsible, such period shall be adequately extended. Supplier shall inform Purchaser about the beginning and ending of said events as soon as possible.

6. Purchaser can revoke the contract without any notice period if the delivery becomes impossible to Supplier before the passing of the risk. Purchaser can furthermore revoke the contract if parts of the delivery become impossible and if he has a legitimate interest to refuse part shipment. If this is not the case, Purchaser has to pay the corresponding proportional part of the purchase price. The same shall occur in the event of Supplier's inability to perform. For any further cases section VII.2. shall apply. In the event that the impossibility or Supplier's inability to perform occurs during Purchaser's default in taking delivery or in the event that Purchaser is solely responsible or predominately responsible for the circumstances, his obligation to pay the consideration will remain unaffected.

7. If Supplier is in delay and the right of the Purchaser to revoke the contract after an additional period of time granted to the Supplier has ineffectively expired shall remain unaffected, subject to the exceptions provided by law.

Any additional claims related to the delay are exclusively governed by section VII.2. of these Terms and Conditions.

#### **IV. Transfer of Risk, Transport Insurance**

1. Risk of loss or damage shall pass to the Purchaser as soon as the consignment has left Supplier's works premises. This shall also apply if Supplier ships parts or if Supplier undertook to provide additional services, for example payment of shipping costs or setting up of goods.
2. If the shipment or the acceptance of the completed work is delayed or does not occur because of circumstances that are not within the control of Supplier, the risk passes to Purchaser on the day of the notice stating readiness for shipment.
3. Part shipments are permissible if reasonable acceptable to Purchaser.

#### **V. Retention of Title**

Title to all goods supplied shall only pass to Purchaser upon full payment of the purchase price to us. Any third party contesting of title shall be notified to us without delay. In the event of further disposal prior to payment in full of the purchase price owed to us, the Purchaser shall, by way of security, assign to us future receivables arising out of further disposable to his customers, including all securities. No subsequent specific statements shall be required in this respect.

#### **VI. Warranty Claims**

Liability of Supplier as to defects in legal rights or quality shall be limited to the following, excluding any further claims; section VII. shall remain unaffected.

Defects in quality

1. Supplier shall, in its discretion, repair or replace all components which are defective due to a cause prior to the passage of risk. Supplier shall be informed of such defects in writing without undue delay. Components which are replaced shall become the property of Supplier.
2. Purchaser shall procure that Supplier is given the opportunity to carry out any repair and replacement deemed necessary by Supplier; failure by Purchaser to provide such opportunity shall result in an exclusion of liability of Supplier for any consequences resulting from such failure. Only in urgent cases in which the safety of operation is affected or in which there is a danger of excessive damage, Purchaser has the right to carry out the repair himself or through a third party and to demand from Supplier reimbursement of reasonable expenses; Purchaser shall remain under the obligation to notify Supplier immediately.
3. If a warranty claim turns out to be justified, Supplier shall bear the costs directly related to repair or replacement, consisting of the costs

of a replacement item including shipping costs as well as reasonable costs for removal and assembly and, to the extent is reasonable in the individual case, costs of assembly workers and other workers including travel expenses.

4. In the event that Supplier fails to provide repair or replacement of defective goods after the end of a deadline set by Purchaser, Purchaser shall have the right to withdraw from the agreement as provided by applicable law; the exceptions thereto as provided by law shall apply. In case of an immaterial defect, Purchaser may only claim the reduction of the purchase price. Except for the aforementioned case, any claims for reduction of the purchase price shall be excluded.
5. Further claims are specified in section VII. of these General Terms. Suppliers shall, in particular but without limitation, not be liable in the following cases; unsuitable or inappropriate use, incorrect assembly or putting into operation by the Purchaser or third parties, natural wear and tear, incorrect or negligent handling, lack of required maintenance, unsuitable lubricants etc. faulty construction work, unsuitable foundations, chemical, electromechanical or electrical interferences; the foregoing shall not apply if Supplier is responsible for the situation in question in the individual case.
6. Supplier shall not be liable for the consequences of faulty repairs carried out by Purchaser or a third party. The foregoing shall apply accordingly to modification of the object of purchase carried out without Supplier's prior consent.

Defects in legal rights/intellectual property rights

7. In the event that the use of the object of purchase constitutes an infringement of domestic industrial property rights or copyrights, Supplier shall procure that Purchaser obtains the right for further use; alternatively, Supplier may modify the object of purchase in a manner reasonably acceptable to Purchaser, thus avoiding the infringement. If the foregoing cannot be effected in an economically reasonable way or within a reasonable time, Purchaser shall have the right to withdraw from the agreement. If the foregoing condition is fulfilled, also the Supplier shall have the right to withdraw from the agreement. Furthermore, Supplier shall indemnify Purchaser from claims of the respective owner of the intellectual property right which are undisputed or determined by a final judgement.
8. The obligations of Supplier in case of an infringement of industrial property rights or copyright shall be limited to those contained in section VI.7; the provisions contained in section VII.2. shall remain unaffected.

Said obligations are subject to the following conditions:

- Purchaser informs Supplier without undue delay of any claims made in connection with industrial property rights or copyright;
- Purchaser provides to Supplier reasonable assistance in the defence against claims raised and/or enable Supplier to carry out modifications as provided in section VI.7;
- Supplier reserves the right to take full control of all defences including out of court settlements;
- The defect in title/intellectual property right is not caused by an instruction given by Purchaser;
- Infringement of industrial property rights/copyright was not caused by unauthorized modification of the object of purchase by Purchaser or by use in a manner not covered by the existing agreement.

## VII. Liability

1. In the event that the object of purchase cannot be used as intended by the agreement because of a failure to implement proposals or advice or to implement correctly such proposals or advice before or

after the conclusion of the agreement or because of a violation of ancillary contractual obligations Supplier is responsible for, any related claims of Purchaser shall be exclusively those provided for in section VI. and VII.2. which shall apply accordingly: the foregoing shall apply, in particular, to instructions regarding operation and maintenance of the object of purchase.

2. Liability of Supplier for damages other than at the object of purchase and regardless of its legal basis shall be limited to cases of
  - a) intent
  - b) gross negligence of the owner, legal representatives or managers
  - c) violations of life, body, health resulting from intent or negligence
  - d) defects fraudulently concealed or the absence of which was guaranteed by Supplier
  - e) defects of the object of purchase to the extent liability for damage to persons or private property is stipulated by the German Products Liability Law.

In cases of intentional or negligent violation of essential contractual obligations Supplier shall also be liable for gross negligence of employees other than managers and for slight negligence; in the latter case liability shall be limited to typical and reasonably foreseeable damages.

Any further damage claims shall be excluded.

## VIII. Limitation of Actions

All claims of Purchaser – regardless of the legal cause – are subject to a limitation period of 12 months. For damage claims under section VII.2.a) – e) the limitation periods as provided by law shall apply. The foregoing also shall apply to defects at any building or defects of those goods, which are commonly used for a building and which caused any damage to a building.

## IX. Use of Software

1. If software products are part of the delivery, the Purchaser shall be granted a non-exclusive right to use these software products including the software documentation. The use of the software on more than one computer system is prohibited. Purchaser may duplicate, modify, translate the software, or transform the software from object code to sourcecode only as permitted by law (section 69 a ss. UrhG – German Copyright Act). Purchaser shall not move or change without prior approval of Supplier any information about Supplier – especially a copyright notice. Any additional rights in the software and the software documentation including rights in all copies thereof remain with Supplier or with the supplier of the software. Purchaser is not allowed to grant any sub-licences.

## X. Substantive Law; Venue

1. All disputes shall be settled in accordance with the provisions of the Terms and Conditions and all other agreements regarding its performance, otherwise in accordance with the Law in force in Germany without reference to other laws. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
2. Legal venue shall be the court having jurisdiction at the supplier's headquarters. The supplier is also entitled to file suit at the orderer's headquarters.
3. If any provision of the contract is void, the remaining part of the contract shall remain unaffected. This shall not apply if adherence to the contract might mean an unreasonable hardship to any one party.
4. Side agreements shall be made in writing to be effective.