

1. General Provisions
2. Prices and Payment
3. Delivery, Passing of Risk and Taking Delivery
4. Delivery Time
5. Retention of Title
6. Warranty and Notice of Defects
7. Liability
8. Software Use
9. Disposal
10. Confidentiality
11. Place of Performance, Forum and Applicable Law
12. Amendments, Severability Clause

1. General Provisions

1.1 Our General Terms and Conditions, which our customers have accepted by placing their orders, shall be applicable exclusively.

This shall also refer to any future business transactions, even if our General Terms and Conditions are not explicitly referred to but have been forwarded to Purchaser with an order confirmed by us. Orders placed in deviation from our General Terms and Conditions shall also be ruled by our General Terms and Conditions without requiring our explicit contradiction. Any deviations shall only be effective if explicitly accepted by us in writing.

1.2 All offers made by us are subject to confirmation. Orders shall be deemed to be accepted only upon our written acknowledgement. Our acknowledgement is controlling for the terms of the contract if we do not receive a written objection within 14 days following the date of our acknowledgement.

1.3 Collateral agreements made prior or contemporaneously to the conclusion of the contract need in any case our written consent in order to become valid and enforceable.

1.4 If INCOTERMS are agreed for foreign business the definitions apply which are determined and published from time to time by the International Chamber of Commerce in Paris.

1.5 The sale, resale and the disposal of goods and services including any associated technology or documentation may be governed by German, EU, US export control regulations as well as by the export control regulations of further countries. Any resale of goods to embargoed countries or to denied persons or persons that use or may use the goods for military purposes, ABC weapons or nuclear technology is subject to an official license. The customer declares with his order the conformity with such statutes and regulations and that the goods will not directly or indirectly be delivered into countries that prohibit or restrict the import of such goods. The customer declares to have obtained all licenses required for export and import.

2. Prices and Payment

2.1 Our prices are ex works Salem excluding packing, freight and insurance. Value Added Tax will be added to the agreed prices for domestic use by the respective statutory amount.

2.2 Our invoices shall be paid net cash within 30 days after date of invoice unless otherwise stated in our order confirmation.

2.3 In case of deliveries to customers having their principal place of business outside the Federal Republic of Germany, or in case of deliveries which are for export from the above-named territory, we are entitled to request for the opening of an irrevocable letter of credit by a German bank or savings bank which is domestically licensed as guarantor for customs duties or taxes and to deliver the commodities only upon opening of such letter of credit.

2.4 We take bills of exchange or checks only on account of payment. All expenses and charges for discounting or cashing the bills of exchange shall be born by the customer.

Customer Information

For the purposes of initial business contacts/ delivery of goods/ assessing the risk of advance payments/ ordering goods/ we shall commission the Euro Treuhand Inkasso GmbH in Cologne at irregular intervals to conduct business checks (on the probability of debt default-ts) and store the relevant data until the settlement of our invoice.

This information is in compliance with our obligation to provide information pursuant to the Federal Data Protection Law.

2.5 If we get knowledge of circumstances which question the credit standing of the customer all and any of our outstanding debts become immediately due for payment. In such case we are entitled notwithstanding any maturity of received bills of exchange, to demand cash payment against return of the bills of exchange. Our rights accruing out of sec. 321 German Civil Code remain unaffected.

2.6 The customer is not entitled to a right of retention or setting counter-claims off against our claims unless such counter-claims are expressly admitted by us or finally recognized by judgment.

3. Delivery, Passing of Risk and Taking Delivery

3.1 Shipping is made at customer's cost and risk in every case. Deliveries will be insured against transport damage only upon the customer's explicit request and at its cost.

3.2 The risk passes to the customer as soon as the goods leave our factory even if partial deliveries are made. In case that the customer picks the goods up the risk passes to it by the time of notice of readiness for shipment.

3.3 Notwithstanding the customer's rights under section 6. of these General Terms and Conditions delivery of items shall be taken by the customer even if the items show minor defects.

4. Delivery Time

4.1 Binding schedules for deliveries or services (Delivery Schedules) must be expressly agreed as such. An agreed period for deliveries or services (Delivery Period) starts running only upon customer's receipt of our order acknowledgement but in case that the customer has to procure technical specifications not earlier than the time it does so, and in case of orders from abroad only upon presentation of the letter of credit according to section 2.3 of these General Terms and Conditions for Sale, Payment and Delivery. Alterations or extensions of the initial scope of delivery which are agreed upon after conclusion of the agreement appropriately extend respectively postpone the initial Delivery Periods respectively Delivery Schedules.

4.2 The Delivery Period has been observed if the item to be delivered has left the factory, or the readiness for shipment has been notified, before expiration of the Delivery Period. Partial deliveries are permitted.

4.3 After our exceeding a non-binding Delivery Schedule or a non-binding Delivery Period for more than 2 weeks the customer may demand us in writing to deliver within a reasonable period. By such demand we are put in default. If we fall into default the customer is obliged to give us in writing an additional period of time of reasonable length together with its declaration that it will reject performance if not made within the given period. After such additional period has been fruitlessly elapsed the customer is entitled to rescind the contract.

4.4 Failure in deliveries or services due to Act of God or occasioned by strikes, interventions of governmental authorities, interruption of operations, difficulties in procuring material or energy, or other unforeseeable or exceptional circumstances which are not our fault, each regardless of whether such circumstances occur in our or our subcontractors' firm, extend the delivery time by the continuance of the impediment. This provision does not apply to cases where we have committed ourselves to Delivery Schedules or Delivery Periods despite the fact that such circumstances could have been foreseen or we did not take possible and reasonable steps to prevent or overcome such failure or we are responsible for such impediment. Corresponding to the foregoing provisions we are not liable for the named circumstances even if they occur during a then present default. We can invoke these provisions only if we notify the customer of the occurrence and prospective continuance of such failure without undue delay.

4.5 If the customer incurs damage due to a delay which we are liable for, then the customer is entitled to compensation for such damage. The amount of such compensation is limited to 1 percent for each full week of the default – single days portionally –, but not more than 5 percent, of the contract value. This provision does not affect our liability according to section 7.2 and 7.3 of these General Terms and Conditions for Sale, Payment and Delivery.

5. Retention of Title

5.1 We retain title to the delivered goods (Reserved Goods) until full performance of all of our claims arising out of the business relation with the customer even if the particular good has already been paid. In case of current account the retained title provides security for our balance claim.

5.2 Until passing of the title the customer shall insure the delivered item against theft, breakage, fire, water or other damage. The customer assigns already now all rights ensuing from the insurance contracts and its claims against the insurer to us. We accept the assignment.

5.3 The customer is not permitted to pledge nor to assign the Reserved Goods as security. In case of any pledge as well as seizure or other dispositions the customer has to inform us without undue delay.

5.4 If the customer does not adhere to a term of payment or falls in default with the payment of mature bills of exchange or checks, wholly or partly, or if it commits a breach of contract in any other respect then we are entitled to take the Reserved Goods back after demand for performance. This provision applies, too, if the customer becomes over indebted or suspends payments, or if a petition is filed for insolvency proceedings against its assets, or if any other material deterioration of its economic standing occurs. If we claim our retention of title or levy execution against delivered items such action shall not be deemed rescission of the contract.

5.5 If the resale of the delivered items is the business of our customer then our customer is permitted to resale the delivered items in the ordinary course of business and at its normal terms as far as the customer is not in default with payment. For the occasion of such resale the customer assigns to us already now the claims ensuing from the respective legal transaction up to the amount of our invoice value. We accept hereby the assignment. Even after such assignment the customer is authorized to collect these claims until revoked by us which we can do at any time. This does not affect our power to collect the claim by our own; but we commit ourselves not to collect the claims as long as the customer properly meets its debts. We may require the customer at any time to inform us about the assigned claims and the debtors thereof, to give us all information necessary for the collection, to deliver to us the necessary documents, and to notify the debtors of the assignment.

5.6 If Reserved Goods are resold by the customer together with other goods which do not belong to us then the customer's claim against the purchaser is assigned to us already now up to the amount of the delivery price which has been agreed upon between us and the customer. Processing or reconstructing of the Reserved Goods is made for us at any time without our assuming any obligation. In case of processing or union with items delivered by third parties we retain co-ownership in the new good in the ratio of value of the good delivered by us and the new good.

5.7 We agree to release the securities due to us to the extent that their value exceeds the claims to be secured by more than 20%.

6. Warranty and Notice of Defects

6.1 The customer has to inspect the delivered good carefully without undue delay after receipt and to give notice to us in writing of possible defects without undue delay after such defects could be detected.

6.2 In case of a defective delivery respectively service the customer is entitled – at our option – either to subsequent improvement or to replacement delivery (Subsequent Fulfillment) at no cost. If the subsequent improvement or replacement delivery also fails to remedy the defect the customer may at its discretion demand either the purchase price respectively the service price be reduced (Reduction of Price) or the contract be cancelled (Cancellation of Contract). A Cancellation of Contract is excluded if the defect diminishes the good's respectively the work's value or fitness only insignificantly. If we fall in default with the subsequent improvement or the replacement delivery the customer may claim the same rights after an additional period of time has elapsed fruitlessly; such additional period of time, however, must be set in writing.

6.3 We guarantee in the meaning of Sec. 443 German Civil Code for certain qualities of the sold good or work only if we undertake such guarantee expressly and in writing, this does not apply in case of a consumer goods contract.

6.4 Any warranty is excluded if our delivery item has been altered, particularly by implanting foreign parts without authorization and if it cannot be excluded that such alteration caused the defect.

6.5 All warranty-claims become time-barred one year after delivery of the good sold or acceptance of the work. This is not the case if the item sold or delivered has been used – in conformity with its usual utilization – for an edifice and has caused its defectiveness.

6.6 We may refuse to remedy defects as long as the customer is in default with its obligations. This provision does not affect a right of retention arising out of possible defects of delivery up to the double amount of the cost of subsequent improvement.

7. Liability

7.1 Claims for damages because of neglect of any and all contractual or quasi-contractual obligations and claims for damages based on tort – particularly as to consequential damages – are excluded.

7.2 Our liability for damages arising from injuries to life, body or health, for claims under the Product Liability Law as well as for express written guarantees and in all cases where intent or gross negligence can be imputed to us remains unaffected.

7.3 As far as culpable violations of material contractual duties in the meaning of sec. 307 subsec. 2 sentence 2 of the German Civil Code are concerned we are liable even in cases of slight negligence but only for the foreseeable and typically arising damage and up to the amount of our liability insurance's cover.

7.4 The limitation period for claims against us –based on whatever legal ground – is 12 months from the date of delivery to the customer and in case of tortious claims 12 months from the date the customer becomes aware or would have become aware of the grounds giving rise to a claim and the liable person, had the customer not been grossly negligent.

7.5 If the customer is an intermediary seller of the goods obtained from us and the final purchaser of the goods is a consumer, the limitation period for any action of recourse against us by the customer shall be the period specified by statute.

7.6 Our liability for software supplied by us shall be limited to liability for losses or alteration of data caused by the program; however, we shall not be liable for any losses or alteration of data which could have been avoided by the customer's compliance with its duty to secure such data at appropriate intervals and at least once per day.

8. Use of Software

8.1 To the extent that software is included in the scope of delivery, the purchaser is herewith granted the non-exclusive right to use the software and documentation supplied. Its use is permitted with respect to the goods supplied. The software shall not be used on more than one system.

8.2 The purchaser shall be allowed to copy, revise or translate the software or convert the object code into the source code only as legally permitted by Sec. 69 et seq. of the German Copyright Act (UrhG). The purchaser undertakes not to remove manufacturer identification labels – including, but not limited to copyright marks – without having obtained the prior express consent of the Supplier.

8.3 Typically, no source programs are provided. This shall require a special written agreement in each particular case.

8.4 All other rights to the software and documentation, including any copies that may exist, shall remain with the Supplier and/or the software supplier. No sub licences shall be granted.

9. Disposal

9.1 The customer is obliged to closely observe our goods accompanying documents and to ensure the correct disposal of the goods in accordance with the applicable law.

9.2 In case the customer is a businessman, the customer shall be obliged to dispose the goods at own costs. The customer shall be obliged to transfer this obligation on the purchaser of the goods or parts thereof in case of a resale of the goods. In case the customer is a consumer, the statutory provisions regarding disposal of waste shall apply.

10. Confidentiality

10.1 Unless otherwise expressly stipulated in writing, no information provided to us in connection with orders shall be regarded as confidential, unless their confidential nature is obvious.

10.2 We point out that personal data in relation to our contractual relationship may be stored by us and may be transferred to companies associated with us in the corporate group, too.

11. Place of Performance, Forum and Applicable Law

11.1 Exclusive place of performance for both contractual parties is our place of business 88682 Salem. As far as our customers are merchants in the meaning of the German Commercial Code the forum is agreed to be Konstanz, Germany. This does not apply in case of summary proceedings for order to pay debts. We are entitled to assigning any claims arising from our General Terms and Conditions.

11.2 The contractual relationship shall solely be ruled by German Law and, in particular, by the German Civil Code and Commercial Code.

11.3 If Buyer should be in default with any payment obligations towards us, all existing claims/receivables shall become due for payment immediately.

12. Amendments, Severability Clause

12.1 Amendments of these General Terms and Conditions for Sale, Payment and Delivery or other contractual arrangements must be in writing.

12.2 Should particular provisions of these General Terms and Conditions for Sale, Payment and Delivery become ineffective by a law or a particular contract then this will not affect the effectiveness of the remaining provisions.