



Terms and Conditions of Sale (Germany International)

I. Terms and Conditions

The terms and conditions for the provision of any parts, equipment, documentation or service (hereinafter collectively referred to as "Products") shall be exclusively defined by the written provisions of these terms and conditions and the Seller's Sales Order Acknowledgement (hereinafter collectively referred to as "Contract"). These terms and conditions apply to the present and all subsequent contracts whose preponderant object is the supply of goods to customers. No other terms and conditions shall apply including the terms of any purchase order submitted to the Seller by the Buyer, whether or not such terms are inconsistent or conflict with or are in addition to the terms and conditions set forth herein and regardless whether the Seller has explicitly objected to such terms or not. The Seller's acceptance of Buyer's purchase order is conditional upon Buyer's acceptance of all the terms and conditions contained herein. Any communication construed as an offer by the Seller and acceptance thereof is expressly limited to the terms and conditions set forth herein.

II. Prices, Terms of Payment

If not stated otherwise in the Sales Order Acknowledgement, prices and delivery shall be FCA, Seller's Facility (Incoterms 2010) and shall exclude packing, any additional expenses and any indirect tax, including but not limited to license, sales, use, value added or similar taxes or duties applicable to the transaction or related work.

The Buyer agrees to pay or reimburse the Seller for any such taxes, which Seller or its subcontractors or sub-Sellers are required to pay.

Notwithstanding Clause II paragraph 1, taxes, fees, duties, social security contributions and other charges which are levied on Seller or its employees (including Seller's subcontractors and their personnel) in connection with the performance of the Contract in the country of destination of the Products, if any, shall be solely borne by the Buyer.

Payments shall be made to the bank account or payment office notified by the Seller without any reservation or deduction and free of expenses and costs for the Seller.

In the event the Seller does not receive payment from the Buyer when such payment has become due and payable, the Seller shall be entitled to charge interest at the annual rate of eight (8) percentage points above the rate for main refinancing operations (Minimum bid rate) of the European Central Bank (ECB) as applicable at the respective point of time whereas further rights and remedies of Seller provided by applicable law shall not be excluded thereby.

The Buyer may set off only those claims in accordance with applicable law that are undisputed between the Buyer and the Seller or have been finally adjudicated. Aforementioned rule shall apply mutatis mutandis to any right of retention of the Buyer.

In the event of an increase in costs incurred with regard to the manufacture of the Products after the date of the Sales Order Acknowledgment and prior to the date of delivery, Seller reserve the right to unilaterally adapt the purchase price, in line with equity and the new cost situation related to the respective increase in costs; such right will however not apply in case the Products have to be delivered or rendered within four months of conclusion of the contract. The adapted purchase price will be determined by Seller through written notification Buyer.

If Seller increases the purchase price due to any increase in costs, Buyer will be entitled to withdraw from the Contract, however, each party shall pay its own costs resulting from the termination. Buyer must communicate such withdrawal by written notice within 30 days of the receipt of the written notification determining the increase of the purchase price, otherwise the increase shall be deemed approved. Buyer's right of withdrawal will expire if Seller reverts to offering the Products at the initial purchase price.

III. Title; Risk of Loss

1. Risk of loss or damage to the Products will pass to the Buyer on delivery, as per Incoterms 2010.
2. Notwithstanding risk in the Products passing in accordance with the foregoing sentence, legal and equitable title in the Products shall not pass to the Buyer until the Seller has received in full in cleared funds all sums due to it in respect of the Products and all other sums which are or which become due to the Seller from the Buyer in the course of the ongoing business relationship on any account.
3. The Buyer is authorized by the Seller to use the Products in the ordinary course of its business or to sell the Products to a third party pursuant to a bona fide and arms length transaction at full market value.
4. Until the Seller has received cleared funds of all sums due to the Seller with respect to the Products:
 - (a) the Buyer will hold the Products in a fiduciary capacity and as bailee for the Seller;
 - (b) the Products shall, subject to the foregoing paragraph be: (i) kept properly stored and protected separate and distinct from all other property of the Buyer and of any third party; (ii) insured with a reputable insurance Seller for their full replacement value against all risks to the reasonable satisfaction of the Seller and on request the Buyer shall produce the policy of insurance to the Seller; (iii) kept complete and in good repair and condition and free from damage and/or tampering.
 - (c) the Buyer will not obliterate or remove any identifying marks on the Products and shall, if requested in writing by the Seller cause a note to be made in its book keeping records and also where possible a notice to be affixed to the Products indicating that the Products remain the property of the Seller.
 - (d) the Seller, its representatives, agents or auditors shall be entitled at all reasonable times to examine the Buyer's book keeping records and the Products to satisfy themselves that the note referred to in sub-paragraph (c) above has been made and that the notice referred to in sub-paragraph (c) is affixed to the Products and has not been obscured.

Without prejudice to any other rights and remedies provided by law or this contract, the Seller is entitled to declare the Contract avoided in case the Buyer substantially breaches its obligations under this paragraph 4 of this Clause III.

5. The Buyer's right to possession and power of sale contained in the foregoing paragraph shall automatically cease if the Buyer (being a corporation) has a petition presented for its winding up or administration or passes a resolution for voluntary winding-up otherwise than for the purposes of a bona fide amalgamation or reconstruction or has a receiver, manager administrator or administrative receiver appointed over all or any part of its assets or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or (being an individual) becomes bankrupt or enters into any arrangements with its creditors or takes or suffers any similar action in consequence or carries out or undergoes any analogous act or proceedings under foreign law or ceases or threatens to cease carrying on business.
6. Until such time as the Seller has received cleared funds of all sums due to the Seller with respect to the Products, the Seller (including its representatives, agents and employees) is irrevocably authorized by the Buyer at all reasonable times to enter upon any premises of the Buyer or any third party where the Products are or may be stored in order to inspect them or where the Buyer's right to possession has terminated for the purpose of repossessing, removing and if necessary dismantling such Products for the purposes of removal.
7. The Seller has the right to maintain an action against the Buyer for the price.
8. Nothing in these Terms and Conditions of Sale or any other contract will constitute the Buyer the agent of the Seller in respect of the resale of the Products so as to confer upon a third party any rights against the Seller.
9. If the Buyer pledges or in any way charges by way of security for any indebtedness any of the Products for which the Seller has not received cleared funds of all sums due to the Seller with respect to the Products, all money owed by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) immediately become due and payable.
10. Following any sale of the Products to a third party pursuant to a bona fide and arms length transaction in accordance with Clause III paragraph 3 the Buyer shall hold the proceeds of sale on behalf of the Seller and the Buyer shall account accordingly. The entire proceeds of any sale or otherwise (whether tangible or intangible and including without limitation any insurance proceeds) are to be:
 - (a) held by the Buyer in a fiduciary capacity for the Seller and are kept separate from and not mixed with other money or property of the Buyer or any third party;
 - (b) in the case of cash, not paid into an overdrawn bank account;
 - (c) at all times identifiable as the Seller's money or property; and
 - (d) in the case of tangible proceeds properly stored, protected and insured.

IV. Delivery

1. Performance of the stipulated time for delivery is subject to the timely receipt by the Seller of all required documentation, necessary permits and releases, especially of plans to be provided by the Buyer, as well as fulfillment of the agreed terms of payment and all other obligations by the Buyer stated herein. To the extent said conditions are not fulfilled on time, the time for delivery shall be extended accordingly.
2. If non-performance of any obligation of the Seller is due to "Force Majeure", defined as impediments or other circumstances beyond Seller's reasonable control, then the Seller's performance is excused and the time for delivery is extended for the duration of the Force Majeure event and its consequences. Force Majeure events include, but are not limited to: natural disasters or catastrophic events such as epidemics, nuclear accidents, fire, flood, typhoons or earthquakes; acts or omissions by civil or military government authorities, such as foreign currency restrictions, revocation or suspension of export or import licenses, governmental priority orders, allocations or restrictions upon the use of materials or manpower; war (whether governmentally declared or otherwise), riots, sabotage or revolutions; terrorist acts, strikes or lockouts.





3. In case of delay with delivery culpably caused by the Seller, the liability of the Seller for damages thereby caused shall be limited to an amount of 0.5 % of the contractual value of the Products for each full week of delay up to a maximum of 5 % of the contractual value of the Products whereas such value shall in each case be calculated in relation to the delayed part of the Products. Subject to Clause IV paragraph 4 below, payment of damages pursuant to this Clause IV paragraph 3 shall constitute the sole and exclusive remedy of the Buyer for delay to the exclusion of any and all other remedies.
4. Without prejudice to Clause IV paragraph 1 and 2 above and any preconditions required by applicable law, the Buyer shall only be entitled to declare the Contract avoided by reason of delay if the Buyer has threatened Seller with avoidance of the Contract in writing and an additional period of time of reasonable length needed for performance has not resulted in delivery of the Products.
5. If dispatch or delivery is delayed at the Buyer's request or otherwise caused by the Buyer by more than fourteen (14) days after notice was given of the readiness for dispatch by the Seller, the Seller may charge the Buyer storage costs for each commenced month thereafter of 0.5 % of the price of the respective Products.

V. Liability for non-conforming Products and Products with deficiency in title

1. The Products shall only be deemed to be non-conforming if already at the time of the transfer of risk they are clearly different to the specifications laid down in this Contract, or in the absence of agreed specifications, the Products are not fit for the purpose for which products of the same description would ordinarily be used in Germany. Except for the express warranties stated in the Contract, the Seller disclaims any other express or implied warranties, including but not limited to implied warranties of merchantability and fitness for a particular purpose, or otherwise. The Seller shall in particular not be liable for compliance of the Products with any legal requirements existing outside of Germany. Seller's warranty does not apply to defects a) which are due to reasons beyond the Seller's control, b) defects in expendable and/or consumable parts regularly replaced due to normal wear and tear arising after the transfer of risk, c) nonconformities caused by faulty or negligent handling, excessive strain, or other abuse by Buyer or any third party, d) non-compliance with the instructions contained in the operation and maintenance manuals of the original equipment manufacturer, e) non-reproducible software errors or f) minor defects.
2. Without prejudice to any exclusion or reduction of liability of the Seller pursuant to the applicable law, the Products delivered have a deficiency in title if they are not free from enforceable rights or claims of third parties at the time of transfer of risk. Without prejudice to further legal requirements, third parties' rights or claims founded on industrial or other intellectual property shall only be deemed to constitute non-conformity with the Contract to the extent that the industrial or intellectual property is registered and made public in Germany and the usual use of the Products by the Buyer is thereby impeded.
3. In case of delivery of non-conforming goods or Products with deficiency in title, the Seller shall, at its option, repair any defect or re-perform or replace any Products or any portion thereof that are non-conforming with the Contract provided the non-conformity is due to circumstances that existed before the transfer of risk occurred.
4. To the extent the Seller has incurred cost or expenses, the Seller shall be entitled to compensation in the event the defect notified by the Buyer to the Seller is subsequently determined to (a) not exist or (b) if the Seller is not responsible for the notified defect.
5. The Seller shall be given adequate time and opportunity to remedy the defect. For this purpose, the Buyer shall grant the Seller working access to the non-conforming Work, including disassembly and reassembly, as well as a complete technical data report without cost to Seller.
6. The defects liability period shall be twelve (12) months from the date of initial handover of the Products to the Buyer if not stated otherwise in the Sales Order Acknowledgment and any actions against the Seller based on a defect of the Products shall be time-barred thereafter. For the avoidance of doubt, no new defects liability period shall commence with regard to any repaired or replaced portions of the Products.
7. The Seller shall not be liable a) if the Buyer or a third party carries out modifications or repairs to the Work, b) if the Buyer does not notify the Seller during the defects liability period in writing of a defect or a deficiency in title without undue delay, at the latest however fourteen (14) calendar days after Buyer's discovery or after the Buyer should have discovered the respective defect (whereas the Buyer is obliged to examine the Products with regard to potential defects immediately after take over) or deficiency in title, if Buyer had exercised due care pursuant to the requirements of the applicable law, c) if the Buyer has not immediately taken all appropriate steps to mitigate a damage caused by a defect, or d) if the Buyer prevents the Seller from remedying a defect. With regard to his duties to notify any defect or deficiency in title without undue delay to the Seller, the Buyer shall not be entitled to rely on any excuse for its failure to give the required notice.
8. To the extent that the Buyer in accordance with the terms of the Contract is entitled to remedies because of delivery of non-conforming Products or Products with deficiency in title, such remedies are limited to the remedies as expressly provided in this Clause V. In addition to the remedies set forth in Clause V. paragraph 3 above, but without prejudice to any further requirements set forth by this Clause and applicable law, the Buyer may be entitled to a reduction of the purchase price provided that either two attempts of Seller to make good the respective default have been failed or the Seller has not undertaken such remedial measures within a reasonable time after receipt of notice of default by the Buyer. Finally, and subject to all and any requirements set forth by applicable law and this Clause V., the Buyer is only entitled to declare the contract avoided in case of non-conforming Products or Products with deficiency in title if such non-conformance or deficiency amounts to a fundamental breach of contract and a reasonable period of time required for appropriate remedial works has been expired to no avail subsequent to the Buyer's written claim of default towards Seller. Subject to Clause VI. paragraph 2, any other remedies or claims of the Buyer, in particular any claims of damages, shall be explicitly excluded.

VI. Limitation of Liability

1. The Seller shall in no event and irrespective of the legal basis (contract, tort or any other area of law) be liable towards the Buyer for loss of profit or revenue, loss of use, loss of data, cost of capital, down-time costs, cost of substitute goods, property damage external to the Products and any damage or loss arising out of such damage or any special, incidental, indirect or consequential damage or any of the foregoing suffered by any third party.
2. The aforementioned restrictions of liability shall not apply a) in the event of gross negligence or willful misconduct of Seller's managing partners or of its executive employees but they do apply in the case of willful misconduct and gross negligence of any other party acting for the Seller, including without limitation Seller's subcontractors, agents, advisors and employees; b) in case of bodily injury or insofar as mandatory law provides otherwise.
3. These limitations of liability shall also apply for the benefit of Seller's subcontractors, agents, advisors, directors and employees.

VII. Intellectual Property and Confidentiality

1. The Seller reserves all rights, title and interest in all intellectual property rights including but not limited to patents or copyright (hereinafter collectively "Intellectual Property Rights").
2. The Buyer having received Documents from the Seller, know-how, data or information (hereinafter "Information") agrees not to reproduce or disclose such Information to any third party, without Seller's prior written consent, and not to use Information for any purpose not authorized by the Seller. The Buyer also agrees to appropriately instruct its employees having access to such Information of the Buyer's confidentiality obligations and to duly restrict access of such Information to employees who have a need to know it in their scope of employment. The Buyer agrees to carefully protect Seller's Information, and at least with the same degree of care used in protecting its own similar information. In the event the Seller has consented to the disclosure of Information to a third party by the Buyer, the Buyer shall procure that such third party undertakes to be bound by the confidentiality obligations imposed on Buyer by this Contract and shall indemnify and hold harmless Seller from any damage incurred through the breach of said confidentiality obligation by the third party.
3. This confidentiality obligation shall not apply to Information which: a) is or becomes part of the public domain through no fault of the Buyer; b) is disclosed to the Buyer in good faith by a third party who has a right to make such disclosure; or c) as evidenced by Buyer's written records, has been developed independently by Buyer without reliance on the Information or has been known to Buyer prior to its disclosure by Seller; or d) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order and subject to Buyer's obligation to notify the Seller of the requirement in a timely manner.

VIII. Installation and Acceptance

1. Unless otherwise explicitly agreed in writing by the Seller, the Buyer shall be solely responsible for the installation and erection of the Products.
2. If an acceptance test has been agreed upon, it must be carried out immediately by the Buyer after Seller's notification of readiness for acceptance. If, after completion, the Seller requests acceptance of the Products or a portion thereof, Buyer shall provide such acceptance in written form within one week of Seller's request. In case of Buyer's failure to accept the Products in the time frame indicated, the Products shall be deemed to be accepted. The same shall apply if Buyer refuses acceptance, but does not state the reasons therefore in writing within one week after receipt of Supplier's request. The reasons to be stated by Buyer shall at least comprise the portion of the Products that Buyer considers as incomplete or substantially defective and why Buyer is of such an opinion. Furthermore, deemed acceptance shall occur if the Products or any portion thereof are put into operation by the Buyer. The Buyer shall in particular not be entitled to refuse acceptance in case of a) defects which only insignificantly impair the use of the respective Products, b) minor deviations of the Products from the specification of the Products, c) defective installation or erection not carried out by the Seller.

IX. Indemnity

Without prejudice to Seller's continuing claims, the Buyer will indemnify and hold Seller harmless against all and any claims of third parties which are brought against the Seller by reason of product liability or





similar provisions to the extent such liability is based on circumstances which were caused by the Buyer or other third parties.

X. Avoidance of Contract by the Seller

Without prejudice to any such right arising under applicable law or this Contract, the Seller shall be entitled to declare the Contract avoided if

- a) the Buyer fails to make payment of any amount due to the Seller under this Contract within thirty (30) days after it has become due and payable, or
- b) the Buyer fails to perform its obligations - whose performance is necessary for the Supplier to deliver the Products - within fourteen (14) days after request of the Seller in that regard, or
- c) Delivery of the Products is prevented by export control regulations or other legally mandated restrictions for more than six (6) months; or
- d) the Buyer has provided inaccurate information regarding its creditworthiness, or
- e) a material deterioration of the Buyer's creditworthiness has occurred or insolvency proceedings relating to the assets of the Buyer are applied for or commenced.

XI. Arbitration and Governing Law

1. All disputes arising out of or in connection with the Contract shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by one arbitrator appointed in accordance with the said rules without recourse to the ordinary courts of law. The language to be used in arbitration shall be English. The seat of arbitration shall be Zurich, Switzerland.
2. This Contract, and any and all claims arising out of or related to this Contract shall be governed by the UN Convention on Contracts for the International Sale of Goods (CISG). Outside the application of the CISG, the legal relationship between the parties shall be governed by the material laws of Switzerland.

XII. No Assignment

No rights arising under this Contract may be assigned by the Buyer unless expressly agreed upon in writing by the Seller.

XIII. Compliance with Export Control Regulations

1. The obligation to deliver the Products by the Seller shall be subject to the condition that the required export licenses are issued and that no other restrictions exist, arising from German, European, U.S. or any other applicable export control regulations, which are to be observed.
2. The Buyer undertakes to comply with all export control regulations of the national export control authorities applicable to him, in particular the authorities in Germany, in the European Community and in the United States of America. In particular, the Buyer undertakes not to directly or indirectly export or re-export the Products to any country for which such export may be prohibited by the aforementioned regulations. Failure to comply strictly with all laws relating to embargoes, sanctions, export and re-export applicable to Buyer and the Products shall be grounds for immediate termination of the Contract by the Seller.

XIV. Severability

Should any of the provisions of the Contract be or become invalid or otherwise unenforceable, the same shall not affect the validity and enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by an operative one coming as close as possible to the economic purpose and effect intended by the original provision.

