

## Terms and Conditions of Delivery and Payment

### § 1 General observations

1. These Terms and Conditions shall apply to all the merchandise supplied, services delivered, and offers made by us to business customers or prospects, i.e., any individual or legal entity under private law acting in pursuit of their commercial activities when entering into the present contract or placing their present order, as well as for any legal entity under public law and any separate public estates. These Terms and Conditions shall not apply to consumers as defined by Section 13 of the German Civil Code.
2. These Terms and Conditions shall apply exclusively. Any agreements deviating from these Terms and Conditions of Delivery and Payment shall be null and void unless explicitly agreed to by us in writing.

### § 2 Conclusion of a contract

1. An order placed by a customer shall be considered a binding offer. We shall have the right to accept this offer within two weeks by sending out an order confirmation or the merchandise ordered.
2. We reserve the right to make modifications to the merchandise supplied or services offered – including but not limited to those based on engineering changes or product modifications – inasmuch as these can be reasonably expected to be acceptable to the customer.

### § 3 Terms of delivery, risk of delivery

1. The general time for delivery amounts to three weeks, unless there is more time necessary within demandable inquiries into the customer's creditworthiness. If the contracted merchandise is to be manufactured from a location specification or upon clarification of certain technical issues, the contractual delivery period shall not commence until the date stipulated for the completion of the production.
2. Our meeting our delivery obligations shall be contingent on the customer's timely and adequate fulfilment of his obligations.
3. All deliveries shall be effected to the delivery address given by the customer and at the customer's risk. This shall be true even if delivery is effected from a location other than our warehouse. We shall be under no obligation to deliver to addresses outside Germany. If no delivery address within Germany is given, we shall have the right to effect delivery by making the merchandise ordered available for collection at our place of business. Insurance of the delivery only shall take place at expense and request of the customer.
4. In case of force majeure, particularly natural disasters and not predictable, extraneous dislocation or limitation of traffic as well as legal labour struggles (strike, lockout), we have no obligation to deliver in extent and length of such effects, however, at the most for a period of six (6) weeks. In case that such effects last longer than six (6) weeks, both us and the customer shall have the right to rescind our contractual obligations and to cancel the Agreement. The liability based on proof of fault of assumption, precaution or prevention by us remains unaffected.

### § 4 Terms of payment/Prices

1. Our invoices shall be due and payable in full fourteen (14) days after the invoice date unless otherwise explicitly stated on our order confirmation.
2. The customer shall have the right to set off counterclaims only if these have been determined by a court of law, are undisputed, or have been accepted by us in writing. The customer shall not be able to execute any right of retention as defined by Sections 273 and 320 of the German Civil Code.
3. All our prices are quoted on a net basis and are subject to shipping and handling charges and VAT. Granting of cash discount requires expressed stipulation in writing.
4. We reserve the right to increase our prices accordingly if there have been cost increases subsequent to the date of our Agreement, including but not limited to material cost increases or cost increases due to increased labour costs, and if the period between the date of the Agreement and the agreed

date of delivery exceeds two months. The cost increases shall be documented for our customers on request.

### § 5 Rescission

1. We shall have the right to rescind our contractual obligations and to cancel the Agreement in the event that the customer has suspended payments, has protested against a bill of exchange/draft, or has experienced a deterioration in credit and confidence rating or other events that might put the proper settlement of the business at risk, unless the customer agrees to performance upon tender of counterperformance or provision of security, if so requested.
2. If the merchandise ordered is unavailable through no fault on our part, we also have the right to rescind our contractual obligations. We undertake to inform the customer about the unavailability without delay and to return any payment already made with regard to the unavailable merchandise.

### § 6 Advertising

1. All images contained in our advertising material (catalogues, Internet, brochures, etc.) represent the depicted objects as of the date of going to print or the date of first publication of the respective advertisement. We reserve the right to make technical and other modifications. All price quotes are indicative only and are not legally binding.
2. Images depicting our products in advertising may include special editions or accessories not contained in the basic price of the standard edition.

### § 7 Notification of defects

1. The validity of any claims on the part of the customer shall be contingent on the customer's having duly fulfilled his obligation to inspect the merchandise and to notify us of any defects, as required by Section 377 of the German Commercial Code.
2. Section 377 of the German Commercial Code shall apply to our commercial and other business customers.
3. In the case of overt defects, the customer shall be considered in default of his obligation to inspect the merchandise and to notify us of any defects if notification has not been effected within ten (10) working days from the date of delivery.
4. In the case of covert defects, Subparagraph 3 of this Section shall apply, with the exception that notification is due no later than ten (10) working days from the discovery of the defect.

### § 8 Warranty against defects

1. Within a period of limitation of one (1) year on delivery or acceptance of the merchandise, any defects shall be remedied by us on proper notification by the customer. This shall be effected, at our sole option, of repairing or replacing the defective merchandise free of charge (post-performance).
2. If the defect cannot be repaired or the defective merchandise cannot be replaced within a reasonable period of time or if the repair or replacement should fail for any other reason, the customer may, at his option, request an appropriate price reduction or rescind the contract solely as it relates to the defective delivery.
3. The repair or replacement shall not be considered failed unless we have been given sufficient notice to effect the repair or replacement and such is not effected successfully or if repair and replacement are impossible or if we refuse or unreasonably delay repair or replacement.
4. Any warranty shall be null and void if the customer modifies or allows a third party to modify the merchandise, unless the customer can prove that the defect in question has not been caused by the modifications effected by him or a third party. The same shall be true in the event that the customer uses the merchandise under circumstances other than those explicitly approved for use.
5. The previous Subparagraphs of this Section shall also be effective in the event that consumers raise warranty claims against the customer or the cus-

customer's customers; Sections 478 and 479 of the German Civil Code shall not apply with regard to such claims. In these cases, unless the customer's interests have been adequately satisfied by repair or replacement pursuant to the previous Subparagraphs of this Section, the customer shall be entitled – beyond the statute of limitations mentioned in Subparagraph 1 of this Section, within the statute of limitations defined in Section 479 paragraph 2 of the German Civil Code – to appropriate compensation in the form of a merchandise credit in the amount of the value of the respective defective merchandise.

6. The statute of limitation defined in Sections 438 paragraph 1 subparagraph 2, paragraph 3 and 634a paragraph 1 subparagraph 2, paragraph 3 of the German Civil Code and the limitation of liability defined in Section 10 of these Terms and Conditions shall be unaffected by the Subparagraphs of this Section.

#### **§ 9 Warranty against defects of title**

1. We shall defend the customer against any claim made within the statute of limitations for defects of title (Subparagraph 4 of this Section) arising from a violation of any industrial property rights or copyright by the merchandise as used pursuant to the specifications of the purchasing contract. We shall be liable for any damages due to defects of title – including but not limited to costs and damages determined by a court of law – only if the customer has informed us of such claims in writing, without delay, and has reserved the right, on our behalf, to undertake any defensive action or to enter into any negotiations for settlement.
2. If claims against the customer pursuant to Subparagraph 1 of this Section are made or expected, we shall have the right to modify or replace the merchandise, at our own cost, to the extent these can be reasonably expected to be acceptable to the customer. If this is not possible and if obtaining use rights is not possible at reasonable cost, the customer's rights shall be as determined by the provisions Section 8, Subparagraph 2.
3. We shall be free of any obligations if the claims pursuant to Subparagraph 1 of this Section refer to programs or data provided by the customer or if they are the merchandise not being used in its valid, original form or under circumstances other than those explicitly approved for use.
4. The statute of limitations for defects of title is one (1) year from the date of delivery.
5. The statute of limitations defined in Sections 438 paragraph 1 subparagraph 2, paragraph 3 and 634a paragraph 1 subparagraph 2, paragraph 3 of the German Civil Code and the liability limitations defined in Section 10 of these Terms and Conditions shall be unaffected by the Subparagraphs of this Section.

#### **§ 10 Limitation of liability**

1. Without respect to the legal grounds, we may only be held liable for damages we caused
  - a) by a negligent or intentional violation of essential contractual obligations or in a way that endangers achieving the contractual purpose, or
  - b) by gross negligence or willful misconduct.
2. Should we be held liable pursuant to Subparagraph 1 a) for a violation of an essential contractual obligation without a showing of gross negligence or willful misconduct, its liability is limited to the damage reasonably foreseeable at the time of entering into the Agreement.
3. The limitation of liability set forth in Subparagraph 2 also applies to damages caused by gross negligence or willful misconduct of our employees or agents other than managing directors or executive officers.
4. In all cases of Subparagraphs 2 and 3 we may not be held liable for consequential, indirect, individual, specific or incidental damages or loss of profit.
5. The amount of damages reasonably foreseeable shall in no event exceed the coverage of our liability insurance of 3 Mio €.
6. The limitations of liability pursuant to Subparagraphs 1 through 5 apply accordingly in favour of our employees and agents.
7. Our statutory liability for personal injury or loss of life and our liability pursuant to §§ 1 and 4 of the German Product Liability Act remain unaffected.

#### **§ 11 Industrial property rights**

Any title, copyrights or other industrial property rights of us in the merchandise and in any accompanying documentation remain unaffected.

#### **§ 12 Retention of title**

1. We retain title to the merchandise until all amounts due to us within our business relationship with the customer have been received in full. In case that the customer delays payment or does not fulfil other essential contractual obligations we shall have the right to cancel the Agreement and to claim recovery of possession of the merchandise reserved of ownership. The customer has to tolerate the removal and gain access to his business premises.
2. The customer may resell the merchandise in due course of business. Any other utilization, particularly pledging or transfer of ownership by way of security, is not permitted. The customer is obliged to keep safe and to effect sufficient insurance, in particular against fire and theft, the merchandise. Customer hereby assigns any claims against his insurance company with respect to damaged or lost merchandise.
3. In the event of attachment or seizure or other action on the part of others, the customer shall be obligated to immediately notify us in writing in order for us to be able to institute third-party proceedings pursuant to Section 771 of the German Code of Civil Procedure. To the extent that the third party is not in a position to reimburse us for the cost of legal action in court and out of court pursuant to Section 771 of the German Code of Civil Procedure, the customer shall be liable for this reimbursement.
4. At the time of concluding the Agreement, the customer shall assign to us all claims, in the amount of the final invoice including VAT, arising from any resale against his customers or any third party, independently of whether or not this resale was permitted in the case at hand. The customer continues to be entitled to collect the assigned amounts from his claim, notwithstanding, however, our right to collect the assigned amounts ourselves. We undertake, however, not to collect such amounts for as long as the customer is current with us regarding his payment obligations from the amounts collected and, in particular, as long as no insolvency proceedings have been commenced or payments suspended. Once that is the case, however, we shall have the right to demand that the customer inform us about the assigned claims and the debtors, giving us all the information required for collecting the assigned amounts, handing over all the requisite documents, and notifying the debtors (third parties) of the assignment.
5. Any processing or modification of the merchandise shall be effected on our behalf. If the merchandise is processed together with other products that are not our property, we shall obtain partial ownership in the resulting new products at a ratio corresponding to the value of the merchandise relative to other processed items at the time of processing. The same rules shall apply for the products created by processing as for the merchandise delivered under reservation of the right of ownership.
6. We undertake to release any securities due us, at the customer's request, to the extent that the value of the securities exceeds the claims to be secured by more than twenty per cent (20%). The choice of securities to be released shall be in our sole discretion.

#### **§ 13 Governing law, place of jurisdiction**

1. The contractual relationship with our customers shall be governed exclusively by German law. The United Nations Convention on Contracts for the International Sale of Goods shall not be applied. To the extent that German conflict-of-law regulations prevent the exclusion of certain provisions of other jurisdictions by contractual agreement, these provisions shall remain unaffected.
2. The place of jurisdiction is our place of business. However, we reserve the right to take any legal recourse against our customers at our customer's place of business.