

Conditions of Sale and Delivery

I. General

1. The scope of supplies or services (hereinafter: Supply) is governed by the written statements of both parties. The general trading conditions of the Purchaser shall only apply, however, to the extent that the Supplier or Service Provider (hereinafter: Supplier) has expressly accepted them in writing. There are no other verbal or written agreements or understandings between the parties with respect to this contract or any of the subject matters settled therein.
2. The Supplier fully reserves its proprietary utilisation rights and copyright with respect to estimates, drawings and other documents (hereinafter: Documents). Documents must not be disclosed to third parties without the prior consent of the Supplier and shall be promptly returned to the Supplier at its request should no order be placed with the Supplier. Clauses 1 and 2 equally apply to documents of the Purchaser; the latter may, however, be disclosed to third parties to which the Supplier has assigned a part of the Supply as allowed under the contract.
3. The Purchaser has the non-exclusive right to use standard software with the agreed performance characteristics in unmodified form on equipment as agreed. A backup copy may be made by the Purchaser without an express agreement being made to that effect.
4. Partial shipments are acceptable to the extent that they may be reasonably asked of the Purchaser.

II. Prices and Terms of Payment

1. The offer is without obligation unless otherwise agreed in writing.
2. Prices are quoted ex works, and exclude packing and the current statutory value added tax. Should the cost of materials and/or operating costs increase between the date of the order and the date of delivery, the Supplier reserves the right to adjust prices accordingly.
3. If the Supplier has contracted to undertake installation or mounting and unless otherwise agreed, the Purchaser shall in addition to the agreed rate of remuneration bear all necessary related costs such as travelling expenses, freight charges for tools and personal luggage as well as allowances.
4. Invoices are payable in cash in full within 30 days of the date of the invoice. Payment shall be effected free of charge to the accounts office of the Supplier.
5. The Purchaser shall only be allowed to set off payment against claims that are undisputed and declared legally effective.
6. Should the Purchaser default in payment, the Supplier – without serving notice of default – shall be entitled to charge interest after the due date at a rate of 5% above the base lending rate.
7. Cash payments, bank transfers or payments by cheque which are effected against forwarding a bill of exchange issued by the Supplier and accepted by the Purchaser, are not deemed to be payment and settlement of the account payable until the bill of exchange has been discharged by the drawee and the Supplier has thereby been released from responsibility for the bill.

III. Retention of Title

1. The items supplied (reserved goods) remain the property of the Supplier until all present and future claims arising out of the business relationship have been satisfied by the Purchaser. Should the realisable value of all charging liens due to the Supplier exceed by 50% the amount of all secured claims, the Supplier will waive a corresponding part of the charging lien if so requested by the Purchaser.
2. As long as the retention of title is effective, the Purchaser shall be prohibited from pledging or transferring by way of security the items supplied, and Resellers alone shall be authorised to resell the items in the normal course of business and subject to the Reseller receiving payment from its client or with the proviso that the property shall not pass to the client until the latter has met its financial obligations. All receivables accruing to the Purchaser against its Buyer from the resale are forthwith assigned to us. Upon the assignment of receivables the Purchaser remains entitled to collect such receivables without prejudice to the right of the Supplier to collect such receivables itself. The Supplier undertakes not to collect such receivables, however, as long as the Purchaser duly meets its financial obligations towards the Supplier. The Supplier may, however, require the Purchaser to identify the debtors of the assigned receivables and to notify such debtors of the assignment.
3. The Purchaser shall immediately notify the Supplier of any seizures, confiscation or other disposals or interventions by third parties.
4. Should the Purchaser fail to comply, in particular by not effecting payment by the agreed date, the Supplier shall be entitled to withdraw from the contract and to recover the items supplied if the Purchaser fails to provide remedy within a reasonable period of time appointed by the Supplier; the provisions of the law regarding the possibility of dispensing with the fixing of a time limit remain unaffected. The Purchaser shall undertake to surrender the items.

IV. Scope of Delivery Obligations, Delivery Periods , Delay

1. Compliance with delivery deadlines is conditional upon the timely receipt of all documents to be supplied by the Purchaser, necessary permits and release notes, and in particular

plans/schedules, as well as upon compliance by the Purchaser with the agreed terms of payment and other obligations. Should any of these preconditions not be met by the due date, delivery deadlines shall be extended accordingly unless the delay is attributable to the Supplier. The scope of our delivery obligations shall be governed by our confirmation of the order in writing. We reserve the right to make technical modifications during the delivery period that will not adversely affect the function of the items supplied. Documents which form part of the offer, such as illustrations, drawings and declarations of weight, shall only be binding if they are expressly designated as such. The delivery period specified by the Supplier shall commence on the date of the order confirmation, but not before all design details and all preconditions to be met by the Purchaser have been fully clarified. The delivery date shall be the loading date or the date on which the order is ready for shipment.

2. Should the non-compliance with deadlines be due to Force Majeure, e.g., mobilisation, war, unrest or similar events such as strikes or lockouts, deadlines shall be extended within reason.
3. Should the Supplier fail to meet the deadline, and the Purchaser be able to demonstrate that it has suffered consequential loss, the Purchaser may charge compensation amounting to 0.5% per full calendar week, but limited to a maximum of 5% in total, of the price of the portion of the Supply that could not be put into useful service because of the delay.
4. Claims for Damages by the Purchaser for delays in delivery as well as Claims for Damages in lieu of execution exceeding the limits specified in clause 3 will not be considered in all cases of delays in delivery including the expiration of a time limit fixed by the Purchaser and indicated to the Supplier, with the exception, however, of compulsory liability in the case of wrongful intent, gross negligence or injury to life, bodily injury or injury to health. Under the provisions of the law, the Purchaser cannot withdraw from the contract unless the delay in delivery is attributable to the Supplier. The above provisions do not imply a shift in the burden of proof to the detriment of the Purchaser.
5. At the request of the Supplier the Purchaser is required to state within a reasonable period of time whether it is withdrawing from the contract as a result of the delay, or whether it insists on the Supply being effected.
6. Should the Purchaser request that the dispatch or the delivery be delayed by more than one month from the date of the advice of readiness for shipment, storage fees at a rate of 0.5% up to a maximum of not more than 5% of the cost of the items to be supplied may be charged for every full month or part of a month, notwithstanding the right of the parties to furnish evidence of higher or lower storage costs.

V. Transfer of Risk

1. Even if the carriage is paid by the Supplier, the risk shall pass to the Purchaser as provided below:
 - a) If the scope of supply does not include installation or mounting services: upon dispatch or collection of the items. At the request of the Purchaser the Supplier may take out insurance against common transport risks.
 - b) If the scope of supply includes installation and mounting services: on the date of take-over on the Purchaser's premises or – if so agreed – upon successful completion of the test run.
2. Should the dispatch, the delivery, the starting date, the performance of installation or mounting work, the take-over on the Purchaser's premises or the test run be delayed for reasons attributable to the Purchaser, or should acceptance by the Purchaser otherwise be delayed, the risk shall pass to the Purchaser.

VI. Installation and Mounting

1. Unless otherwise agreed in writing, the following provisions shall apply to installation and mounting work:
 1. The Purchaser shall be responsible for the timely provision of the following at its own expense:
 - a) any excavation, civil engineering and other auxiliary work alien to the trade including the provision of skilled and unskilled personnel, construction materials and tools needed for this purpose,
 - b) auxiliary objects and materials required for mounting and commissioning such as scaffolding, lifting gear and other devices, fuels and lubricants,
 - c) power and water at the place of use including connections, heating and lighting,
 - d) adequately sized, appropriate, dry and lockable rooms for storing machinery parts, apparatus, materials, tools, etc. near the place of mounting, as well as adequate shop space and common rooms for the mounting personnel including such sanitary facilities as can be reasonably expected at the location; in addition the Purchaser shall take the same action for the protection on site of the property of the Supplier and the mounting personnel as it would take for the protection of its own property,
 - e) protective clothing and equipment as may be required by the particular circumstances at the place of mounting.
 2. Before the start of any mounting work the Purchaser shall, unprompted, provide necessary details of the routing of concealed power, gas and water lines or similar facilities, as well as any static data required.
 3. Before the start of any installation or mounting work the provisions and materials needed for the commencement of mounting operations shall be available at the place of installa-

tion or mounting, and all preparatory work prior to the commencement of installation and mounting operations shall be in a state of progress that will allow installation or mounting to proceed as arranged and to be completed without any interruption. The place of installation or mounting and access routes shall be levelled and cleared.

4. Should installation, mounting or commissioning services be delayed by circumstances not attributable to the Supplier, the Purchaser shall bear reasonable expenses for standby time and additional travelling expenses of the Supplier or the mounting personnel as required.
5. The Purchaser shall promptly issue to the Supplier weekly certificates showing the working hours of the mounting personnel as well as a certificate of completion of installation, mounting or commissioning.
6. Should the Supplier request an inspection upon completion of the Supply, the Purchaser shall arrange for such an inspection within two weeks. If the Purchaser fails to do so, the items supplied shall be deemed to have been accepted. Acceptance is also deemed to have occurred when the items supplied have been put into use; upon completion of a test phase as agreed, if any.

VII. Receiving

The Purchaser is not entitled to refuse to receive the Supply because of negligible defects.

VIII. Defects of Quality/Complaints

Liability of the Supplier for defects of quality is governed by the following provisions:

1. All parts or services affected by a defect of quality within the period of limitation – irrespective of the operating time – shall be repaired, replaced or re-performed free of charge at the discretion of the Supplier provided that the cause of the defect already existed at the time of the transfer of risk.
2. Claims for defects of quality expire after twelve months have elapsed. This does not apply to the extent that the law pursuant to Articles 438 section 1 sub-section 2 (Buildings and things used for building), 479 section 1 (Claims asserting a right of recourse) and 634a section 1 sub-section 2 (Building deficiencies) of the German Civil Code (BGB) provides for longer periods or in the case of injury to life, bodily injury or injury to health, in the case of a wilful or grossly negligent breach of duties by the Supplier or in the case of fraudulent concealment of a deficiency. Legal regulations with regard to suspension of the running of a period, or suspension and the fresh start of periods are not affected.
3. The Purchaser shall promptly notify the Supplier in writing of any defect of quality. The Purchaser shall give the Supplier the opportunity to examine the defect in question.
4. When a complaint is lodged against the Supplier, the Purchaser may retain such payment as is reasonably proportionate to the defects discovered. Payments shall not be retained by the Purchaser unless the complaint can be totally substantiated. If a claim is found not to be substantiated, the Supplier shall be entitled to demand reimbursement of any expenses incurred from the Purchaser.
5. The Supplier shall first be given the opportunity to re-perform within a reasonable period of time.
6. Should the Supplier fail to correct the defect by re-performance, the Purchaser may withdraw from the contract or reduce the compensation without prejudice to its right to claim damages pursuant to Article XI.
7. Claims arising from a defect may not be lodged for minor deviations from the quality agreed, for a negligible impairment of serviceability, for natural wear or for damages arising after the transfer of risk from faulty or negligent handling, excessive strain, improper operating facilities, defective construction work, unsuitable subsoil or because of particular external influences not allowed for under the contract, as well as in the case of software errors that cannot be reproduced. Moreover, the Purchaser shall not be entitled to lodge claims for defects arising from any modifications or maintenance work improperly performed by the Purchaser or any third party or the consequences of such work.
8. Claims made by the Purchaser for expenses necessary for the purpose of re-performance, in particular handling, transport, working and material costs, will not be considered to the extent that expenses increase because the item supplied has subsequently been relocated to a site other than the place of business of the Purchaser, unless such relocation conforms with its intended use.
9. Claims under a right of recourse of the Purchaser against the Supplier under Article 478 of the German Civil Code (Businessperson's right of recourse) may only be lodged to the extent that the Purchaser has not made any arrangements with its Buyer beyond the scope of legal claims arising from defects. Moreover, the extent of the claim under a right of recourse the Purchaser may have against the Supplier under Article 478, section 2 of the German Civil Code is governed by clause 8.
10. In all other respects Claims for Damages are governed by Article XI (Other Claims for Damages). No further claims, or claims made by the Purchaser against the Supplier or its agents resulting from a defect in quality other than those set out in this Article VIII will be considered.

IX. Industrial Property Rights and Copyright; Defects in Title

1. Unless otherwise agreed, the Supplier is required to execute the Supply free from industrial property rights and copyrights of third parties (hereinafter: Proprietary Rights) in the country of the place of delivery only. Should a third party raise justified claims against the Purchaser for an infringement of Proprietary Rights by items supplied by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the period as per Article VIII clause 2 as set out below:

- a) The Supplier will at its own discretion and expense either obtain the right of use for the affected items supplied, modify them so that the Proprietary Right is no longer infringed, or replace the items. Should the Supplier be unable to do so under reasonable conditions, the Purchaser shall be entitled within the law to rescind or to obtain a price reduction.
 - b) The obligation of the Supplier to pay compensation is governed by Article XI.
 - c) The aforementioned obligations of the Supplier are subject to the Purchaser serving prompt notice in writing to the Supplier of any claims raised by the third party, failure to acknowledge an infringement by the Purchaser, and reservation of all defensive action and negotiations for settlement to the Supplier. Should the Purchaser discontinue the use of the items supplied in order to mitigate damages or for other important reasons, it shall undertake to notify the third party that the discontinuation of use does not imply the acceptance of an infringement of Proprietary Rights.
2. Claims on the part of the Purchaser will not be considered to the extent that the Purchaser is responsible for the infringement of Proprietary Rights.
 3. Moreover, claims on the part of the Purchaser will not be considered to the extent that the infringement of Proprietary Rights is caused by specific specifications of the Purchaser, by a use the Supplier could not have foreseen, or by the fact that the items supplied have been modified or are used together with other products not supplied by the Supplier.
 4. In the case of infringements of Proprietary Rights the claims the Purchaser may lodge shall be as set out in sub-clause 1 a); in all other respects the provisions of Article VIII, clauses 4, 5 and 9 shall apply accordingly.
 5. For all other defects in title the provisions of Article VIII shall apply accordingly.
 6. No further claims, or claims made by the Purchaser against the Supplier or its agents resulting from a defect in title other than those set out in this Article IX will be considered.

X. Impossibility; Adaptation of the Contract

1. If delivery is impossible, the Purchaser shall be entitled to demand compensation unless the impossibility is not attributable to the Supplier. The claim for compensation on the part of the Purchaser shall, however, be limited to 10% of the value of the portion of the items to be supplied that cannot be put into useful service because of the impossibility of the situation. This limitation shall not be effective to the extent that liability is compulsory in the case of wrongful intent, gross negligence or injury to life, bodily injury or injury to health; this provision does not imply a shift in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to withdraw from the contract is not affected.
2. Should unforeseeable events as per Article IV, clause 2 substantially alter the economic importance or the contents of the Supply or substantially affect the business of the Supplier, the contract shall be altered within reason in good faith. Should such an alteration not be justifiable on economic grounds, the Supplier shall have the right to withdraw from the contract. If it intends to exercise this right of rescission, it shall notify the Purchaser of its intention to do so as soon as it recognises the implications of the event, even if an earlier arrangement with the Purchaser provided for an extension of the delivery period.

XI. Other Claims for Damages

1. Claims by the Purchaser for damages and reimbursement of expenses (hereinafter: Claims for Damages) for any legal reasons whatsoever, in particular resulting from failure to comply with contractual obligations or illegal action, will not be considered.
2. The aforesaid does not apply to the extent that liability is compulsory, e.g. under the product liability statute, in the case of wrongful intent, gross negligence or because of injury to life, bodily injury or injury to health or because of a breach of essential contractual obligations. Claims for Damages because of breach of contract are, however, limited to foreseeable damage typical to the contract, unless there has been wrongful intent or gross negligence or the Supplier is liable for injury to life, bodily injury or injury to health. The above provisions do not imply a shift in the burden of proof to the detriment of the Purchaser.
3. Claims for Damages under this Article XI to which the Purchaser may be entitled expire after the period of limitation for claims for defects pursuant to Article VIII, clause 2. Claims for Damages under the product liability statute are governed by statutory limitations provisions.

XII. Place of Jurisdiction and Applicable Law

1. If the Purchaser is a businessman, the only place of jurisdiction for all disputes arising directly or indirectly from the contract shall be the registered office of the Supplier. The Supplier shall, however, also be entitled to take legal action at the registered office of the Purchaser.
2. The legal relations associated with this contract shall be governed by German substantive law, and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

XIII. Legal Validity of the Contract

Should individual provisions of the contract be invalid in legal terms, all other parts shall remain binding. This principle shall not apply if holding to the contract would represent an unreasonable hardship for either of the parties.