

# TERMS OF DELIVERY AND PAYMENT

Version 2006

## I. General

1. All deliveries and services are performed on the basis of the following terms and conditions as well as of any specific contractual agreements. Deviating terms and conditions of purchase of the Buyer shall not become contents of the contract by acceptance of the order or other means.  
In the absence of special agreements, a contract shall be deemed concluded upon written confirmation of order by the Supplier. The Supplier retains titles of ownership and copyrights to samples, cost estimates, drawings and similar information of tangible and intangible nature, including those in electronic form; they may not be made accessible to third parties.
2. The Supplier obligates himself to make available to third parties information and documents designated by the Buyer as confidential only with the Buyer's approval.

## II. Prices and Payment

1. In the absence of a special agreement, prices shall be agreed ex works, including loading in the works, but excluding packaging and unloading. Value-added tax as currently applicable will be levied in addition to the prices given.
2. In the absence of a special agreement, payment shall be made without any deductions to the account of the Supplier as follows:
  - a) For delivery of machines and equipment:  
1/3 advance payment upon receipt of the order confirmation  
1/3 as soon as the Buyer has been notified that the principle parts are ready for shipment  
The balance within 10 days after receipt of the invoice
  - b) For wage work and spare parts:  
Net cash immediately upon receipt of the invoice
3. The Buyer is entitled to retain payment or to set payment off against counter-claims only to the extent that said counter-claims are undisputed or have been conclusively determined by legal action.
4. In the event of default of payment of the Buyer, occurrence of difficulties in payment, fruitless execution measures or petition for initiation of bankruptcy proceedings, any and all claims of the Supplier against the Buyer shall become due and payable immediately.

## III. Delivery Time, Default of Delivery

1. The delivery time shall be determined in the agreements between the parties to the contract. The observance of the delivery time by the Supplier presumes that all commercial questions between the parties to the contract have been clarified and that the Buyer has fulfilled all of his obligations, such as acquisition of the necessary government certificates or permits or performance of a down payment. If this is not the case, the delivery time shall be extended by a reasonable period. The above provision shall not apply to the extent that the Supplier is responsible for the delay.
2. Observance of the delivery time is subject to correct and timely delivery by the Supplier's own suppliers. The Supplier shall submit notification as soon as possible of any delays which become apparent.
3. The delivery period shall be deemed as observed if the object of the delivery has left the Supplier's works or if notification of readiness for shipping has been given before lapse of the period. To the extent that an acceptance is to be performed, the acceptance date – except in the case of justified refusal to accept – shall be decisive, alternatively the notification of readiness for acceptance.
4. If the shipment or the acceptance of the object of the delivery is delayed due to reasons for which the Buyer is responsible, he shall be billed for the expenses incurred by the delay, beginning one month after notification of the readiness for shipment or acceptance.
5. If the failure to observe the delivery time is a consequence of force majeure, industrial action or other events which are beyond the influence of the Supplier, the delivery time shall be extended by a reasonable period. The Supplier shall notify the buyer of the beginning and end of such circumstances as soon as possible.

6. If the Supplier is in default and the Buyer consequently suffers damage, the latter shall be entitled to demand lump-sum default compensation. Said compensation shall amount to 0.5% for each full week of the default, but in total no more than 5%, of the value of that part of the complete delivery which cannot be used in due time or in accordance with the contract as a consequence of the default. If the Buyer sets a reasonable deadline for the Supplier – taking into account the statutory exceptions – following the due date, and if the Supplier culpably fails to meet the deadline, the Buyer is entitled to withdraw from the contract within the scope of the statutory provisions. Further claims due to default of delivery shall arise solely on the basis of the provisions of Section IX.2 of these terms and conditions.

#### IV. Agreement on Properties

Any illustrations, photographs, printed matter, etc., as well as information regarding dimensions, weights, performance, etc., accompanying the offers or deliveries shall not be deemed an agreement on properties if they have not been included in the written order confirmation. Deliveries are subject to changes which serve technical advances. The Supplier is not obligated to check dimensions, weights, etc., which have been given to the Supplier by the Buyer. The above provision shall also apply with respect to static or other construction prerequisites of the set-up and installation of the equipment at the Buyer's facility.

#### V. Transfer of Risk, Acceptance

1. The risk of accidental loss, deterioration or damage shall be transferred to the Buyer when the object of the delivery has left the works in accordance with provisions; this provision shall also apply if partial deliveries have been made or if the Supplier has also agreed to performance of other services, e.g., the shipping costs or the delivery and set-up. If differing from sentence 1 in the individual case no delivery charge is agreed, the risk shall be transferred in every case upon storage of the objects belonging to the scope of the delivery at the installation site. The above provision shall also apply if an acceptance is to be performed. The acceptance must be performed without delay on the acceptance date, alternatively following notification by the Supplier of the readiness for acceptance. The Buyer may not refuse acceptance due to the existence of a minor defect. Upon request by the Supplier, the Buyer shall be obligated to partial acceptance of services of the Supplier which are complete in themselves.
2. Regardless of the transferred risk, the Buyer shall take the necessary and reasonable measures to ensure the protection of the objects properly stored by the Supplier at the installation site from the usual risks at a construction site. Said obligation includes protection from unauthorized entry and access of third parties, from theft and fire, as well as the inclusion of the deliveries to which the Buyer has not yet acquired a title under existing insurance policies, or insurance policies which are to be concluded, of the Buyer.
3. If shipment is delayed or is not performed due to circumstances for which the Supplier cannot be held accountable, the risk shall be transferred to the Buyer as of the day of notification of readiness to ship. The Supplier obligates himself to conclude insurance policies requested by the Buyer at the expense of the latter.
4. Partial deliveries are admissible to the extent that they are reasonable for the Buyer.

#### VI. Requirement to Make Complaint in Accordance with Section 377 HGB (German Commercial Code)

The Buyer shall notify the Supplier in writing of obvious defects in the delivery upon receipt of the goods. If he fails to do so, he shall lose his rights to guarantee performance. Complaint regarding defects which can be discovered by reasonable inspection shall be made immediately, but no later than five workdays after transfer of the goods; complaint of defects which are not visible shall be made within three workdays following discovery, but no later than 12 months following transfer of the goods.

#### VII. Retention of Title

1. The Supplier shall retain title to the object of the delivery until payment of any and all claims against the Buyer from the business relationship, including claims which arise in the future, has been made in full.
2. The Buyer may neither sell, pledge nor assign as security the object of the delivery. The Buyer shall notify the Supplier immediately of attachments, confiscation or other disposal by third parties.

3. In the event of Buyer's conduct in violation of the contract, in particular in the event of default of payment, the Supplier, following issue of a warning, is entitled to reclaim the goods and the Buyer is obligated to surrender the goods.
4. The Supplier may demand surrender of the object of the delivery as a consequence of the retention of title only if he has withdrawn from the contract.
5. The petition for initiation of bankruptcy proceedings entitles the Supplier to withdraw from the contract and to demand the immediate return of the object of the delivery.
6. The Buyer's receivable resulting from the further sale of the conditional goods, regardless of whether unchanged, worked or processed, and independent of the number of customers, shall as of now be conveyed to the Supplier in the amount of the invoice value of the object of the delivery. The Buyer is entitled to sell further only subject to the condition that the receivable due to him from the customer is conveyed to the Supplier. The Buyer is not entitled to dispose otherwise of the Supplier's conditional goods. He is obligated to notify the Supplier immediately of any attachment or other detriments to the object of the delivery or rights of the Supplier by third parties. Despite the conveyance, the Buyer, together with the Supplier, is entitled to collect the receivable. The Supplier shall not collect the receivable and reveal the conveyance as long as the Buyer fulfills his payment obligations in due course. Upon request of the Supplier, which may be made at any time, the Buyer shall reveal to the former the debtors of the conveyed receivable and disclose to the debtors the conveyance. The Buyer obligates himself not to agree to a conveyance prohibition with third-party buyers of the objects of the delivery.

#### **VIII. Defect Claims**

The Supplier shall grant a guarantee – subject to Section IX – for material and legal defects in the delivery, excluding further claims, as follows:

##### **Material Defects**

1. Any and all parts which are determined to be defective due to a circumstance existing before transfer of risk shall, at the discretion of the Supplier, be remedied or replaced without defects free of charge. The Supplier shall be notified in writing of the determination of such defects immediately. Replaced parts become the property of the supplier.
2. After coordination with the Supplier, the Buyer shall provide the necessary time and opportunity for the performance of all remedies and substitute deliveries deemed necessary by the Supplier; otherwise, the Supplier shall be released from the liability for the resultant consequences. The Buyer shall have the right to remedy the defect himself, or to have it remedied by third parties, and to demand reimbursement from the Supplier for the necessary expenditures only in urgent cases of danger or of operational safety or to prevent unreasonably great damage, whereby the Supplier shall be notified immediately.
3. Of the immediate expenses incurred by the remedy of defects or substitute delivery, the Supplier shall – to the extent that the complaint is determined to be justified – bear the costs of the spare part, including shipment. He shall also bear the expense of removal and installation as well as the expenses incurred for any work required by technicians and helpers, including travel expenses, insofar as the Supplier is not unreasonably burdened by said expenses. An unreasonable burden in this sense is in particular the case if the expenses are substantially increased by the fact that the Buyer has moved the object of the delivery to a location different from the location agreed for the delivery.
4. Within the scope of statutory provisions, the Buyer shall have the right to withdraw from the contract if the Supplier – taking into account statutory exceptions – has allowed a reasonable deadline set for him for the remedy of defects or substitute delivery due to a material defect to lapse in vain, and the defect has also not been eliminated within a further subsequent period, or if the subsequent performance has failed or is unreasonable. If there is only an insignificant defect, the Buyer shall have solely the right to reduction of the contract price. The right to reduction of the contract price shall be excluded in all other cases. Further claims shall be based on the provisions of Section IX.2 of these terms and conditions.
5. No warranty shall be accepted in the following cases in particular: disregard of the respective operating manual, unsuitable or improper use, defective installation or commissioning by the Buyer or third parties, natural wear and tear, defective or negligent handling, improper maintenance, unsuitable operating materials, poor construction work, unsuitable foundation, chemical, electro-chemical or electric influences – to the extent that the Supplier is not responsible.
6. If the Buyer or a third party remedies a defect improperly, there shall be no liability on the part of the Supplier for the resulting consequences. The above provision shall apply

analogously in the event of modifications of the object of the delivery undertaken without the prior approval of the Supplier.

#### **Legal Defects**

7. In case a defect occurs or in case of clause IX. the supplier shall be entitled to have the default resp. damage checked by an expert.
8. If the use of the object of the delivery leads to the infringement of industrial property rights or copyrights in Germany, the Supplier shall, at his expense, acquire for the buyer the right to continued use, or modify the object of the delivery in a manner reasonable for the Buyer to such an extent that the infringement of the right no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period, the Buyer is entitled to withdraw from the contract. The Supplier shall also have the right to withdraw from the contract under the above conditions. Moreover, the Supplier shall indemnify the Buyer from undisputed or legally and finally determined claims by the holders of the relevant property rights.
9. The obligations of the Supplier set down under Section VIII. 7 are exhaustive for cases of infringement of industrial property rights or copyrights, subject to the provisions of Section IX.2.

They shall exist only if:

- a) The Buyer notifies the Supplier immediately of any infringements of industrial property rights or copyrights which have been asserted;
- b) The Buyer supports the Supplier to a reasonable extent in the defence against the asserted claims, or enables the Supplier to perform the modification actions described in Section VIII.7;
- c) Any and all defence measures, including settlements out of court, remain reserved for the Supplier;
- d) The legal defect does not result from instructions given by the Buyer; and
- e) The legal defect is not caused by the Buyer modifying the object of the delivery on his own authority or has used it in a manner which is not in conformity with the contract.

#### **IX. Liability**

1. If the object of the delivery cannot be used by the Buyer in conformity with the contract as a consequence of omitted or incorrect execution of suggestions and advice given before or after conclusion of the contract, or due to the violation of other contractual subsidiary obligations, for which the Supplier is culpable – in particular instructions for operation and servicing of the object of the delivery – the provisions of Sections VIII and IX.2 shall apply correspondingly, excluding further claims of the Buyer.
2. The Supplier shall be liable for damage which does not occur to the object of the delivery itself – for any legal reason whatsoever – only in cases of:
  - a) intention;
  - b) gross negligence on the part of the owner/the agents or executive employees;
  - c) culpable injury to life, body, health;
  - d) defects which have been fraudulently concealed, or if he has guaranteed the absence thereof;
  - e) defects in the object of the delivery to the extent that the Product Liability Act mandates liability for personal injury or material damage to objects used privately. In the event of culpable violation of essential contractual obligations, the Supplier shall also be liable in cases of gross negligence of non-executive employees and in cases of slight negligence, in the latter case limited to damage typical of the contract and which could reasonably be foreseen. Further claims are excluded.
3. The liability shall be excluded if the damage is based on the violation of regulations of the operating manual.

#### **X. Limitation of Actions**

Any and all claims of the Buyer – regardless of the legal basis for the assertion – shall be timebarred after lapse of a period of 12 months. The statutory periods shall apply with respect to damage compensation claims based on Section IX.2 a-e. Said periods shall also apply with respect to defects in a construction work, or to objects of a delivery which were used for a construction work in conformity with their usual manner of use and caused the defects in said work.

#### **XI. Proper Law, Jurisdiction**

1. Proper law for all legal relationships between the Supplier and the Buyer shall be

**exclusively the law of the Federal Republic of Germany applicable to the legal relationships of parties within this country.**

- 2. Jurisdiction is that of the competent court for the place of business of the Supplier. However, the Supplier is entitled to file complaint at the main place of business of the Buyer.**

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