

# General Terms and Conditions

Last amended: January 2018

## Article I: General provisions

1. The legal relationships between Supplier and Customer in connection with the deliveries and/or services of Supplier (hereinafter: Deliveries) are governed exclusively by these General Terms and Conditions. General terms and conditions of Customer shall only apply if and to the extent that Supplier has agreed to them in writing. The scope of Deliveries is governed by the corresponding written declarations of the two parties.
2. Supplier reserves its full rights of use and exploitation as owner and copyright holder to cost estimates, drawings and other documents (hereinafter: Documents). Documents may only be made available to third parties with the prior written consent of Supplier and are to be returned to Supplier immediately if Supplier is not awarded the contract. The first and second sentences apply as appropriate to documents of Customer; however, said documents may be made available to third parties to which Supplier is permitted to and has outsourced deliveries.
3. Customer shall have the non-exclusive right of use to standard software or firmware with the agreed characteristics and in an unchanged form on the agreed devices. Customer shall be entitled to generate a backup of the standard software without a specific agreement to this effect.
4. Partial deliveries are admissible provided this is reasonable for Customer.
5. The term "damages" in these Terms and Conditions shall include claims for wasted expenditure.

## Article II: Prices, terms of payment and set-off

1. Prices are ex works and do not include applicable VAT. All Deliveries are based on INCOTERMS 2010.
2. Payments are to be made in accordance with the terms of payment agreed separately. In the event that terms of payment have not been agreed in writing, invoices shall be due 14 days from the invoice date with a 2 % discount but with no other deductions, or 30 days from the invoice date in full with no deductions. The payment deadline shall be deemed to have been met if we are able to dispose of the sum by the agreed date. In the event of default, we shall be entitled to charge default interest of 5 % higher than the applicable base rate of the European Central Bank (ECB). In the case of contracts of sale between businesses, default interest of 8 % higher than the applicable base rate of the ECB shall be due. We shall not accept deductions for postage, surface freight, etc. of any kind. Cheques shall only be accepted subject to the sum being credited without recourse. Customer shall bear discount charges, bank charges and stamp duties.
3. In the event that Supplier has taken on installation or assembly and in the absence of an agreement to the contrary, Customer shall, in addition to the agreed remuneration, bear all necessary ancillary costs such as travel and transport costs and daily allowances.
4. Payments shall be made ex paying agent of Supplier.

5. Customer can only set off such receivables as are uncontested or have been established by a final and binding court decision.

## Article III: Reservation of title

1. The items in the Deliveries (reserved goods) shall remain the property of Supplier until all Supplier receivables due from Customer arising from the business relationship have been settled. If and to the extent that the value of all security interests to which Supplier is entitled exceeds the sum of all secured entitlements by more than 20 %, Supplier shall, at Customer's request, release a corresponding part of the security interests; Supplier shall have the right to choose which security interests to release at its discretion.
2. For as long as goods are subject to retention of title, Customer shall not pledge goods or assign goods as securities, and may only resell goods to resellers in its ordinary course of business and only on condition that the reseller either receives payment from its customers or sets the condition that title shall only be transferred to said customers once they have fulfilled their payment obligations.
3. In the event of resale by Customer of reserved goods, Customer hereby assigns to Supplier by way of security future receivables, arising from said resale, that are owed to Customer by its customers including all ancillary rights – including any claims for payment of balances – without this requiring any further, separate declarations. In the event that the reserved goods are resold together with other items without a separate price being agreed for the reserved goods, Customer shall assign to Supplier that part of the total price that corresponds to the price of the reserved goods as invoiced by Supplier.
4. a) Customer shall be entitled to process the reserved goods and to mix or combine them with other items. Processing shall be on behalf of Supplier. Customer shall hold the new item produced, on behalf of Supplier, with the care of a prudent businessperson. The new item shall constitute reserved goods.  
b) Supplier and Customer hereby agree that, in the event of the combination or mixture with other items not belonging to Supplier, Supplier shall in all cases be entitled to joint ownership of the new item in proportion to the ratio of the value of the combined or mixed reserved goods to the value of the remaining goods at the time of combination or mixture. The new item shall to this extent constitute reserved goods.  
c) The provisions on the assignment of receivables pursuant to no. 3 shall also apply to the new item. However, assignment shall only apply to the amount that corresponds to the value invoiced by Supplier of the processed, combined or mixed reserved goods.  
d) In the event that Customer combines the reserved goods with property or moveable objects, Customer shall also assign to Supplier, without this requiring any further, separate declarations, the remuneration owing to it for said combination including all ancillary rights in proportion to the value of the combined reserved goods in relation to the other combined goods at the time of combination.

5. Until further notice, Customer shall also be authorised to collect assigned receivables arising from resale. In the event of cause, including but not limited to payment default, cessation of payment, the launch of insolvency proceedings, protest of a bill or clear indications of the overindebtedness or imminent insolvency of Customer, Supplier shall be entitled to withdraw Customer's authorisation to collect. Following a warning and after setting a reasonable deadline, Supplier shall also be entitled to disclose the assignment as security, use the assigned receivables and require the disclosure by Customer to the client of the assignment as security.
6. Customer shall notify Supplier immediately of seizure, confiscation or other interventions by third parties. In the event that a justified interest can be credibly established, Customer shall provide Supplier with the necessary information and issue the necessary documents required for exercising its rights vis-à-vis the customer.
7. In the event of breach of obligations on the part of Customer, including but not limited to default on payment, Supplier shall be entitled to set Customer a reasonable deadline for performance and, upon expiry of said deadline without performance, to take back goods and to rescind the contract; this shall not affect statutory provisions on the dispensability of a deadline. Customer shall have an obligation to hand over the goods. The taking back or exercise of retention of title or seizure of the reserved goods by Supplier shall not constitute rescission of the contract unless Supplier has given explicit notice of rescission.

#### **Article IV: Deadlines for Deliveries; delay**

1. Compliance with deadlines for Deliveries is subject to the receipt, in time, of all documents, necessary authorisations and approvals to be provided by Customer, including but not limited to plans, and compliance with the agreed terms of payment and other obligations on the part of Customer. In the event that these requirements are not met in time, the deadlines shall be extended appropriately; this shall not apply if Supplier is responsible for the delay.
2. In the event that failure to meet the deadlines is a result of
  - a) force majeure, for example mobilisation, war, acts of terror, civil unrest or similar events (e.g. strike or lockouts);
  - b) virus or other attacks by third-parties on the IT system of Supplier, if and to the extent that said attacks occurred despite protective measures in compliance with the principles of due care;
  - c) obstacles resulting from German, US or other applicable national, EU or international regulations on foreign trade or from other circumstances for which Supplier is not responsible, or
  - d) late, incorrect or non-compliant delivery to Supplier, the deadlines shall be extended appropriately.
3. In the event of Supplier default, Customer can – if it reasonably demonstrates that it has suffered loss as a result – demand compensation for each full week of default amounting to 0.5 % per week but no more than a total of 5 % overall of the price of that part of Deliveries that could not be usefully used as a result of default.
4. Customer shall not be entitled to bring claims for damages for delay in delivery or in lieu of performance that go beyond the limits specified in no. 3 in any cases of delayed delivery, even after the expiry of any deadline for delivery set for Supplier. This shall not apply in the event of liability for intent, gross negligence or injury to life, limb or health. Customer may only rescind the contract in accordance with statutory provisions if Supplier is responsible for the delay in delivery. The above provisions do not involve a change in the burden of proof to the disadvantage of Customer.

5. At the request of Supplier, Customer shall have a duty to state by a reasonable deadline whether it is rescinding the contract on the grounds of the delay in delivery or whether it requires delivery.
6. In the event that dispatch or delivery is delayed at Customer's request by more than one month after notification that the goods are ready for dispatch, Customer can be charged a storage fee per subsequent month or part thereof of 0.5 % of the price of the items in the Deliveries, but no more than a total of 5 % overall. The contracting parties shall have the right to demonstrate that the costs of storage were higher or lower.

#### **Article V: Transfer of risk**

1. Risk shall be transferred to Customer as follows, even in the case of delivery carriage paid:
  - a) for delivery without installation or assembly, when the delivery has been dispatched or collected. At the Customer's request and expense, Supplier shall insure the delivery against the usual transport risks;
  - b) for delivery with installation or assembly, on the day of acceptance on Customer premises or, if agreed, after successful test operation.
2. In the event that the dispatch, delivery, commencement, installation or assembly, acceptance on Customer premises or test operation is delayed for reasons for which Customer is responsible, or Customer defaults on acceptance, the risk shall be transferred to Customer.

#### **Article VI: Installation and assembly**

Unless otherwise agreed in writing, the following provisions apply for installation and assembly:

1. Customer shall take on responsibility for and provide by the required time, at its expense:
  - a) all earthworks, construction work and other ancillary work in other fields including the required specialist and support staff, construction materials and tools,
  - b) the necessary equipment and materials for assembly and commissioning, such as scaffolding, lifting gear and other equipment, fuels and lubricants,
  - c) power and water at the site including connections, heating and lighting;
  - d) sufficiently large, suitable, dry and lockable spaces for storing machine components, equipment, materials, tools, etc. at the assembly site and suitable workspaces and break rooms for assembly personnel, including if necessary suitable sanitary facilities; Customer shall also take the same measures to protect the property of Supplier and the assembly personnel at the site as it would take to protect its own property;
  - e) protective clothing and protective devices required as a result of specific conditions at the site.
2. Before the commencement of assembly work, Customer shall automatically provide, without prompting, all necessary information on the location of concealed electricity, gas and water lines and similar systems and the necessary structural information.
3. Before the start of installation or assembly, the supplies and items necessary for the commencement of work must be available at the installation or assembly site, and all preparatory work must be so far advanced as to allow contractual installation or assembly to be commenced and completed without interruption. Access routes and the installation or assembly area must have been levelled and cleared.
4. In the event that installation, assembly or commissioning is delayed as a result of circumstances for which Supplier is not

responsible, Customer shall, to a reasonable extent, bear the costs of waiting times and additional trips required on the part of Supplier or assembly personnel.

5. Customer shall provide Supplier with confirmation of the working hours of the assembly personnel each week and, without delay, of completion of installation, assembly or commissioning.
6. In the event that Supplier requires acceptance of delivery after completion, Customer shall accept delivery within two weeks. Acceptance shall be deemed to have been given if Customer allows the two-week deadline to expire or if the delivery – if applicable after completion of an agreed test phase – has been put into use.

## Article VII: Acceptance

Customer may not refuse acceptance of Deliveries on the grounds of minor defects.

## Article VIII: Material defects

Supplier shall be liable as follows for material defects:

1. All components or services with material defects are to be remedied or replaced or provided again, at Supplier's discretion, if the cause of the defects already existed at the time of transfer of risk.
2. Claims for the remedy of defects shall become time-barred 12 months after commencement of the legal limitations period; the same shall apply for rescission and price reductions. This deadline shall not apply:
  - a) if and to the extent that the law pursuant to sections 438 par. 1 no. 2 (buildings and things used for buildings) or 634a par. 1 no. 2 (building defects) BGB [German Civil Code] specifies longer periods;
  - b) in the event of intent;
  - c) in the event of the fraudulent concealment of the defect, or
  - e) in the events of failure to fulfil a warranty of qualitye) claims for reimbursement of expenses of Customer according to section 445a BGB (recourse of seller) shall also be time-barred 12 months after commencement of the legal limitations period, provided that the last contract in the supply chain does not constitute a sale of consumer goods.
  - f) This shall not affect the statutory regulations on suspension, interruption and recommencement of the period of limitation.
3. Customer notices of defects must be made immediately in writing.
4. In the event of claims for defects, payments by Customer may be withheld to an extent that is reasonable in the light of the material defects in question. Customer shall not have a right of retention if its claims for defects are time-barred. In the event of an unjustified notice of defects, Supplier shall be entitled to require Customer to cover the expenses Supplier has incurred.
5. Supplier is to be granted a reasonable grace period for subsequent performance.
6. In the event that subsequent performance is unsuccessful, Customer shall – without prejudice to any damages entitlements pursuant to no. 10 – have the right to rescind the contract or reduce remuneration.
7. Claims for defects cannot be brought in the case of merely minor deviations from the agreed quality; of merely minor effects on usability; of natural wear or loss that occurs after the transfer of risk as a result of incorrect or negligent treatment, excessive strain, unsuitable operating equipment or substances, defective construction work, unsuitable foundations or specific external factors that were not a

requirement in the contract, or in the case of non-reproducible software errors. If Customer or third parties perform modifications, installation/extension or repair work incorrectly, no claims for defects may be brought for said work or for the resulting consequences.

8. Any claims of Customer for expenses required for the purpose of supplementary performance shall be excluded to the extent to which the expenses increase because the object of the delivery was subsequently transferred to a place other than the place of business of Customer, unless said transfer corresponds to said object's intended use. The same shall apply accordingly to claims for reimbursement of expenses of Customer according to section 445a BGB (recourse of seller), provided that the last contract in the supply chain does not constitute a sale of consumer goods.
9. Customer shall only be entitled to recourse against Supplier pursuant to section 445a BGB (recourse of seller) if and to the extent that Customer and its buyer have not entered into agreements that go beyond statutory claims for defects.
10. Customer shall not be entitled to bring claims for damages on the grounds of a material defect. This shall not apply in the event of the fraudulent concealment of the defect; failure to fulfil a warranty of quality; injury to life, limb or health, or an intentional or grossly negligence breach of duty on the part of Supplier. The above provisions do not involve a change in the burden of proof to the disadvantage of Customer. Customer shall not be entitled to bring any claims for defects over and above or other than those regulated in this Art. VIII.

## Article IX: Industrial property rights and Copyright; defects of title

1. Unless otherwise agreed, Supplier has a duty to undertake the delivery in the country of the place of delivery only without violation of third-party industrial property rights or copyright (hereinafter: Property Rights). In the event that a third party brings justified claims against Customer as a result of breach of Property Rights by Deliveries of Supplier used in accordance with the contract, Supplier shall be liable to Customer within the period specified in Art. VIII no. 2 as follows:
  - a) Supplier shall, at its discretion, obtain at its expense a right of use for the Deliveries in question, change said Deliveries in such a way that the Property Right is not violated, or exchange said Deliveries. In the event that Supplier is not able to do so under reasonable conditions, Customer shall be entitled to exercise its statutory rights of rescission or reduction in price.
  - b) Supplier's obligation to pay damages is in accordance with Art. XII.
  - c) The above Supplier obligations shall only apply if Customer notifies Supplier immediately in writing of the claims brought by the third party, does not accept that a breach has occurred, and Supplier retains the right to take all defensive measures and undertake all settlement negotiations. In the event that Customer ceases use of the delivery on the grounds of damage limitation or other cause, it shall have an obligation to notify the third party that this does not constitute an acceptance of the breach of the Property Right.
2. Customer shall not be entitled to bring claims if it is responsible for the breach of the Property Right.
3. Customer shall not be entitled to bring claims if and to the extent that the breach of the Property Right is caused as a result of specific specifications of Customer, of a use not foreseeable by Supplier, or of Customer modifying the delivery or using it with products not supplied by Supplier.

4. In the case of breaches of Property Rights, Customer claims pursuant to 1a) shall otherwise be governed by the provisions of Art. VIII nos. 4, 5, 8 and 9 as applicable.
  5. In the case of other defects in title, the provisions of Art. VII shall apply accordingly.
  6. Customer shall not be entitled to bring any claims for defects in title against Supplier or its agents over and above or other than those regulated in this Art. IX.
1. In the event that Customer is a merchant, the courts at the registered office of Supplier shall have sole jurisdiction for all disputes arising directly or indirectly from the contract. Supplier shall, however, also be entitled to bring an action at the place of the registered office of Customer.
  2. This contract and its interpretation are governed by German law. The United Nations Convention on Contracts for the International Sales of Goods (CISG) shall not apply.

#### **Article X: Retention of performance**

1. Contractual performance is subject to the condition that there are no obstacles to said performance on the grounds of German, US or other applicable national, EU or international foreign trade regulations or embargoes or other sanctions.
2. Customer has an obligation to provide all information and documents required for export, provision or import.

#### **Article XI: Impossibility; modification of the contract**

1. If and to the extent that delivery is impossible, Customer shall be entitled to require damages unless Supplier is not responsible for the impossibility. However, Customer's entitlement to damages shall be limited to 10 % of the value of that part of the delivery that cannot be usefully used as a result of impossibility. This limitation shall not apply in the event of liability on the grounds of intent, gross negligence or injury to life, limb or health; this shall not result in a change in the burden of proof to the disadvantage of Customer. This shall not affect Customer's right to rescind the contract.
2. In the event that events pursuant to Art. IV nos. 2 a) to c) significantly change the economic significance or content of the delivery or have a significant impact on the business of Supplier, the contract shall be reasonably modified in accordance with the principles of good faith. If this is not commercially reasonable, Supplier shall be entitled to rescind the contract. The same shall apply if any necessary export licences are not issued or not useful. In the event that Supplier wishes to exercise this right of rescission, Supplier shall notify Customer as soon as it becomes aware of the implications of the event, even if an extension in the delivery time had been initially agreed with Customer.

#### **Article XII: Other damages**

1. Unless otherwise specified in these Terms and Conditions, Customer shall not be entitled to bring any other claims for damages for whatever reason, including but not limited to breach of obligations or tort.
2. This shall not apply in the case of liability:
  - a) pursuant to the German Product Liability Act [*Produkthaftungsgesetz*];
  - b) in the event of intent;
  - c) for gross negligence on the part of owners, legal representatives or officers;
  - d) for malice;
  - e) upon failure to fulfil a warranty;
  - f) for culpable injury to life, limb or health, or
  - g) for culpable breach of material contractual obligations
3. The entitlement to damages for the breach of material contractual obligations is, however, limited to foreseeable loss typical of the contract type, unless one of the other scenarios listed above applies.
4. The above provisions do not involve a change in the burden of proof to the disadvantage of Customer.

#### **Article XIII: Courts of jurisdiction and applicable law**

#### **Article XIV: Validity of the contract**

Even in the event individual provisions of the contract are or become ineffective, all other provisions of the contract shall remain effective and binding. This shall not apply if compliance with the contract would cause unreasonable hardship to one of the parties.