

# General terms and conditions of sale and delivery

## 1) General

All agreements entered into and quotations issued by us are subject to the following terms and conditions. Placement of an order constitutes acceptance of these terms and conditions. Conflicting terms imposed by the client are hereby repudiated.

## 2) Quotations and prices

- a) Our quotations are subject to change without notice until such time as the order is confirmed in writing.
- b) Orders placed in response to a written quotation issued by us shall be regarded as accepted upon expiry of a period of 2 weeks if not rejected by us within this period.
- c) Where not otherwise specifically agreed, our prices are ex works prices including loading at our works but excluding shipping, packing and insurance costs and exclusive also of value added tax at the legally applicable rate at time of delivery.

- d) Confirmed prices are valid for a period of 90 days from the date of entry into contract, excepting where goods or services are to be supplied or performed within the context of a continuous obligation. Where performances are to be rendered by us more than 90 days after the date of entry into contract, we reserve the right to increase prices appropriately in the event of changes in the circumstances applying at the time of entry into contract which substantially affect our price calculations, in particular with regard to the cost of materials, wages, transport, insurance and public charges.

## 3) Drawings and descriptions

We reserve title and copyright to cost estimates, drawings and other documents; these must not be made accessible to third parties. We undertake to disclose plans designated by the client as confidential to third parties only with the approval of the client.

## 4) Software products

- a) We shall convey to the client a non-transferable and non-exclusive right to use the programs listed in the performance certificate including any designated ancillary programs and the respectively associated materials for their economic service life. Changes to the hardware configuration or system software must be notified to us by the client.
- b) We provide the software as an executable program either pre-installed or on a suitable medium for installation by the client. The transfer of the source code is not included in the scope. The software may not be reverse-engineered, decompiled or disassemble subject to § 69e of the German Copyright Act (UrhG). The client is not entitled to make changes of the source code.
- c) Copying programs thus made available in machine-readable form is permissible only within the scope of the intended use of the said programs. This shall in particular include loading the original data medium, installation upon the hard disk, loading into main (core) memory and intermediate memories such as cache memories, insofar as shall be necessary for technical reasons for the purpose of use. One single copy may be made on one single data carrier for backup purposes. The costs shall be borne by the client.
- d) Simultaneous use of a program at another computer or computers and/or on a network is permissible only with our prior approval.
- e) Title to the documentation made available to the client, remains with us.
- f) All rights to programs made available to the client, including the associated materials, shall continue to be held by us, even where these shall have been modified by the client or combined with the client's own programs or those of a third party. In the event of such modifications or combinations, and when preparing copies, the client shall apply a corresponding copyright notice.

## 5) Delivery and risk

- a) A time agreed for delivery shall be regarded as having been complied with provided that by the end of the said period of time the goods shall have left our works or, where goods are available for shipment, the goods shall have been reported as ready for shipment.
- b) Insofar as the time allowed for delivery shall be exceeded, the client shall be entitled in writing to set a grace period of 4 weeks, and upon expiry of the same to withdraw from the contract. Claims for compensation due to non-fulfilment, late fulfilment or impossibility of performance shall be excluded. This however shall not apply insofar as we shall have acted with wilful intent or gross negligence.
- c) Unless otherwise agreed, deliveries shall be made by what we judge to be the best and fastest transport route, on account of and at the risk of the client. The risk of accidental loss or accidental deterioration of the goods shall transfer to the client upon delivery of the goods to our authorised shipping agent, however no later than upon departure from our works. We shall be entitled to make part-deliveries.
- d) Transport insurance must in principle be arranged by the client and at the client's expense. If insurance is to be arranged by us, this must be expressly noted on the order. The costs shall be borne by the client.

## 6) Payment

Unless otherwise specifically agreed, the following shall apply:

- a) Where bills of exchange are to be accepted, we shall as a minimum invoice the bank discounting and collection charges which shall be payable immediately and in cash.
- b) In the event of default on payment, in compensation for the loss thereby incurred we shall charge interest at 2% above typical bank current account borrowing rates. This shall not affect the client's right to assert a lower loss, nor our right to assert a higher one.
- c) Insofar as justified concerns shall arise subsequent to entry into contract regarding the creditworthiness or economic circumstances of the client, we shall have the right to demand cash in advance or the provision of security by the client within a period of one week. Optionally, we may also interrupt the execution of the order and demand immediate settlement. In the event of refusal we shall be entitled to withdraw from the contract. In such a case the client shall have no right to compensation.

## 7) Guarantee

We offer a guarantee against defects and a warranty of title subject exclusively to the following provisions:

- a) If the client does not withdraw from the contract, at our choice, parts exhibiting defects attributable to circumstances pertaining prior to the transfer of risk shall be rectified or replaced by us free of charge.
- b) The client shall be entitled in urgent cases only, e.g. in the event of a risk to operational safety or to avert disproportionately greater loss or damage, to himself eliminate the defect or have the same eliminated by a third party and to demand recompense from us for the resulting costs. In such cases the client shall be obliged to notify us forthwith. Otherwise, in coordination with the customer we must be given the necessary opportunity and time to carry out all relevant rectification works and make replacement supplies; failing which we shall be released from all liability for the resulting loss or damage.
- c) The guarantee period shall be 12 months. Where the commencement of this period shall be determined by an acceptance of the subject of supply, the commencement of use of the subject of supply shall equate to its acceptance.
- d) Our guarantee obligations shall firstly be performed by restricted to rectification or replacement. Should we fail to meet our obligation under the guarantee within a reasonable period, or at the latest within a period of 6 weeks following receipt of written notification of a defect, or should the steps taken under guarantee prove unsuccessful, the client shall be entitled to demand a reduction in the price payable or cancellation of the contract. This however shall be dependent upon the client making known his intention in advance and in writing at 14 days' notice.
- e) Only with our approval may defects be eliminated by the client.

- f) Further claims by the client, in particular claims for compensation for loss or damage suffered other than at or by the supplied item itself, are excluded. This shall not however apply in the case of wilful intent, gross negligence or the culpable breach of essential contractual obligations. In the event of a culpable breach of essential contractual obligations, other than in cases of wilful intent or gross negligence, we shall be liable only for such reasonably foreseeable loss or damage as is typically associated with the relevant contract.

- g) In respect of outsourced products of significance, our liability shall be restricted to the assignment of claims accruing to us against the supplier.

- h) The warranty shall be precluded if the client or any third party on behalf of the client has changed the good or associated software, unless the client proves that the change does not rise our expenses for analysis and handling significantly and the defect was already present at the stage of acceptance.

## 8) Reservation of ownership

- a) Ownership of supplied items is reserved by us until such time as all payments due under the contract and other claims due from the client have been received.
- b) The client shall be entitled to sell the goods supplied by us within the context of his due and proper business operations. In the event that the goods are to be sold, the client here and now assigns his claims against his customers to us up to the value of the claims arising from this contract.
- c) The client may neither pledge nor assign the supplied goods by way of security. In the event of attachments or seizures or other dispositions by third parties, the client must draw the attention of such third parties to our rights and must notify us forthwith.
- d) The client must adequately insure the supplied items for the duration of our reservation of ownership against fire, theft and water damage and provide us upon demand with evidence of such insurance cover.
- e) In the event of the client being in breach of contract, and in particular in the event of a default in payment, we shall be entitled following a warning to take back the goods; and the client shall be obliged to surrender the same. The assertion of our reserved ownership and the attachment by us of the goods supplied shall not be regarded as a withdrawal from the contract.

## 9) Limitation of liability

The claims of the client for damages or reimbursement of expenses are governed by this clause.

- a) For damages resulting from personal injury or death caused by a negligent breach of duty of us or an intentional or negligent breach of duty of our legal representatives or vicarious agents, we have unlimited liability.
- b) For other liability claims, we have unlimited liability only in the absence of guaranteed quality as well as for intent and gross negligence, also in terms of our legal representatives and executives. We are responsible for the actions of other agents only to the extent of the liability for ordinary negligence according to the following lit. c).
- c) For slight negligence, we shall only be liable if a duty is violated, the fulfillment of the purpose of the contract is of particular importance (cardinal obligation). With a slightly negligent breach of a cardinal duty, liability is limited to € 10,000.00.

## 10) Set-off and retention

Our client shall have no right of set-off or retention in consequence of any counterclaims or minor defects. This however shall not apply insofar as the counterclaim by the client is undisputed or has been recognised by declaratory judgement.

## 11) Concluding provisions and place of jurisdiction

- a) The validity of the contract and of the subsequent provisions shall persist even in the event that individual terms should be ineffective.
- b) The place of fulfilment and place of jurisdiction for registered traders shall be our place of business. This shall likewise apply for all obligations arising from bills of exchange and cheques. Application of the United Nations Convention on the International Sale of Goods (CISG) is excluded. German law shall exclusively apply.