

Delivery Conditions

1. GENERAL

- 1.1 The following conditions shall apply to all our deliveries. Other conditions shall be binding upon us only, if we have acknowledged them in writing. For services offered by us supplementary separate service conditions shall apply. The following conditions shall also apply, if we execute the delivery unconditionally in knowledge of customer's conditions which are opposed to these conditions or differ from them.
- 1.2 Amendments, additions and verbal agreements shall be invalid without our written confirmation.
- 1.3 Cost estimates shall be non-binding. Our offers shall be non-binding unless they are expressly designated as binding. Binding offers shall expire 90 days after the date of the offer, unless they are extended by us in writing.
- 1.4 These conditions shall also apply to all future deliveries to the customer.

2. INFORMATION, DOCUMENTATION

- 2.1 Details of weights and measures, drawings, explanations, descriptions and illustrations contained in our brochures or other sales literature shall be approximately authoritative; they shall represent a general description of materials and shall not be construed as part of the offer, unless the corresponding data is expressly included in the contract.
- 2.2 We reserve the right to modify the technical concept on which the offer is based, provided that this has no adverse effect on the performance and quality of the item offered, the price or the delivery date.
- 2.3 Our licensors or we shall retain sole ownership and copyright in respect of all software, drawings and other documentation. The drawings and other documentation may not be made accessible to third parties without our consent and shall be returned on request.
- 2.4 Orders shall only be binding for us, if they are confirmed by us in writing.

3. PACKAGING, SHIPMENT

- 3.1 Goods shall be shipped EXW in accordance with Incoterms 2010 from a place to be determined by us.
- 3.2 Unless otherwise specified, prices shall include the costs of customary packing.
- 3.3 We do not assume any liability for least-cost dispatch.
- 3.4 Transport insurance shall be arranged only at the instigation and expense of the customer.

4. DELIVERY

- 4.1 Unless expressly specified otherwise, agreed delivery periods shall relate to shipment from our factory or forwarding department. They do not begin before the customer has fulfilled its obligations to co-operate, in particular by supplying documentation required from it and the agreed advance payments.
- 4.2 Reasonable partial deliveries are permitted.
- 4.3 Delivery periods shall be extended reasonably if the agreed delivery deadlines cannot be met due to Force Majeure or other events beyond our reasonable control, e.g. mobilisation, war, earthquake, flood, fire or other natural disasters, strikes, lock-out, shortage of materials or power, delivery delays on the part of suppliers, national or international import and export restrictions and the like.

Should we be unable to fulfil an order for longer than 2 months due to the aforementioned events we shall have the right to cancel all or part of the order with no resulting entitlement to compensation on the part of the customer. This shall apply even, if the aforementioned events occur at a time when we are in default.

- 4.4 Should we be in delay with a delivery the customer shall upon our request declare within a reasonable timeframe whether it wishes to claim damages instead of the delivery, cancel the order or insist on delivery. The rights of the customer remain unaffected. In case the customer elects to claim damages it shall be entitled to claim liquidated damages in an amount of 0.5% of the price of the part of the delivery which is in delay for each completed week of delay. The aggregate amount of liquidated damages shall not exceed 5% of the price of the part of the delivery which is in delay.
- 4.5 We reserve the right to prove that the actual damage was lower.
- 4.6 Claims for damages which go beyond the limits mentioned in Section 4.4 shall be excluded in all cases of damages for delay, even after expiration of a cure period which may have been granted to us. This shall not apply in cases of mandatory liability for intentional misconduct or gross negligence.

5. RETENTION OF TITLE

- 5.1 We shall retain the right of ownership of the delivered goods until the fulfilment of all claims to which we are entitled under the terms of the commercial relationship, regardless of the legal grounds on which they are based.
- 5.2 The customer shall be entitled to process our products or combine them with other products in the course of its normal commercial operations. We shall acquire joint ownership, which the customer shall hereby transfer to us, of the items produced by the processing or combina-

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- tion, as a security for our claims mentioned in Section 5.1.
- 5.3 We shall grant our customers a revocable right of resale as part of the customer's normal business operations. This right shall lapse in the event of a cessation of payments. The customer shall hereby assign all debts to which he is entitled from the resale, with associated rights; we hereby accept this assignment. The assigned debts shall serve as a security for all debts under Section 5.1. The customer shall be entitled to collect the assigned debts unless we have revoked the authorisation for cause (in particular delayed payment). The collection authorisation shall lapse even without express revocation in the event of cessation of payment or insolvency. At our request, the customer shall inform us immediately in writing of the recipient of the sold goods and of the payments due to it as a result of the sale, and shall provide us at its own expense with publicly authenticated documentation relating to the assignment of the claim. Furthermore we may, following prior warning and allowing a suitable period of grace, disclose the assignment and realise the ensuing claims.
- 5.4 The customer shall not be entitled to otherwise dispose of the items in which we retained the title or for which the corresponding debts were assigned to us. The customer shall inform us immediately of any third-party attachments or other legal impediments.
- 5.5 In the event of a breach of essential contractual duties attributable to the customer, in particular in case of delay in payments or, in the event of a substantial deterioration of the customer's financial situation, we shall be entitled at any time to cancel the contract and to demand the return of the goods which belong to us.
- 6. SOFTWARE, USER RIGHTS**
- 6.1 The customer shall be granted a non exclusive and non transferable right to use the standard software with the agreed performance features in unchanged form on the equipment agreed upon.
- 6.2 Ownership and/or all other rights to the software shall be retained by us or by our licensors. Programs may neither be reproduced nor be modified or disclosed to third parties without our prior written consent.
- 6.3 At the end of the agreed usage period, the customer programs shall, at our discretion, return or destroy original programs and all copies thereof and indicate in writing that he has done so.
- 7. TRANSFER OF RISK**
- 7.1 The delivery shall be carried out "ex works" (in accordance with Incoterms 2010) unless a different delivery term has been agreed between the parties.
- 7.2 The risk shall pass to the customer upon delivery or in case of delivery including installation upon taking into operation or, if so agreed, after successful trial operation.
- 7.3 If dispatch, delivery, beginning or execution of the assembly, taking into operation or trial operation is delayed for reasons attributable to the customer or the customer fails to accept delivery in good time (Annahmeverzug), then the risk shall pass to the customer with the beginning of the delay.
- 8. COMPLAINTS AND NOTIFICATION OF DEFECTS**
- 8.1 The customer shall promptly notify us in writing, at the latest within 10 days of receipt of the goods of any discernible defects. Carton stickers, contents labels or control slips enclosed with the shipment must be enclosed with the notification. The customer shall notify us of any other defects in writing promptly after discovery. The receipt of the notification by us shall be taken into account when considering the timeliness of the notification.
- 8.2 If a customer's defect notification is found to be without merit, we shall be entitled to claim damages from the customer to cover costs incurred by us through the unjustified complaint.
- 8.3 In case the customer fails to provide us with a timely notification of a defect, subsequent warranty claims based upon such defect shall be excluded.
- 9. RECEIPT**
- The customer may not refuse receipt of deliveries because of insignificant defects.
- 10. DEFECTS**
- 10.1 Warranty claims for defects are subject to the statute of limitations after 12 months. The preceding provision shall not apply in cases where law stipulates longer limitation periods in §§ 438 para. 1 no. 2 (buildings and goods for buildings), 479 para. 1 (redress claim) and § 634a (building defects) BGB (German Civil Code).
- 10.2 The limitation period for defects starts with the transfer of risk.
- 10.3 In case a defect occurs of which the cause was set already in the time before the transfer of risk, we may at our discretion either repair the defect or re-supply a defect free product as a warranty fulfilment.
- 10.4 The warranty fulfilment does not trigger a renewed limitation period for defects.
- 10.5 If the warranty fulfilment should fail, the customer can withdraw from the contract or reduce the price regardless of potential claims for damages.
- 10.6 The customer's claims for recovery of damages suffered through the warranty fulfilment, particularly cost for transportation, logistics, time and material costs shall be excluded to the extent these costs increased because the object of the delivery has been brought to an other place than the branch office of the customer subsequent

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to the delivery, unless this change in place corresponds to its agreed use.

10.7 Warrant claims shall be excluded in cases where there is only an insignificant deviation of the qualities agreed upon or only an insignificant impairment of the usefulness.

10.8 The following are not defects:

- natural wear and tear;
- qualities of the product or damage which occurs after the transfer of risk and which result from the non-observance of installation and treatment guidelines or excessive use or because of improper treatment, storage or placement;
- qualities of the product or damage, due to force majeure or which arise due to particular external influences which is not provided for in the contract, or due to the use of the product outside the use which is provided for in the contract or outside its ordinary use;
- non reproducible software fault.

Defect claims are excluded, if the product is changed by third parties or through installation of parts from third parties, unless there is no causal link between the defect and the change.

We shall not be liable for qualities of the product which are due to the construction or the choice of material for the product, if the customer has stipulated the construction or the material.

10.9 We accept redress claims of the customer against us only as far as the customer has not made any agreements with its buyer in excess of the legal warranty obligations.

10.10 Subsections 10.3, 10.6, 10.7 shall not apply as far as it can be proven that our product was sold to a consumer by the customer or customer of the customer without processing or installation into another product.

10.11 Our liability for damages caused by defects is further regulated by Section 11. The rights and remedies set out in this Section 10 shall be the customer's sole and exclusive remedies for defective products.

10.12 Legal deficiencies in the products supplied by us shall be governed also by the provisions set out in this Section 10, unless the deficiency consists in a third party intellectual property right infringement.

11. OTHER CLAIMS FOR COMPENSATION

Unless something different is set out in these Delivery Conditions we shall be liable for damages and compensation of incurred costs within the meaning of § 284 BGB (hereinafter referred to as "damages") due to breach of contractual or extra-contractual obligations only in case of intentional misconduct or gross negligence of our legal representatives or agents, in case of personal injury or death, in case we have extended a guarantee or taken over the risk to obtain specific things, in case of a breach of essential contractual duties, in case of strict liability under the product liability act (Produkthaftungsgesetz) or

any other form of strict liability. The liability for breach of essential contractual duties is limited, however, to foreseeable damage typical for such a contract, as far as there is no intentional misconduct or gross negligence of our legal representatives or agents or any liability because of personal injury or death or because we have extended a guarantee or taken over the risk to obtain specific things. A change of the burden of proof to the disadvantage of the customer is not intended with the preceding provisions.

12. INTELLECTUAL PROPERTY RIGHTS, COPYRIGHTS

12.1 We shall be liable for claims which arise from the violation of intellectual property rights and copyrights only, if the intellectual property right or copyright is not or was not property of the customer or a company which was directly or indirectly controlling, controlled by or under common control with the customer, the customer notified us promptly after becoming aware of any risk of infringement or (alleged) case of infringement and afforded us at our request – as far as possible – the opportunity to conduct any legal disputes (also out of court) and in case of registered intellectual property rights only where at least one registered intellectual property right out of the property right family concerned has been published either by the European Patent Authority or in one of the following states: Germany, France, United Kingdom, Austria or USA.

12.2 At our discretion we may either for the benefit of the customer procure a license for the product (allegedly) infringing an intellectual property right or copyright, or modify the product such that it does not infringe the intellectual property right or copyright anymore or replace it by a product which is similar and does not infringe the intellectual property right or copyright anymore. Should this prove unfeasible for us on adequate terms or in an adequate period, the customer is entitled to the legal right to withdraw from the contract, provided that he has afforded us the opportunity to modify the product. Under the same conditions we shall be also entitled to withdraw from the contract. The provision of Subsection 10.9 shall apply correspondingly. We reserve the right to take the measures provided for in this Subsection 12.2 Sentence 2 even if an infringement of an intellectual property right or copyright has not been finally determined by a court or such an infringement has not been recognised by us.

12.3 Furthermore claims of the customer are excluded if the products are manufactured in accordance with the specification or the instructions of the customer or the (alleged) infringement of the intellectual property right results from the use in combination with another object which did not originate from us or the products are used in a way which we could not foresee.

12.4 Our liability for damages is further regulated by Section 11.

12.5 Subsections 10.1 and 10.2 apply correspondingly to the statute of limitation for claims due to infringement of intellectual property rights and copyrights.

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12.6 This Section 12 sets forth the sole and exclusive remedies of the customer for infringement of third party intellectual property rights and copyrights.

13. EXPORTATION

13.1 Unless the goods delivered by us have been installed into a larger system, they may be exported to other countries only with our written consent. This shall not apply to re-exportation within the European Economic Area.

13.2 In the case of violations we shall be entitled to claim damages besides having the right to withdraw from current orders.

13.3 The customer undertakes to adhere to the German export control regulations (Außenwirtschaftsgesetz), to the US Export Administration Regulations as well as any other export control regulations which may apply, whenever exporting products supplied by us.

14. TERMS OF PAYMENT

14.1 Prices are quoted ex works including customary packaging plus the respectively applicable sales tax; a calculation of the sales tax shall only be waived in case the prerequisites for tax exemption of exportation deliveries are present.

14.2 Payments shall be made in accordance with the terms of payment set by us; as a rule, payment shall become due within 30 days after delivery. We are authorised to allocate payments to the oldest, payable invoice. If a transfer of the payments is impossible from the country from which the payment has to be carried out at the time of the settlement date, then the customer shall nevertheless pay the equivalent of the owed amount from a bank in this country on schedule; in the case of a currency exchange rate deterioration of the amounts paid in a currency not agreed upon between the Parties, the customer shall compensate for the shortfall by additional payment.

14.3 As far as our payment claim becomes jeopardised due to circumstances which cause a substantial deterioration of the customers financial situation, we are authorised to declare all payment obligations arising under the business relationship as immediately due and payable; this shall also apply for deferred payments or acceptance of bills of exchange or checks. Under such circumstances we shall also be entitled to demand advance payments or payment securities for all regular business. The legal remedies for delay in payment shall not be affected by this provision.

14.4 The customer may only make use of any retention rights or use the right to set off in connection with undisputed or finally adjudicated demands.

14.5 Invoicing shall be carried out in EUR. If foreign currency amounts are indicated in the invoices besides the EUR amount, the EUR amount shall govern. Amounts re-

ceived in foreign currency shall be credited with the proceeds obtained in EUR from them.

15. CONFIDENTIALITY

The contracting parties undertake not to make any information received by the other contracting party including this contract accessible to third parties either directly nor indirectly verbally or written or in any other way with the exception of members of their respective corporate group. The obligation for confidentiality does not apply in case information is disclosed to the third party with the express written consent of the disclosing contracting party. The disclosing party reserves all rights for its information.

16. TERMINATION OF CONTRACT

16.1 In the event that either party commits a material breach of this contract the non-defaulting party shall give the defaulting party written notice of the alleged breach and a reasonable time within which to remedy the alleged breach. In the event that the defaulting party fails to remedy the alleged breach within such period the non-defaulting party may upon giving 14 days written notice to the defaulting party (without affecting any other claim or remedy) immediately terminate the Contract (and the license granted herein) or any part thereof.

16.2 Termination for any reason shall not discharge the customer from performing any obligation or from payment of any sums already due or becoming due at the date of termination.

16.3 If either party files for bankruptcy or goes or is put into liquidation (other than solely for amalgamation or restructuring) or if a receiver is appointed over any part of the party's business or if the party suffers the seizure of any property for non-payment of debt, then the other party may regard any such circumstances as grounds for immediately terminating the contract (and in the event that we are the terminating party, the license granted therein) without notice.

17. WASTE DISPOSAL OF ELECTRICAL AND ELECTRONIC EQUIPMENT OUT OF SERVICE

17.1 The customer is obliged to dispose the delivered goods after termination of its use at his own expenses in accordance with the statutory legal provisions. The customer shall indemnify us from our duties according to § 10 para. 2 ElektroG (Obligation to take back of the manufacturer) as well as claims of third parties in connection herewith.

17.2 The customer shall obligate by contract all commercial third parties to whom he is passing on the delivered goods to dispose them properly after termination of use at their own or the customers own cost according to the legal provisions and in the event of a further passing on of the delivered goods to obligate their clients accordingly by contract to a proper waste disposal.

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- 17.3 Should the customer neglect his duties in accordance with clause 17.2, the customer is obliged to taking back the delivered goods at his own expense and to dispose them properly according to the statutory legal provisions.
- 17.4 The customer shall inform us in case of own use of the delivered goods by the customer about the termination of use and disposal in accordance with the statutory legal provisions. The customer shall inform us in case of passing on the delivered goods to commercial third parties or in case of mandating a third party with the disposal of the delivered goods. Furthermore the customer shall provide us on our request if it is not unreasonable with all information necessary for fulfilment of the obligations for manufacturer (particularly § 13 ElektroG) resulting from the ElektroG (e.g. location of the delivered goods, location of disposal).
- 17.5 Our claims resulting from this clause 17 are not subject to the statute of limitations after two years after final termination of use of the delivered goods. This two years lasting suspension of the time limit shall begin at the earliest after receipt of a written notice of the termination of use be the customer.

18. PLACE OF PERFORMANCE, VENUE, APPLICABLE LAW

- 18.1 Place of performance is the forwarding location chosen by us.
- 18.2 Venue shall, at our discretion, be Stuttgart or the location of the business carrying out the order, if the customer
- is a fully qualified merchant, or
 - has no general venue in Germany, or
 - following the conclusion of the contract has relocated his domicile or normal place of residence from Germany or his domicile or his normal place of residence is not known at the time when the action is brought.

We are also entitled to bring action before the court which has jurisdiction over the location of the head office or a branch office of the customer.

- 18.3 The contract shall be governed by and construed in accordance with the laws of Germany. German rules on conflict of laws as far as they refer to a foreign law, the Hague uniform law of sales, the UN uniform law of sales or other international conventions about sales laws shall not be applicable.

19. SUPPLEMENTARY PROVISIONS

Should a provision of these conditions and the further agreements concluded between the parties be or become invalid, then the validity of the remaining provisions shall be unaffected by such partial invalidity.