



# General terms and conditions of sale and delivery

## 1. General

- 1.1. Every service or delivery shall be subject to these terms and conditions, and to any contractual arrangement made on a separate basis. No purchaser's terms and conditions of purchasing differing herefrom shall become part of a contract even by order acceptance. In default of any specific agreement, no contract shall be brought about unless by our written order acknowledgment.
- 1.2. We shall reserve title rights and copyrights for any sample, cost estimate, drawing or the like, and for any information whatsoever, whether tangible or intangible in nature, and even in an electronic form, where such information is eligible for copyright; no such information must be disclosed to any third party. Third parties shall be deemed to include any company not associated with us as defined in section 15 of the German Stock Corporation Law (AktG). We shall be obliged not to disclose any information designated as confidential by the purchaser to any third party unless with the purchaser's consent.
- 1.3. Any information as provided by us on any delivery item (e.g., weights, dimensions, usage information, load capability, tolerances and technical data), or our representations thereof (e.g., drawings or images) shall not be deemed definitive but only approximate unless if and where the usability thereof for any purpose as agreed in the contract requires their precise conformance. Such information shall not be deemed a guaranteed characteristic of state, but rather a description or characterization of a delivery item. Any deviation customary in trade or any deviation made on the basis of any statutory provision or representing a technical improvement, and the replacement of any spare part by any equivalent part shall be deemed admissible if and where such deviation does not affect usability for the purpose as agreed in the contract.
- 1.4. Any erection work and / or commissioning performed outside Germany shall be subject, on a supplementary basis, to our General Terms and Conditions for Erection Work and Commissioning in Germany and Abroad.
- 1.5. These terms and conditions shall not be applicable unless to enterprises as defined to section 310, subsection 1 of the German Civil Code (BGB).

## 2. Price and payment

- 2.1. Unless as specifically agreed otherwise, any price shall be applicable ex works including loading at works, but exclusive of packaging and unloading. Any price shall be deemed exclusive and in addition of value-added tax in the amount as defined by law from time to time.
- 2.2. Unless as specifically agreed otherwise, every payment shall be made to our account without any deduction as follows:
  - 1/3 as progress payment after the receipt of the order acknowledgment;
  - 1/3 as soon as the purchaser is notified that the main parts are ready for shipment;
  - The remaining balance shall be payable one month after the transfer of risk.
- 2.3. No right to retain or offset any payment against any counterclaim whatsoever shall be available to the purchaser unless if and where such counterclaims are uncontested or recognized by declaratory judgment or ready for a decision in any proceedings pending in court.

## 3. Delivery time, delay in delivery

- 3.1. The delivery time shall be as defined in the agreements made by the contracting parties. Observance thereof by us shall be subject to the solution of all commercial and technical questions existing between the contracting parties, and to the fulfilment of every duty incumbent on the purchaser, including, but not limited to producing all certificates or authorizations as required from public authorities or the performance of any payment on account. If the foregoing is

not complied with, the delivery time shall be extended appropriately. The foregoing shall not apply if and where any delay is under our control.

- 3.2. The observance of any delivery deadline shall be subject to correct and timely receipt of any deliveries to ourselves. Any delay, which becomes apparent, shall be communicated by us as soon as possible.
- 3.3. A delivery deadline shall be deemed observed when a delivery item has left our works or when readiness for shipment has been notified prior to the expiry of such deadline. The date of acceptance or, in the alternative, the notification of readiness for acceptance shall prevail if and where acceptance should take place in our works except in the event acceptance is rejected on a justified basis.
- 3.4. If the shipping or acceptance of any delivery item is delayed for any cause under the purchaser's control, the costs incurred due to any such delay shall be invoiced to the purchaser, starting one month after the notification of readiness for shipping or of readiness for acceptance.
- 3.5. The delivery time shall be extended by a reasonable period if and where any failure to comply with the delivery time is caused by force majeure, industrial action or by any other event beyond our sphere of control. We shall notify the purchaser of the beginning and end of any such circumstance as soon as possible.
- 3.6. The purchaser may rescind the contract without giving any prior notice if complete performance by us prior to the transfer of risk becomes definitely impossible. In addition, the purchaser may also rescind the contract if the performance of a part of a delivery becomes impossible for any purchase order, and if the purchaser has a legitimate interest in rejecting such partial delivery. If this is not the case, the purchaser shall pay the contract price which is attributable to such partial delivery. The same shall be applicable if we are unable to perform. Section 7. 2 shall apply in other respects. The purchaser shall be bound to give consideration if any impossibility or inability occurs during any delay in accepting performance or if the purchaser is responsible for any such circumstances either alone or in a largely predominant manner.
- 3.7. If we are in default and if such default causes any loss or damage to the purchaser, the purchaser shall be entitled to claim a lump-sum compensation for default. Such compensation shall amount to 0.5% in full for every complete week of delay but not to more than 5% of the value of the part of the entire delivery which, due to such delay, may not be used in good time or as provided for in the contract. If, after any due date, the purchaser specifies a reasonable period for performance by us, taking account of the exceptions as provided for by law, and if such period is not observed, the purchaser shall be entitled to rescind the contract subject to statutory provisions. The purchaser shall agree to declare within a reasonable period of time upon our request whether the purchaser will make use of such right to claim rescission of contract.

Any other claim arising from any delay in delivery shall be subject exclusively to section 7.2 of these terms and conditions.

#### **4. Transfer of risk, acceptance**

- 4.1. The risk shall pass to the purchaser as soon as any delivery item has left the works, i.e., even in the event that any partial delivery is made, or even when we have undertaken to perform any other service in addition, including but not limited to any forwarding expenses, inbound delivery or erection. Where it shall be granted, acceptance shall prevail for the transfer of risk. Acceptance shall be granted immediately at the date of acceptance or, in the alternative, after our notification of readiness for acceptance. The purchaser may not refuse acceptance if there is any nonessential defect.
- 4.2. If shipping or acceptance is delayed or fails to take place in consequence of any circumstance which is beyond our control, the risk shall pass to the purchaser from the day on which readiness for shipping or acceptance has been notified. We shall agree to take out any insurance as required by the purchaser at the purchaser's expense.
- 4.3. Partial deliveries shall be permitted where the purchaser may be reasonably expected to take such deliveries.

#### **5. Reservation of title**

The delivery of any goods shall be subject to a reservation of title as defined in section 449 of the German Civil Code (BGB) and subject to the extensions as defined hereinbelow:

- 5.1. No property in any delivery item shall pass to the purchaser unless after its complete payment. If and where the validity of any reservation of title is subject to any particular qualification or to any particular requirement as to form in any country of destination, the purchaser shall take care that any such requirement will be complied with.
- 5.2. Prior to the transfer of title therein, the purchaser may neither pledge any delivery item nor make any assignment thereof as security for any debt. The purchaser shall give immediate notice to us in the event of any levy of execution, seizure or any other disposition thereof by any third party.
- 5.3. If the purchaser commits any act contrary to the contract including, but not limited to any default in payment, we shall be entitled to take back any item delivered after sending a dunning notice. The purchaser shall be obliged to surrender any such item.
- 5.4. Any petition for instituting insolvency proceedings against the purchaser's assets shall entitle us to rescind the contract, and claim the immediate surrender of the corresponding delivery item.
- 5.5. The purchaser shall agree to treat any delivery item with care. The purchaser shall insure every delivery item at replacement value against damage or loss by fire, water, or theft at the purchaser's expense. If and where necessary, the purchaser shall perform any maintenance or inspection work at the purchaser's own expense and in good time.
- 5.6. The following shall apply if the purchaser's registered office is located in the Federal Republic of Germany:
  - a. We shall reserve title to every delivery item until every claim has been satisfied which we may have against the purchaser resulting from the ongoing business relation;
  - b. the purchaser shall be entitled to resell any delivery item subject to the retention of title rights within the ordinary course of business. When reselling any delivery item, the purchaser shall reserve title thereto unless such delivery item is paid in full and without any delay by a third-party purchaser. No right to resell shall exist if the purchaser incurs any default in payment. To provide security for our claims, the purchaser shall already now assign any claim to us which may result from resale or from any other cause in law. In the event that any object subject to reservation of title is processed, and co-ownership is created thereby, such assignment shall only cover the part of the claim which corresponds to our share in co-ownership;
  - c. The purchaser shall remain entitled to collect any sum due and assigned to us even after assignment as long as the purchaser complies with the purchaser's obligations of payment to us pursuant to the contract. We may request the purchaser at any time to disclose the claims assigned and the corresponding debtors to us, furnish all information as required for the collection thereof, surrender any documentation pertaining thereto, and notify such debtor of such assignment.
  - d. Any processing by the purchaser of any goods subject to retention of title rights shall be deemed performed for our account in every case. If any object subject to retention of title is processed together with any other object not subject to any title rights by us, we shall obtain co-ownership in the new object in the proportion of the invoice value of the object which is subject to the retention of title rights with regard to the other objects processed as applicable at the time of processing. If our goods are combined with any other movable object to create an object which forms a unit, and if such other object shall be considered the main object, the parties shall agree that the purchaser shall transfer proportionate co-ownership to us if and where such main object is owned by the purchaser. The purchaser

shall keep such property or jointly owned property for our account. In other respects, any object created by processing or combination shall be subject to the same provisions as the goods which are subject to retention of title.

- e. We shall agree to release any security to which we may be entitled if and where the invoice value of any such security does not or does only temporarily exceed our (remaining) claims still outstanding by more than 15%.

## 6. Claims based on defects

For any defect as to quality or title, we shall assume liability, excluding any other claim subject to subsection 7 as follows:

- 6.1. In our discretion, we shall either deliver an object free of defects, or remove any defect which is proven to have been caused by any circumstance that occurred prior to the transfer of risk as defined in section 4 of these general terms and conditions.
- 6.2. The purchaser shall give notice of any defect with no delay, and shall report the defect so notified in writing, including a description thereof. We shall reserve title to any parts replaced in a substitution procedure.
- 6.3. No claim based on any defect shall be deemed to exist if caused by any damage due to any of the following but not to any fault on our side:
  - Natural wear and tear;
  - Any intervention or repair performed improperly whether by the purchaser or by any third party;
  - Unsuitable or improper use, incorrect operator control, assembly or start-up;
  - Incorrect or negligent handling;
  - Improper maintenance;
  - Use of any unsuitable operating media or substitute materials;
  - Defective construction work, unsuitable subsoil;
  - Any environmental condition, chemical, electrochemical or electrical influence not known to us;
  - Any modification to a delivery item performed without our consent.
- 6.4. The purchaser shall grant us time and opportunity as required for post-performance by remedial work. If no such opportunity is provided to us, we shall not assume any liability for any consequence caused thereby. The purchaser shall not be entitled neither to correct any defect on his or her own nor to have any defect corrected by any third party, and claim compensation from us for any expenditure required thereby unless in urgent cases, we shall be notified thereof with no delay, and which cause a hazard to operational safety or where required to avert any disproportionately high damage or loss.
- 6.5. If a complaint is justified, we shall bear the immediate cost of post-performance by remedial work. If the place of delivery/erection site is located outside the Federal Republic of Germany, the total cost to be borne by us shall be limited to the amount of the order value.
- 6.6. In the event of any culpable contributory fault committed by the purchaser and contributing to any defect, including but not limited to the purchaser's failure to comply with the purchaser's duty of avoiding and mitigating any damage or loss, we shall be entitled to damage or loss compensation corresponding to any such contributory fault by the purchaser after post-performance by remedial work.
- 6.7. If, because of any defect, the purchaser specifies a reasonable deadline for post-performance by remedial work for us, taking account of the exceptions as provided for by law, and if such deadline passes without fulfilment, the purchaser shall be entitled to rescind the contract at the purchaser's option. If a defect is merely immaterial, the purchaser shall be entitled to a reduction of the contract price only. The right to a reduction in the contract price shall remain excluded in other respects.

In the event of any violation of industrial property rights or copyrights, the following shall apply on a complementary basis:

1. If, prior to the end of any period of prescription, the use of any delivery item leads to the violation of any industrial property right or copyright, we shall, as a general rule, either obtain the right to continued utilisation for the purchaser, or modify such delivery item in a way which ensures that such violation of industrial property rights or copyrights ceases to exist. If the foregoing is not feasible under reasonable economic conditions or within a reasonable period of time, the parties shall be entitled to rescind the contract. Within the applicable time limits, we shall indemnify the purchaser against any claims which are made by a corresponding holder of industrial property rights, and which are either uncontested or have been recognized as final and binding.
- 6.8. No claim to post-performance by remedial work shall exist for the violation of any industrial property right or copyright unless:
  - a. the purchaser gives use immediate notice thereof in writing by indicating and describing any industrial property right or copyright violation asserted;
  - b. the purchaser provides us assistance to a reasonable extent in the defence against any claim asserted, or allows us to carry out the modification activities pursuant to our "General terms and conditions for erection work and commissioning in Germany and abroad" as applicable from time to time;
  - c. all measures for defence shall be reserved to us, including any extrajudicial settlement;
  - d. such violation of an industrial property right or copyright is not based on any instruction or any specification made by the purchaser;
  - e. such violation of an industrial property right or copyright has not been caused by any unauthorised modification of the delivery item by the purchaser or by any use thereof by the purchaser other than as provided for in the contract.

Our duties as defined in this item 2 and in the foregoing item 1 shall be final for any industrial property right or copyright violation with the proviso of section 7.2 hereof.

## **7. Liability**

- 7.1. The provisions as set forth in sections 6 and 7.2 shall apply mutatis mutandis, excluding any further claim of the purchaser if the delivery item may not be used by the purchaser as provided for in the contract through any fault on our side, due to any failure to perform or any defective performance of any proposal or consulting made or given either before or after contract conclusion or through the breach of any other subsidiary duty under the contract, including but not limited to instructions for the operator control and maintenance of such delivery item.
- 7.2. We shall not assume liability for any loss or damage which, irrespectively of its legal basis, has not been caused in the delivery item itself unless:
  - a. caused intentionally;
  - b. caused by gross negligence committed by the proprietor, by any executive body or by any executive employee;
  - c. in the event of any culpable injury to life, body, health;
  - d. for any defect we have fraudulently concealed or whose nonexistence we have guaranteed;
  - e. if and where the German Product Liability Act provides for liability for personal injury or material damage of objects used for private purposes in the event of any defect in an item delivered;

In the event of any culpable non-observance of essential duties under a contract, we shall also be liable for gross negligence by non-executive employees, and for ordinary negligence, while the latter case

shall be restricted to the reasonably foreseeable contract-typical damage. Any further claim shall be excluded.

## **8. Statute of limitations**

- 8.1. Every claim made by the purchaser shall become statute-barred in 12 months irrespective of its legal basis. The statutory time limits shall apply to any claim for damages as described in section 7. 2 a – e. Such time limits shall also apply to any defect in a structure or to any delivery item which has been used for a structure in accordance to its common usage, and which has caused such structure's defectiveness.

## **9. Software use**

- 9.1. If and where the scope of supply comprises any software, the purchaser shall be granted a nonexclusive right of use to the software supplied including its documentation. Such software shall be permitted for use on the delivery item intended for such purpose. Any use of such software on more than one system shall be prohibited.
- 9.2. The purchaser may neither reproduce, work over, nor translate such software, nor convert it from its object code to its source code unless to the extent as permissible by law (sections 69 a et seq. of the German copyright act (UrhG)). The purchaser shall agree not to remove any manufacturer information, including but not limited to any copyright notices, nor to modify any such information without our express prior consent.
- 9.3. Any other right to the software or to the documentation including any copies thereof shall remain either with us or with the supplier of any such software. No granting of any sub-license shall be admissible.

## **10. Choice of law, place of jurisdiction**

- 10.1. Any legal relationship between us and the purchaser shall be subject exclusively to the law of the Federal Republic of Germany governing the mutual legal relationships between domestic parties, excluding any conflict of laws provisions and the provisions of the UN Sales Convention.
- 10.2. The place of jurisdiction shall be the court of law competent for our registered office. But the supplier shall be entitled to bring action at the purchaser's principal place of business.