

# GENERAL TERMS AND CONDITIONS OF BUSINESS AND DELIVERY (MARCH 2004)

## 1. GENERAL

- 1.1 Our deliveries, services and offers are exclusively made on the basis of these General Terms and Conditions. They shall also apply to all future business relationships, even if not expressly agreed again.
- 1.2 The conditions are deemed accepted upon receipt of the services or products, at the latest.
- 1.3 Any deviations from these General Terms and Conditions – in particular the validity of the buyer's terms and conditions – will also in case of acceptance of an order not become part of the contract, but require our express written consent.
- 1.4 The use of the delivered products implies that any protective rights of third parties are observed.

## 2. OFFER AND CONCLUSION OF CONTRACT

- 2.1 Our offers are without engagement and not binding.
- 2.2 Orders require our written confirmation to become legally effective. The confirmation is deemed made, if we do not refuse the acceptance within four weeks from the receipt of the order. The contract is also deemed concluded, if we have executed the delivery or service or have commenced with the execution of the delivery or of the service within this period of four weeks.
- 2.3 All agreements made between us and the buyer for the execution of the contract are to be stated and written down in the contract. Our employees are not authorized to make any oral collateral agreements or make oral promises that exceed the scope of the written contract.
- 2.4 We reserve the right of ownership and copyright in the offer including the related documents. Any disclosure, dissemination or reproduction by third parties is not permitted.
- 2.5 We reserve the right to modify the product at any time and without special notice, provided the significant characteristics of the product are maintained. We reserve the right to the correcting of errors in the calculation or printing errors in the offer.
- 2.6 We reserve the right of ownership and copyright in samples, cost estimates, drawings and similar information, tangible and intangible, also in electronic form. They shall not be accessed by third parties and shall – on request – be returned immediately to us, should the order not be placed with us. We will disclose information and documents defined by the buyer as confidential to third parties only if prior consent is given by the buyer.

## 3. DELIVERY

- 3.1 Details on delivery (delivery dates or delivery times) or details of manufacture shall only be deemed binding, if confirmed by us in writing. Unless agreed otherwise in writing, delivery times and production data are deemed not binding.
- 3.2 Delivery times are duly established on the basis of existing circumstances. The delivery times commence, at earliest, after the complete clarification of commercial and technical issues and after the fulfillment of the buyer's obligations such as the provision of any documents, necessary government certificates or approvals to be furnished by the buyer, however not before the receipt of any agreed advance payment.
- 3.3 Delivery dates and times are met, when the products have left the warehouse within this time or in case of shipping the products upon notifying that the products are ready for dispatch. Insofar as acceptance is agreed, the date for such acceptance prevails, except for justified refusal of acceptance, alternatively if the willingness to accept is notified.
- 3.4 Partial deliveries are permitted, insofar as reasonable for the buyer.
- 3.5 We accept no responsibility, even in case of a binding agreement on delivery dates and times, for delay in delivery due to force majeure and occurrences which significantly impair the delivery or make it impossible (including in particular government regulations or measures, strikes, lock-outs, disruptions of traffic and operation or lack of raw material), also if such occurrences take place at our sub-contractors'. In case of such delays in delivery, we are authorized to extend the time of delivery according to the duration of the impairment plus a reasonable trial period after the impairment has terminated.
- 3.6 Should the impairment pursuant to sub-section 3.5 last longer than three months, we are entitled to suspend the delivery or withdraw from the contract in whole or in part, without entitling the buyer to claim subsequent delivery or claim damages. We shall notify the buyer without delay prior to any limitation in the delivery or partial withdrawal. The buyer has a right to refuse the fulfillment of the remaining obligations, if the partial delivery is worthless for the buyer. This shall also apply, when such circumstances occur in the event of delivery by our sub-contractor.
- 3.7 If the delivery time is extended pursuant to sub-section 3.5 or if we are exempted from the fulfillment of the contract in compliance with sub-section 3.6, the buyer cannot derive any claims for damages therefrom, provided we have informed the buyer in due time about the existing or forthcoming impairment.
- 3.8 We shall neither be responsible for the circumstances specified in sub-section 3.5, if they occur during the period of an existing default.
- 3.9 Where the impairment pursuant to sub-section 3.5 extends three months, the buyer is entitled, after granting a reasonable grace period, to withdraw from the contract in whole or in part.
- 3.10 The buyer is entitled to withdraw from the contract without the fixing of a time limit, in the event that, prior to the passing of risk, the complete performance becomes definitely impossible for us for reasons we are responsible for. Should we not be responsible for this impossibility, the contract – insofar as reasonable for economical reasons – will be adjusted as mutually agreed upon. Otherwise both parties are entitled to cancel the contract in part or in whole.
- 3.11 The buyer is further entitled to cancel the contract in whole or in part, if the execution of a part of the delivery becomes impossible and in case of a complete cancellation of the contract, the buyer has a justified interest in the refusal of the partial delivery. Should this not be the case, the buyer has to pay the contract price in relation to the partial delivery. The same applies in the case of our inability to deliver.
- 3.12 Should such impossibility or inability occur during the buyer's delay in acceptance or should the buyer be solely or mainly be responsible for these circumstances, the buyer shall be obliged to counter performance.
- 3.13 In case of a delay in acceptance of the buyer, we can grant the buyer, in writing, a reasonable grace period. After expiration of the grace period without success, we are entitled to cancel the contract and claim replacement for the damage we incurred. We are entitled, to calculate the damage at our discretion or to claim 15 % of the net purchase price as damage lump sum, whereby it is subject to the buyer to furnish evidence that we sustained no damage at all or significantly lower than the damage lump sum.
- 3.14 From the commencement of the delay in acceptance, we shall only be liable for damage caused intentionally or by gross negligence. We are entitled to claim damages caused by the delay from the buyer.

## 4. PRICES

- 4.1 The prices stated in our confirmation of the order are valid. In the absence of other agreements, our prices are ex warehouse, postage and packaging excluded.
- 4.2 Prices are plus applicable value added tax.

## 5. PASSING OF RISK

- 5.1 The risk will be passed to the buyer as soon as the consignment is transferred to the carrier or after the products have left our warehouse for dispatch. If the dispatch of the products, on request of the buyer, is postponed, the risk shall be passed to the buyer upon notification that the products are ready for dispatch.
- 5.2 Insofar as the acceptance is required, the date thereof shall be decisive for the passing of the risk. Acceptance must be effected immediately on the scheduled day or alternatively upon our notification that the products are ready for acceptance. The buyer is not allowed to refuse acceptance in case of an existing defect, which is neither material nor substantial.
- 5.3 Should the dispatch or acceptance not be effected or should the dispatch or acceptance be delayed due to circumstances which are not our responsibility, the risk will be passed to the buyer from the day of the notification that the products are ready for dispatch or for acceptance.
- 5.4 Loading and dispatch are executed without insurance at the buyer's risk. We will endeavor to consider the buyer's request with regard to mode of dispatch and route of transit; any additional costs arising therefrom are at the buyer's expense. On the buyer's request, deliveries will be insured in the buyer's name and at the buyer's account.

## 6. WARRANTY

- 6.1 If the contractual item is defective, we are entitled, at our discretion, to supply a replacement for or retrofit of the defective item.
- 6.2 The buyer shall immediately upon receipt examine the contractual item, whether it is free of defect and complete. Any detected defects are to be notified to us in writing including a detailed description of the defect. Should the buyer

omit the timely examination or notification of this defect, the contractual item shall be deemed accepted, unless the defect was not evident in the examination.

Any evident defects have to be notified to us in writing without delay, however within one week after delivery, at the latest; otherwise the enforcement of any warranty claim on the grounds of this defect are excluded. Any defects detected at a later time are to be notified immediately; otherwise the contractual item will be deemed accepted also with respect to these defects.

6.3 If the defect occurs only in connection with certain hardware, access to such hardware must be ensured for inspection, whilst it must be in the same condition as at the time when the defect occurred.

6.4 Warranty claims are not allowed in case that the contractual item deviates from the agreed property only to a minor extent and if the use of the contractual item is impaired only to a minor extent. We accept no liability for defects caused by interfering with the contractual item or by the buyer's attempt to carry out modifications without our prior express and written consent.

6.5 In the event that no replacement delivery or retrofitting pursuant to sub-section 6.1 is effected within a reasonable period, the buyer is entitled to withdraw from the contract. In case of a minor defect, the buyer has no right to withdraw from the contract, but is only entitled to a reduction of the price. In all other respects, the buyer's right to a reduction of price shall be excluded.

6.6 Further claims of the buyer for damages only exist pursuant to section 7 below.

## 7. DAMAGES AND LIMITATION OF LIABILITY

7.1 Save as provided in the provisions below we are liable for damages – for whatever legal reason – solely for breach of duties by willful or gross negligence through us, our legal representative and persons employed by us.

7.2 Insofar as permitted by law, our liability is limited to the invoice value of the products affected by the damage.

7.3 In the event of a breach of major contractual duties due to minor negligence, our liability shall be limited to the extent of damages foreseeable during the normal course of business and which are typical for the contractual items. We are not liable for a breach of duties caused by minor negligence such as delay or impossibility or the infringement of protective duties caused by minor negligence.

7.4 The above exclusions and limitations of liability shall not apply in cases of liability regardless of fault, in particular in compliance with the product liability act (German item: "Produkthaftungsgesetz"), in case of fraudulent concealment of a defect, take-over of a guarantee or a risk of procurement and in case of personal or health injuries or loss of life caused by our fault.

## 8. PAYMENT

8.1 Unless otherwise agreed, our invoices are payable when made out and without deduction.

8.2 We expressly reserve the right to refuse cheques and drafts. Acceptance is therefore on account of payment only. Any discount and exchange charges are to be paid by the buyer and are due immediately and to be paid cash. The risk of timely presentation and protesting shall be the responsibility of the buyer.

8.3 We are entitled, despite other provisions of the buyer, to use payments first for settlement of the buyer's previous debts. Where costs and interest have already been incurred, we are entitled to use the payment first for settlement of the costs, then the interest and finally the main debt.

8.4 In case of default of payment and vested doubts in the solvency or creditworthiness of the buyer, we are - without prejudice to other rights we own – authorized to claim securities or advance payment for outstanding deliveries and demand that all claims arising from the business relationship become immediately due.

8.5 Only undisputed or res judicata claims grant the buyer the right to offsetting or retention. The buyer is entitled to retention also due to counter claims deriving from the same contractual relationship.

8.6 Should the buyer get into default of payment, we will be entitled to suspend outstanding deliveries from this or another order until settlement is made and executes future deliveries only against advance payment or cash on delivery.

8.7 We are entitled to default interest provided by law of eight per cent points above the basic interest rate. A claim for further damages is not excluded.

8.8 Our total claims – even in the case of extension of payment – shall become immediately due as soon as the buyer gets in default of one or several accounts payable, drafts or cheques are protested, suspends payment, is indebted, commencement of composition or insolvency proceedings or such commencement being rejected because of lack of assets. In the above described cases we are entitled to claim the return of the reserved property and withdraw from the contract.

## 9. RESERVATION OF TITLE

9.1 We reserve the title to the contractual items (reserved property) until the complete settlements of all debts arising from any legal ground we have towards the buyer at present and in the future. The buyer is not allowed to dispose of the reserved property.

9.2 In case of attachments through third parties, especially through bailiffs, on the reserved property, the buyer undertakes to indicate that we are the owner of the property and inform us about this attachment without delay so that we can enforce our right of ownership.

9.3 If the buyer fails to comply with the contract, especially in case of default in payment, we are entitled, to take back the reserved property at the buyer's expense or, where applicable, to demand the assignment of the buyer's claim for return against third parties. The return or attachment of the reserved property will not substantiate a withdrawal from the contract.

9.4 The buyer is entitled to sell the reserved property in the course of normal business operations, provided the buyer is not in default. Pledging and security assignments are not permitted. The claims resulting from the sale of the reserved property or from another legal ground (e.g. insurance, illegal acts) are completely assigned to us upon acceptance of these General Terms and Conditions. We authorize the buyer to collect the assigned claims for the buyer's own account and name. We have the right to revoke the authorization for collection, if the buyer fails to fulfill his obligations to pay.

9.5 Where the value of the securities exceeds our claims by more than 20 %, we shall insofar, on the buyer's request, release securities at our discretion.

## 10. LIMITATION

All claims of the buyer, for whatever legal ground, will be statute-barred after twelve months from the delivery or acceptance of the contractual item, unless longer terms are conclusively prescribed by law.

## 11. MISCELLANEOUS

11.1 Exclusively German law shall apply to these Terms and Conditions and all legal relationships between the contractual parties, excluding the laws on international sale of moveable assets (CISG), even if the buyer's place of business is abroad.

11.2 The place of performance for deliveries shall be the respective place of the dispatch of the products, for payment the place of performance shall be Lemgo. Place of jurisdiction for all direct and indirect disputes arising from the contractual relationship shall be Lemgo; we are however entitled to bring an action at the buyer's place of jurisdiction.

11.3 Any modification or amendments to these General Terms and Conditions require the written form. This shall also apply to the revocation of the written form requirement.

11.4 Should any individual provision in this contract be or become legally ineffective or unenforceable, the remaining provisions in this contract and their execution shall remain unaffected thereby.

In such a case, the parties shall be obliged to replace the legally ineffective provision with a legally admissible provision compatible with the provisions of this contract, which conforms as closely as possible with the economic purpose of the ineffective provision. This shall also apply in case of a missing provision in these General Terms and Conditions.