

## Terms and Conditions for Sale and Delivery

### I. General

1. All supplies and performances are based on these conditions as well as any separate contractual agreements. Any Customer purchasing conditions that deviate from or conflict with these terms and conditions are not included in the contents of this contract on acceptance of an order. These conditions take precedence over any Customer purchasing conditions unless a specific written agreement to the contrary exists. The Customer sets forth their agreement with these conditions upon placement of the order with the Supplier.
2. The Supplier retains ownership rights and copyrights over samples, cost estimates, drawings and such like, as well as over physical and virtual information (including information in electronic format); the aforementioned may not be made accessible to third parties by the Customer. The Supplier is obliged to consider information and documents that are designated by the Customer as confidential accessible to third parties only with the agreement of the Customer.

### II. Price and Payment

1. In the absence of any special agreement, prices apply ex-works and include loading at the factory, but exclude packing and unloading. Prices are plus any applicable taxes at the correspondingly applicable legal amount.
2. In the absence of a special agreement, payment is to be made to the Supplier's account following delivery without any discount. The Customer bears the costs of making payment. Field staff of the Supplier are not authorized to collect and payments.
3. Surrendering a bill of exchange or check is not considered payment until the full proper payment amount is redeemed or deposited in the Supplier's account. The Customer bears the costs for discounting and collection.
4. Payments received are credited against older debts first. If costs and interest have arisen, then the Supplier is authorized to credit for payment of costs of the interest first and then of the main debt.
5. The Customer has the right to retain payments or offset with counter-claims only to the extent that his counter-claims have been determined as indisputable or final and absolute by a court of law.

### III. Supply Period, Supply Delays

1. The supply period is determined by agreements between the contract parties. Compliance by the Supplier presupposes that all commercial and technical queries between the contract parties have been resolved and that the Customer has fulfilled all obligations incumbent on him, such as procuring the requisite, official certifications or authorizations or making an advance payment. If this is not the case, then the supply period is extended appropriately.
2. Compliance with the supply deadlines is with the proviso that the Supplier receives their own supplies in a timely manner and in good order.
3. The supply deadline is complied with if the contract item has left the Supplier's factory by expiry of said deadline or has been registered as ready for dispatch and the Customer has been notified that the contract item is ready for shipment. If an acceptance procedure must be carried out, then (except in cases of justifiable refusal of acceptance) the acceptance deadline is the deciding factor, alternatively notification of readiness for acceptance.
4. If shipping or acceptance of the contract item is delayed for reasons attributable to the Customer, then all the costs resulting from this delay will be invoiced to him starting one month after notification of readiness for dispatch or acceptance.
5. If non-compliance with the supply time is due to Force Majeure, industrial disputes or other events outside of the influence of the Supplier, then the supply period is extended appropriately. The Supplier will inform the Customer about the start and finish of such circumstances at the earliest opportunity.
6. The Customer can withdraw from the contract without setting any time limit if the Supplier notifies the Customer that performance of his duties before transfer of risk is impossible not due to any fault of the Customer. Furthermore, the Customer can withdraw from the contract if, with regard to an order, the Customer is notified by the Supplier that it is impossible to provide the complete order and the Customer has a justified and reasonable interest in refusing partial supply. If this is not the case, then the Customer must pay the contract price due for the partial supply.
7. If the Supplier falls behind schedule and damages arise for the Customer as a result of this, then the Customer is entitled to demand a flat-rate damage compensation fee. This fee amounts to 0.5 % for each full week of delay, subject to a maximum of 3 % of the value of the respective part of the total delivery, where that delivery cannot be used on schedule or in accordance with the contract as a result of delay.

### IV. Transfer of Risk, Acceptance

1. The risk transfers to the Customer when the contract item has left the factory and also in those cases when partial deliveries are made or the Supplier has taken on other performances, e.g. shipping costs or delivery and set-up.
2. If delivery is delayed or does not take place as a result of circumstances that are not attributable to the Supplier, then the risk transfers to the Customer from the day of notification of readiness for shipping. The Supplier is obligated to arrange insurance policies requested by the Customer which are then charged to the Customer.
3. Partial deliveries are permitted as long as these are reasonable for the Customer.

### V. Retention of Title

1. All goods supplied remain the property of the Supplier (goods subject to the retention of title) until the fulfilment of all demands, in particular full payment of any account balance.
2. The Customer may only sell the goods subject to the retention of title as long as he is not in default of payment, provided that the demands arising from reselling are transferred to the Supplier in accordance with Nos 4 to 6. He is not entitled to other means of disposal regarding the goods subject to the retention of title.
3. Transfer of debts arising from reselling is not permitted.
4. The Customer must inform the Supplier immediately about any seizure or other inhibiting activities by third parties. The Customer bears all costs that must be expended to revoke access or to transport back goods subject to the retention of title, as far as these are not replaced by third parties.
5. If the Customer is in default of payment by its due date, then the Supplier is entitled to right of repossession on the goods.

### VI. Warranty

The Supplier guarantees, consistent with applicable law, that there will be no material defects and defects of title of the delivery of contract product to the exclusion of any further claims – except for Section VII:

#### Material defects:

1. All those parts that prove to be faulty as a result of circumstances before transfer of risk are to be improved or redeveloped, depending on the choice of the Supplier, free of charge. Once said defects have been determined by the Customer they are to be reported immediately in writing to the Supplier. Replaced parts become the property of the Supplier.
2. In order to carry out all the improvements that appear necessary to the Supplier to provide replacement supplies, the Customer must state the necessary time and opportunity following agreement with the Supplier; otherwise, the Supplier is released from any liability for consequences resulting from this. Only in urgent cases where operational safety is endangered or in order to avert excessively large damage where the Supplier must be informed immediately, then the Customer has the right to remove the defect by their own efforts or by a third party and to demand compensation for the necessary expenditures from the Supplier.

3. The supplier bears the costs arising from improvement work or replacement delivery – in as far as the claim proves to be justified - and the costs of the replacement part including dispatch and the appropriate costs for dismantling and installation. Furthermore, if the individual case calls for it, the demand can rightly be made to include the costs for any necessary provision of his mechanics and auxiliary staff.

4. Within the context of the legal guidelines, the Customer has the right to withdraw from the contract if the Supplier allows an appropriate deadline to expire without any results where that deadline was set for him to improve or replace the delivery because of material defects. If the defect is not considerable, then the Customer merely has a right to have the contract price reduced. Otherwise, the right for a reduction in the contract price remains excluded.

5. No guarantee is assumed in particular for the following cases:

Unsuitable or improper use, faulty assembly or commissioning by the Customer or a third party, natural wear, faulty or negligent handling, incorrect maintenance, unsuitable operating materials, faulty construction work, unsuitable site, chemical, electro-chemical or electrical influences – in as far as the Supplier is not responsible for these.

Used contract items are carefully checked before being sold; nevertheless, liability for material defects is excluded.

Certain components are subject to wear and tear during operation. No claims based on defects can be made valid for wear due to operation.

6. If the Customer or a third party makes any improper improvements, then the Supplier is not liable for any consequences resulting from this.

The same applies for any changes made to the contract item that have been undertaken without previous agreement by the Supplier.

**Defect of title:**

7. If using the contract item leads to an infringement of industrial property rights or copyrights at home (as opposed to abroad), then at his own expense, the Supplier will procure in principle the right to further use for the Customer or modify the contract item in a way reasonable for the Customer so that the property right infringement no longer exists.

If this is not possible for economically appropriate conditions or is not possible within an appropriate period of time, then the Customer is entitled to withdraw from the contract. Under these specified prerequisites, the Supplier also has a right to withdraw from the contract.

Furthermore, the Supplier will release the Customer from any undisputed claims or claims recognized by declaratory judgement by the relevant owner of the industrial property rights.

8. The Supplier's obligations stated in Section VI. 7, subject to Section VII. 2, for the case of infringements of property rights and copyrights are final.

They only exist if

- The Customer informs the Supplier immediately about any valid infringements of property rights or copyrights,
- The Customer supports the Supplier to the appropriate degree in defending against the contended claims, or makes it possible for the Supplier to carry out modification measures in accordance with Section VI. 7,
- The Supplier retains all rights regarding defense measures including extrajudicial regulations,
- The defect of title is not based on any instruction from the Customer, and
- The infringement of rights was not caused as a result of the Customer making any changes himself to the contract item or using it in a manner not in compliance with the contract.

## VII. Liability

1. Sections VI applies to the exclusion of further claims by the Customer if the contract item cannot be used by the Customer in compliance with the contract due to a fault solely attributable to the supplier as a result of omitted or faulty implementation of suggestions and advice made before or after conclusion of contract, or as a result of infringement of other contractual collateral obligations – in particular instructions for operation and maintenance of the contract item.

2. All other claims are excluded.

## VIII. Limitation of Actions

1. All Customer claims – for whatever legal reasons – must be commenced within 12 months or they are deemed expired and untimely.

## IX. Use of Software

1. In as far as software is included in the scope of delivery, the Customer is being granted a non-exclusive right to use the software supplied including its documentation. The right is transferred for use on the contract item it is determined for. Use of the software on more than one system is prohibited.

2. The Customer may only reproduce, revise or translate the software or transform the object code into the source code within the context of the legally permissible scope. The Customer is obliged not to remove the manufacturer's information – in particular the copyright marks – or change said information without previous, explicit agreement by the Supplier.

3. The Supplier and/or the software suppliers retain all other rights on the software and documentation including copies thereof. Allocation to sub-licensees is not permitted.

## X. Applicable Law, Place of Jurisdiction

1. The law of the State of New York applies exclusively for all legal relations between the Supplier and the Customer. This Agreement shall be deemed made by, governed by, and construed in accordance with the laws of the State of New York, without giving effect to conflict of law principles thereof.

2. Place of fulfilment for supply and payment (also for bills of exchange and cheque complaints) is the head office of the Supplier.

3. Place of jurisdiction is the court responsible at the headquarters of the Supplier located in New York State. Any action by either party arising out of this Agreement shall be commenced in a court of competent jurisdiction in the State of New York. The Customer hereby consents to any action being commenced in a court of competent jurisdiction in the State of New York regarding any aspect of this Agreement.

4. This Agreement, including any Exhibits or attached sales orders, contains all the representations, warranties, covenants, agreements, terms, provisions, and conditions relating to the rights of Supplier and Customer with respect to the contract product. No alterations, amendments, or modifications shall be valid unless executed in writing by the parties hereto.