

**§ 1 Applications of conditions**

- (1) Our supplies, services and offers are based exclusively on these Terms and Conditions. Therefore, they also apply for all future business relationships, even if they were not once more explicitly agreed upon. These conditions are deemed accepted upon receipt of the goods or services at the latest. Counter confirmations of the customer under reference to his terms of business and/or purchase are hereby vetoed.
- (2) All agreements made between the customer and us for the purpose of the execution of this agreement have to be documented in writing.

**§ 2 Offer and formation of contract**

- (1) Our offers are subject to change and non-binding. An agreement is only formed upon receipt of our written or faxed order confirmation.
- (2) Our employees are not authorised to make verbal subsidiary agreements or verbal assurances beyond the content of the written agreement.
- (3) The formation of contract occurs subject to the correct and on-time self-supply through our suppliers. This particularly applies in the event that we are not responsible for the non-delivery, especially in case of the conclusion of a congruent hedging transaction with our supplier. The customer shall be informed immediately regarding the non-availability of the service. The payment shall be reimbursed immediately.
- (4) Drawings, illustrations, measurements, weights or other performance data are only binding if they are contained in the technical product description.
- (5) We reserve ownership and copyrights to illustrations, drawings, calculations and other documents - including in electronic form. This particularly applies for documents which are labelled "confidential". The customer requires our express written permission prior to their transmission.

**§ 3 Prices and payment conditions**

- (1) Unless stipulated otherwise in the order confirmation, our prices apply "ex works" excluding packaging; packaging shall be invoiced separately.
- (2) We reserve the right to adjust prices appropriately if cost decreases or increases occur after the conclusion of the contract, particularly due to tariff agreements or price changes for material. Upon request, we shall verify this to the customer.
- (3) The deduction of a discount is only permissible upon special written agreement.
- (4) The statutory regulations apply regarding the consequences of default of payment.
- (5) We are entitled to initially off-set payments against the customer's older debt despite contrary instructions of the customer. We shall inform the customer regarding the type of the off-setting. If expenses and interest have already been incurred, we are entitled to initially off-set the payment against the expenses, then the interest and lastly against the main performance.
- (6) The customer is only entitled to off-setting if his counter claims were legally determined, are uncontested or accepted by us. He is furthermore entitled to a right of retention in as far as his counter claim is based on the same contractual relationship.

**§ 4 Periods of delivery and performance**

- (1) Delivery deadlines are only binding if they are confirmed by us in writing or by fax.
- (2) We are not responsible for delays in delivery and performance due to force majeure and events which essentially complicate or prevent delivery not only temporarily - these particularly include strike, lock-out, official directives etc., even if they occur at our suppliers or their sub-suppliers or at other third parties commissioned by us for the fulfilment of contractual obligation - also in case of bindingly agreed deadlines. Such events entitle us to postpone the delivery and/or service for the duration of the impediment plus a reasonable start-up time or to completely or partially withdraw from the agreement with regard to the yet unfulfilled component.
- (3) If the impediment lasts longer than three months the customer is entitled to withdraw from the agreement with regard to the yet unfulfilled component following a reasonable period of grace. If the period of delivery or performance is extended or if we are released from our obligation, the customer is not entitled to any compensation claims. We can only invoke the above mentioned circumstances if we have informed the customer without undue delay.
- (4) If we are responsible for the non-compliance with bindingly agreed deadlines or if we are in delay, our liability is limited to one percentage point of the invoice value (without VAT) of the deliveries and services affected by the delay for each completed week of delay, however to maximally ten percentage points of the invoice value of the deliveries and services affected by the delay. Any further claims are excluded unless the delay is based on gross negligence.
- (5) We are entitled to partial deliveries and partial services at any time unless the partial delivery or partial service is not reasonable for the customer.
- (6) Compliance with our delivery and performance obligations is subject to the customer's timely and proper fulfilment of his obligations.
- (7) If the customer is in default of acceptance we are entitled to demand compensation for damages incurred to us; the risk of accidental deterioration and accidental destruction is transferred to the customer at the moment of default of acceptance.

**§ 5 Transfer of risk**

The risk is transferred to the customer as soon as the consignment is transferred to the person conducting the transport or has left our warehouse for dispatch. If the dispatch is delayed due to the customer's request, the risk is transferred to the customer upon notification of readiness for dispatch.

**§ 6 Warranty**

- (1) In principle, only the characteristics stipulated in the technical product descriptions apply regarding the quality of the goods. Public comments, promotions or advertising does not contain binding descriptions of the agreed quality of the goods. Calculations of profitability and profit forecasts contained therein merely represent calculation examples and are non-binding.
- (2) Discolorations on modules which do not impede their functionality are not considered deviations from the agreed quality.
- (3) Warranty claims of the customer imply that he has properly complied with his obligations regarding inspection and requirement to give notice of defects in accordance with § 377 HGB (German Commercial Code).
- (4) If the goods exhibit a defect we are entitled to subsequent fulfilment in form of a remedy or to supply a new defect-free item at our discretion. In the event of remedy of defect we are obligated to bear all expenses, particularly transport, shipping, labour and material costs required for the purpose of the remedy unless they increase because the goods were shipped to a location other than that of the place of fulfilment.

- (5) If the subsequent fulfilment fails, the customer is entitled to withdrawal or reduction at his discretion.
- (6) The statute of limitations for warranty claims is 12 months calculated from the date of delivery of the defect item.
- (7) The statute of limitations in case of delivery recourse according to §§ 478, 479 BGB (German Civil Code) remains unaffected.
- (8) If the customer receives inadequate assembly instructions, we are merely obligated to supply adequate assembly instructions and only if the inadequacy of the assembly instructions prevents proper installation.
- (9) Unless expressly specified otherwise in individual contracts, we give no guarantees. In case of the provision of guarantees or an extension of time to assert warranty claims, these shall only apply insofar as the commissioning, operation and maintenance requirements of the manufacturer are observed and no intervention by the customer or a third party is being made regarding the products delivered by us.

**§ 7 Liability**

- (1) We are liable according to the statutory regulations if the customer asserts compensation claims based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. If we are not guilty of intentional violation of contract, the liability for compensation is limited to the foreseeable, typical damage.
- (2) We are liable according to the statutory regulations if we have culpably violated an essential contractual obligation; however, in this case the liability for compensation is limited to the foreseeable, typical damage.
- (3) The liability based on culpable violation of life, body or health remains unaffected; this also applies to the mandatory liability according to the Product Liability Act.
- (4) Unless stated differently above, our liability is excluded.
- (5) The above liability exemptions and limitations also apply for non-contractual claims and if the customer demands compensation for futile expenses for the services instead of compensation for the damage according to § 284 BGB (German Civil Code).
- (6) If our liability for compensation is excluded or limited, this also applies in terms of personal liability for compensation with respect to our employees, representatives and vicarious agents.

**§ 8 Reservation of title**

- (1) We reserve the right of ownership of the goods up to the receipt of all payments due to the business relationship with the customer. In the event of the customer's conduct contrary to the agreement, particularly in case of default of payment, we are entitled to retrieve the goods. The retrieval of the goods by us constitutes a withdrawal from the agreement. Upon retrieval of the goods we are entitled to their utilisation; the revenue from the utilisation is off-set against the customer's obligations less reasonable utilisation expenses.
- (2) The customer is obligated to treat the goods carefully; he is particularly obligated to insure the goods against fire, water and theft at his own expense. If maintenance and inspection work has to be carried out, the customer has to implement those at his expense in due time.
- (3) The customer is obligated to immediately inform us in writing in the event of levies of execution or other interventions by third parties to enable us to file a petition according to § 771 ZPO (Code of Civil Procedure). If the third party is not able to reimburse us for the judicial and extra-judicial costs of a successful petition according to § 771 ZPO (Code of Civil Procedure), the customer is liable for the damage we incurred.
- (4) The customer is entitled to on-sell the goods in the course of proper business; however, he now assigns to us all claims in the amount of the invoice (including VAT) which he accrues from his purchasers or third parties based on the on-selling, regardless whether the goods were on-sold with or without processing. The customer is entitled to collect these claims also following the assignment. Our authorisation to collect the claim ourselves remains unaffected. However, we will not collect the claim as long as the customer complies with his payment obligations from the collected revenue, is not in default of payment and has particularly not applied for the commencement of composition or insolvency procedures or has suspended payment. If this is the case, we can demand that the customer discloses the assigned claims and their debtors, provides all details necessary for the collection, supplies the respective documentation and informs the debtors (third parties) of the assignment.
- (5) The processing or reconstruction of the goods by the customer is always performed on our behalf. If the goods are processed with other merchandise not belonging to us, we obtain co-ownership in the new object at the ratio of the objective value of the goods (invoice amount including VAT) to the other processed objects at the time of processing. For the remainder, the same conditions apply for the items created by the processing as in case of goods delivered under reservation.
- (6) If the goods are inseparably intermingled with other objects not belonging to us, we obtain co-ownership in the new object at the ratio of the objective value of the goods (invoice amount including VAT) to the other intermingled objects at the time of intermingling. If the intermingling occurs in the manner that the object of the customer is considered the main object, it is agreed that the customer assigns to us proportional ownership. The customer preserves the thus created sole ownership or co-ownership for us.
- (7) To secure our claims against the customer, the customer assigns to us such claims which he accrues based on the intermingling of the goods with a property against a third party.
- (8) Upon demand by the customer we are obligated to release the securities owed to the extent as the realisable value of the securities exceeds the claims of our security by more than 10 %; the choice of the securities to be released is at our discretion.

**§ 9 Usage of software**

As far as contained within the scope of supply the customer is granted a non-exclusive and non-transferable right to use the supplied software including their documentation. The software is exclusively supplied for utilisation on the designated delivery item. Usage, duplication, reworking, translation of the software as well as the transformation of the object code in the source code for other purposes is prohibited.

**§ 10 Applicable law, place of jurisdiction, partial invalidity**

- (1) The laws of the Federal Republic of Germany apply for these Terms and Conditions and the entire legal relationship between the customer and ourselves. The conditions of the United Nations Convention on Contracts for the International Sale of Goods are excluded.
- (2) Exclusive place of jurisdiction for all disputes arising from or in relation to this contractual relationship is Wesel.
- (3) If one of the conditions of these Terms and Conditions or a condition in the context of other agreements is or becomes ineffective, the effectiveness of the remaining conditions or agreements remains unaffected.