

Conditions of Sale and Delivery (as per December of 2009)

1. General Statements

1.1 The conditions hereinafter shall extend to all quotations submitted by us and to all transactions concluded with the customer even to the extent that they were concluded with us in electronic business. The customer's general terms and conditions shall not be applied unless we explicitly confirm this in writing in specific cases. Provided that there are blanket agreements (in particular, global arrangements) between the customer and ourselves, the departing provisions in the blanket agreements shall have prior ranking.

1.2 Our order confirmation shall be primarily definitive for the content of the contract - in particular for prices, the scope of performance, quality of performance, period of performance and any other periods or commercial conditions. All other arrangements shall only apply on a subordinated basis. When the customer accepts the performance or a portion thereof, the customer recognises the fact that the content of the contract follows our order confirmation. Subsequent amendments to the contract shall only apply if we have confirmed them in writing.

1.3 The documents belonging to the quotation such as illustrations, drawings and information on weight and dimensions are only approximately definitive to the extent that they are not explicitly designated as binding. We reserve ourselves the right to modifications to the construction and technical design. We reserve ourselves the copyright to drawings, documentation and other documents. They may not be made accessible to third parties. The customer shall only make plans that we designate as confidential accessible to third parties with our permission.

1.4 All supplies to the customer shall be under the reservation of obtaining correct supplies ourselves in due time even with reference to the necessary raw materials and primary products for the products to be supplied to the customer. If this is not done or not in due time, we will notify the customer thereof and we shall be entitled to withdraw from the contract within an appropriate period of time.

2. Prices / Payment

2.1 For lack of any special agreement, prices shall be without any trade discounts or other discounts ex works Mühhlacker-Lomersheim, Germany including loading, although excluding packaging and plus the statutory value-added tax.

2.2 If the customer neglects any action that is incumbent upon it and makes it therefore impossible for us to carry out performance (in due time), or if the customer does not render any due payment or otherwise comes into in debtor's delay, we can set the customer an appropriate extension for contractual performance together with threatening to serve notice on the contract in the event of fruitless expiration of the period; setting an extension shall also be deemed a warning as defined by Section 286 of Bürgerliches Gesetzbuch (German Civil Code). If the customer does not make up contractual performance by the time said extension expires, we can serve notice on the contract and dispose of the delivery item elsewhere. In the event of said notice, we can demand the full purchase price. The payments already rendered and the value of the components that can be further used without changing shall be deducted from that. If the customer's behaviour in breach of contract rests upon force majeure, we can only demand the costs we incurred to serving notice and any costs that can no longer be averted.

Further legal rights and claims (such as claims to compensation for damage in the event of the customer's culpable violation of obligations) shall remain unaffected.

2.3 If we become aware of circumstances with the customer/user or in their state after signing the contract due to which our claims no longer seem sufficiently secured to us based on commercial principles, we shall be entitled to only comply with our own obligations from the contract after the customer renders other preliminary payments or collateral. If the customer does not comply with our demands for further preliminary payments or the payment of collateral within an appropriate period set it for this purpose, we shall be entitled to withdraw from the contract.

2.4 Setting off or retaining payments due to the customer's claims - such as claims to liability for defects - shall be ruled out to the extent that such claims are not undisputed or have not been declared legally effective.

3. Delivery Period and Default in Delivery

3.1 The delivery period shall commence when the order confirmation is sent, however not before the documents, permits and approvals to be procured by the customer have been furnished and before any agreed down payment has been received. Any delivery periods or delivery dates not explicitly designated as binding shall always be non-binding. If no delivery date or delivery period has been given, it shall be six weeks from issuing the order confirmation in cases of doubt.

3.2 The delivery period shall be complied with if the delivery item has left the facility or shipping readiness has been announced by the time it expires.

3.3 The delivery period shall be appropriately extended if there are actions in the framework of labour disputes, in particular strikes or shutdowns or if unforeseen obstructions occur that are beyond the control of the vendor to the extent that said obstructions can be proven to have a substantial impact on finishing or delivering the delivery item.

3.4 If the customer incurs a loss due to our default, it can demand 0.5% as compensation for each full week of default, however no more than 5% of the value of the parts of the delivery item that cannot be used in due time or cannot be contractually used due to the default. There shall only be claims to compensation for damage going beyond this pursuant to the specifications of Number 7.

3.5 We shall be entitled to partial deliveries and partial performance at any time.

3.6 If shipping is delayed at the customer's request, the customer shall be charged the costs incurred from storage, however at least 0.5% of the invoice amount for each month if it is stored in our facility starting one month after notification of shipping readiness. However, we shall be entitled to otherwise dispose of the delivery item after setting an appropriate extension and after it expires fruitlessly and to supply the customer with an appropriately extended period.

3.7 The prerequisite of complying with the delivery period shall be meeting the customer's contractual obligations.

4. Passing of Risk and Receipt

4.1 The risk shall pass to the customer no later than when the delivery parts are shipped even if partial deliveries are made or we have accepted other performance such as the shipping costs or driving and setting up. At the customer's request, we shall insure the shipment against theft, breakage, transport and damage from fire or water as well as other insurable risks at the customer's expense.

4.2 If shipping is delayed due to circumstances that the customer is responsible for, the risk shall pass onto the customer from the day of shipping readiness; however, we shall insure the shipment against theft and damage from fire and water as well as other insurable risks at the customer's request and expense.

4.3 The customer shall receive delivered objects notwithstanding the rights from Section 7, even if they have non-essential defects.

5. Reservation of Title/Insurance

5.1 The goods delivered shall remain our property until all of our demands arising from the business relations with the customer have been fully paid, even those emerging in future.

5.2 The customer shall insure the delivery item against damage from theft, breakage, fire, water and miscellaneous damage in favour of the vendor at its own expense during the term of reservation of title and document said insurance to us.

5.3 The goods may neither be pledged nor may the ownership be transferred by way of security without our permission until complete payment. If the goods are resold, this may only be done on your side with the customer's own reservation of title. When the goods are resold, all of the customer's claims against its purchaser, in particular for payment of the purchase price, shall be assigned to us. Until further notice, the customer shall be entitled to collect the demand. We can revoke the authorisation to collect the demand if the customer comes into default to us with its performance. The customer has to notify us without delay if third persons want to assert rights to the goods for sale, in particular if they are seized.

5.4 If the law of the country that the delivery item is in does not permit reservation of title, although it allows the vendor to reserve itself other rights to the delivery item, we can exercise all of this type of rights. The customer has to assist in the actions that we want to undertake to protect our property rights - or any other right to the delivery item in its place.

6. Warranty

6.1 Our performance is free of defects if its actual condition only slightly departs from the contractually agreed condition and said departure is acceptable to customer.

6.2 We guarantee that our performance is free from defects in the following fashion: All defects properly objected to shall be remedied at no charge to the customer at our choice either by repair or supplying faultless parts (subsequent performance). The customer shall send us defective parts at request. If we cannot provide quality subsequent performance, we shall confer with the customer. To the extent that this is acceptable to the customer, we may supply other delivery items or solutions from our range of products to comply with our subsequent performance obligation that altogether have the agreed condition of the subject matter of the contract or, if there is no agreement on condition, a condition of the subject matter of the contract defined as defect-free in the law (Section 434, Paragraph 1 or Section 633, Paragraph 2 of Bürgerliches Gesetzbuch - German Civil Code).

6.3 The warranty period shall be 12 months from official acceptance or - if official acceptance is not owed - from delivery. This shall not apply to the customer's claims to compensation for damage from the facts and circumstances specified in Number 7.1 and it shall not apply to the extent that the law sets forth longer periods in Sections 438, Paragraph 1, Number 2 (of building structures and things for building structures), Section 479, Paragraph 1 (claim to recourse) and Section 634a, Paragraph 1, Number 2 (construction defects) of Bürgerliches Gesetzbuch (German Civil Code). Official acceptance shall be deemed carried out in the aforementioned sense if the customer does not refuse official acceptance giving reasons within three months after shipping each delivery item / work.

6.4 The customer may not rectify any defects or have them rectified by third parties without our written permission. This shall not extend to urgent cases of jeopardising plant safety, averting disproportionately great damage or if we are in default with subsequent performance; however, we shall be notified without delay even in these cases. To the extent that the customer may rectify said defects or have third parties rectify them, it shall have a claim to reimbursement of the appropriate costs of eliminating defects.

6.5 We shall not provide any guarantee if

a) the customer modifies the delivery item without our permission,
b) the delivery item is not set up or started up by our personnel or against their instructions,

c) our operating and service instructions were not followed or the delivery item was otherwise treated improperly,

d) the machine was not operated by expert trained personnel,;

e) we have not been given appropriate opportunity or time for subsequent

performance, or

f) the defect may be attributed to normal wear provided that this caused the defect or our warranty work is frustrated or made unacceptably difficult.

6.6 We shall only provide a guarantee for parts of the delivery not manufactured by us (such as all electrical and electronic components) to the extent that we are entitled to warranty claims towards vendors.

6.7 The customer has to point out to us in due time if the delivery item is exposed to unusual circumstances (such as of a climatic, local or operational nature) or is used in multi-shift operation. If the customer fails to observe these notifications, this shall be at its risk.

6.8 If (any multiple) subsequent performance is unsuccessful, if we refuse it, if it is unacceptable for the customer or if it is superfluous to set an extension pursuant to Section 281, Paragraph 2 and Section 323, Paragraph 2 of Bürgerliches Gesetzbuch (German Civil Code), the customer can at its choice appropriately diminish the remuneration or withdraw from the contract even without the prior definition of an appropriate period for subsequent performance that would otherwise be necessary and it expiring unsuccessfully in the event of the defect being substantial and - provided that we do not prove that we are not culpable - demand compensation for damage pursuant to the specifications of Number 7 or demand reimbursement of its expenditures pursuant to Section 284 of Bürgerliches Gesetzbuch (German Civil Code) unless we did not have to count on this.

6.9 The customer shall declare at our demand within an appropriate period set it in writing by us whether it still insists on the performance and/or which of the claims and rights it is entitled to it asserts. If the customer does not comply with this obligation, exercising these rights or claims of fruitless expiration shall require another appropriate period that is set up by the customer in writing for subsequent performance if we have not already finally refused subsequent performance in advance. Our legal claims to compensation for damage shall remain unaffected.

6.10 The customer's legal right to withdraw from the contract due to a defect in the subject matter of the contract shall not presuppose any culpability on our part. The customer can only withdraw from the contract in all other cases of violation of obligations if we are responsible for said violation of obligations.

7. Liability

7.1 Numbers 7.2-7.5 hereinafter shall extend to all kinds of claims to compensation for damage regardless of what legal grounds they rest on (such as liability for defects, default, violating miscellaneous duties from contractual relationships and obligations, impossibility and disallowed actions), however not to claims due to damage from injuring the customer's life, limb or health or violating the customer's rights and claims with malicious non-disclosure of a defect by us or due to the lack of a condition that we have assumed a warranty for, the customer's claims and rights that rest on the intentional or grossly negligent behaviour of us, our legal representatives or vicarious agents and claims pursuant to the Produkthaftungsgesetz (German Product Liability Law). It shall remain with the statutory regulation for the aforementioned exceptions.

7.2 In the event of causing damage slightly negligently, we shall only be liable if essential rights and obligations are violated that arise from the nature of the contract and whose violation jeopardises achieving the purpose of the contract. Otherwise, our liability shall be ruled out with slightly or simply negligent causing of damage.

7.3 To the extent that there is liability for violating essential contractual obligations with respect to its cause pursuant to Number 7.2, its amount shall be limited to the typical damage that was predictable for us when the contract was signed.

7.4 Any liability existing pursuant to the aforementioned provisions for the typical damage that was predictable for us when the contract was signed shall be limited to the amounts insured of our business liability insurance/professional liability insurance policies and they are 10,000,000 euros each for property damage and personal injury for two cases of damage per calendar year.

7.5 The customer's claims to compensation for damage shall be statute-barred - to the extent that the law does not set forth any shorter period - in the event of liability for defects (Number 6) when the period specified in Number 6.3, Sentence 1 expires and in all other cases in one year beginning with the end of the year when the claims were incurred and the customer became aware of the circumstances establishing the claims and the party liable or would have to become aware of it without gross negligence. Said claims shall be statute-barred in 5 years from their incurrence without regard to the awareness or grossly negligent lack of awareness and without regard to their incurrence and the awareness or grossly negligent lack of awareness in ten years from committing the action, the violation of the obligation or any other event triggering the damage (maximum period).

8. Special Conditions in the Electronic Business

8.1 The customer shall have to ensure with reference to the customer accounts existing for its company that only the employees of the customer distribute electronic orders who were appropriately authorised for this.

8.2 The customer shall have to ensure and correspondingly encourage its employees not to inform third parties of passwords or user identifiers for using its customer accounts and ensure strict secrecy with and securing said information against unauthorised persons gaining access or becoming aware of them.

9. Software

9.1 Our liability for software defects in the objects we deliver shall be ruled out if the customer changes and/or modifies said software without our permission and the defective behaviour may be attributed to that.

9.2 The customer shall connect the delivery item to internet if it constitutes software and perform agreed cooperative actions so that we can carry out remote service.

9.3 The customer shall only be entitled to install updates of software approved by us. If said updates are installed, the customer shall test the compatibility of the update with the specific machine settings by means of test runs supervised by expert personnel before commencing production.

10. Applicable Law and Venue

10.1 Our general terms and conditions do not modify the legal distribution of the burden of proof to the customer's detriment.

10.2 The exclusive venue for all disputes arising directly or indirectly from the contractual relationship shall be Stuttgart, Germany. However, we can bring civil action against the customer at its headquarters.

10.3 German law shall apply exclusively excluding the conflict-of-laws rules of international private law and the UN Convention on the International Sales of Goods.