

## GENERAL CONDITIONS OF SALE AND DELIVERY

last updated 2006

### GENERAL PROVISIONS

1. These General Conditions of Sale and Delivery apply for all – even future – contracts, deliveries and other supplies including consultancy services, information etc. with and towards businesses in the sense of § 14 BGB (German Civil Code).
2. Documents belonging to the offer, such as illustrations, drawings, information on weight and dimensions, are only authoritative as approximations, unless they have been expressly designated as binding. We reserve the right of ownership and the copyright to cost estimates, drawings and other documents.
3. All offers are subject to confirmation.
4. Our registered office is in Hungen.

### SCOPE OF THE DELIVERY

5. Our written order confirmation shall be binding with respect to the scope of the delivery and the agreement on delivery dates. In case we have issued an offer with a limitation as to the acceptance date and the offer has been accepted within this period of time, this offer shall be binding, as long as a timely order confirmation has not been provided.
6. Information on prices and performances as well as any other declarations or warranties are only binding if they have been made or confirmed by us in writing.
7. Modifications in the construction of the delivery item in the course of technical advancements are admissible.

### ACCEPTANCE INSPECTIONS

8. Unless otherwise agreed, any acceptance inspections agreed upon in this contract will be carried out on our premises during normal working hours.
9. The customer shall be informed in writing of the acceptance inspections in good time, so that he or a representative can participate in the inspection.

### PRICES AND PAYMENT

10. Unless specifically agreed otherwise, prices are to be understood ex works including loading at the site, however, excluding packaging. Prices are net plus statutory value added tax valid at the time.
11. The customer shall not be entitled to set-off any claims, nor shall he be entitled to assert a right of retention on the basis of such claims, unless these claims are uncontested or have been determined in a legally binding way.
12. Unless otherwise agreed, our invoices are to be paid 30 days after issue of the invoice, without deductions. For payments within 10 days, a cash discount of 2% is taken as agreed. Otherwise, cash discounts and rebates are taken as agreed if they are shown on the invoice.
13. Irrespective of the means of payment used, payment is only deemed to be effected once the complete invoice amount has irrevocably been credited to our account.

### DELIVERY TIMES AND DELAYS

14. Delivery periods shall commence at the time the order confirmation is dispatched, however, not before the furnishing of those documents, permits and clearances to be provided by the customer as well as the receipt of an agreed advance payment, and shall normally be 6 – 8 weeks if a framework agreement is in existence; in other cases, the delivery period stipulated in the order confirmation shall apply.
15. The delivery period is deemed to have been met if the notification of the readiness for dispatch has been issued to the customer within the agreed period of time.
16. In case of disturbance of deliveries due to force majeure or unforeseeable circumstances (disturbances of operation, strikes etc.), we shall be entitled to postpone the delivery date by an appropriate period of time. Any delivery periods extended in such a way shall not lead to, or cause a continuation of, default.
17. Should the customer not accept delivery at the agreed delivery date, he shall still be obliged to pay the part of the purchase price due at the time of delivery, as if the delivery had been carried out. In this case, we shall be obliged to provide for the storage of the delivery item at the customer's expense and risk. On the customer's request, we shall be obliged to insure the delivery item at the customer's expense, insofar as he pays this in advance.
18. Compliance with the delivery period requires the fulfilment of the contractual obligations by the customer.

### DELIVERY AND PASSING OF RISK

19. The agreed delivery clauses are to be interpreted under the INCOTERMS valid at the time of the conclusion of the contract. Unless other special delivery clauses have been included in the contract, the delivery item shall be deemed to be delivered "ex works" (EXW), packaging costs to be borne by the customer.
20. On the customer's request, we shall, at the customer's expense, insure the consignment against theft, damages through breakage, transport, fire and water as well as against other insurable risks.
21. Should delivery be delayed due to reasons within the customer's sphere of responsibility, the risk shall pass to the customer on the day of readiness for dispatch. In other cases, the risk shall pass to the customer at the time of dispatch of the delivery item to the customer. We are obliged to take out any insurances the customer requests, at the customer's expense.
22. Partial deliveries are admissible, insofar as they are reasonable for the customer.

### RESERVATION OF TITLE

23. All delivered goods shall remain our property (reserved title goods) until all outstanding claims have been settled, also in particular any claims remaining as a balance and to which we are entitled within the framework of the business relationship between ourselves and the customer. This shall also apply for any claims arising in the future and for conditional claims and also if payments are made for the settlement of expressly designated claims.
24. Treatments to, and processing of, the reserved title goods shall be deemed to be carried out for us as manufacturer in the sense of § 950 BGB, without any obligation for ourselves. The treated and processed

goods shall be considered as reserved title goods. In case of processing, composition or blending of the reserved title goods with other objects by the customer, we shall be entitled to a partial joint ownership to the new object in the relation of the invoice value of the reserved title object to the other goods used. Should our ownership expire due to composition or blending, the customer now already assigns us with the property rights he then receives to the new object to the extent of the invoice value of the reserved title object, and shall keep it for us, free of charge. Our joint ownership rights shall be deemed to be reserved title goods.

25. The customer may only sell reserved title goods under his normal business activities and subject to his usual business terms and only as long as he is not in default with his payment obligations towards us, provided that the claims arising from this resale or reprocessing are transferred to us. He shall not be entitled to dispose of the reserved title goods in any other way.

26. Any of the customer's claims from the resale or reprocessing of the reserved title goods shall be assigned to us now already and we accept this assignment. They shall serve for the securing of our claims from the business relationship to the same extent as the reserved title goods themselves. Should reserved title goods be sold by the customer together with other goods not bought from ourselves, the claims from the resale shall be assigned to us in the relation of the invoice value of the reserved title goods to the invoice value of the other goods. In case of a sale of goods in which we have a share of joint ownership pursuant to No. 24, a share corresponding to our joint ownership share shall be assigned to us.

27. The customer shall be obliged to inform us without delay of any attachments or other interference by third parties. The customer shall bear all necessary costs for the repeal of such interference and for the recovery of the purchase item, insofar as these costs cannot be obtained from third parties.

## LIABILITY

28. Should the item delivered by us have a defect at the time of handing over, we shall first of all be entitled to eliminate the defect through rectification or substitute delivery. Should this subsequent fulfilment fail or should it not be possible, the customer shall be entitled to withdraw from the contract, to claim a reduction of the purchase price or, should the defect have been caused within our sphere of responsibility, to assert compensation for damages subject to the provisions in Nos. 28 to 42.

29. Should the defect originate in our sphere of responsibility, the customer's claim to compensation of damages pursuant to § 280 BGB shall be limited to compensation of the damages to the sold item itself and to such damages, for which we have taken over an expressed and written obligation to assume liabilities.

30. Should any other obligation which is essential to the contract be violated in a slightly negligent way, or should we be in arrears with the delivery of the goods, our liability shall be limited to the foreseeable, typical, direct average damages. In case of a slightly negligent violation of less essential contractual obligations, our liability towards businesses shall be excluded.

31. We are not obliged to inspect goods, which we only sell as merchants (i.e. which have not been produced by us), as to their defectiveness. Therefore, we shall not be guilty of neglect in the sense of § 276 BGB, should the sold goods show defects which only can be found after an inspection. In the case of direct deliveries from the third supplier to the customer, the delivery of a defective item is, as a matter of principle, not to be regarded as our responsibility in the sense of § 276 BGB.

32. At the present state of technology, and in spite of diligent work, it is not possible to produce software which is free of defects and

faultless in all combinations and application situations. Therefore, liability for certain characteristics of the programmes is excluded.

33. The above mentioned limitations of liability apply correspondingly to our assistants and vicarious agents.

34. The above mentioned limitations of liability do not apply for cases of intent or gross negligence, nor for damage to the customer's life, body or health, nor for claims under the Product Liability Act.

35. Should the customer have notified us of a defect and if no defect exists, for which we would be liable, the customer shall be obliged to compensate us for the damage we have incurred due to such notification.

## NOTIFICATION AND INSPECTION OBLIGATIONS

36. The delivered goods are to be inspected by the customer immediately after having been handed over and, should they be defective in the sense of § 434 and § 435 BGB, we are to be notified of this in writing. This does not apply for hidden defects. The customer has the same inspection and notification obligation for deviations as to quantity. Should the customer neglect his inspection and notification obligations, he shall not be able to derive any claims from the defectiveness or deviation in quantity.

37. The customer bears the burden of proof for the defect, the time of detection of the defect and for the timeliness of the notification.

38. Should a hidden defect only appear at a later time, the customer must inform us of this defect without delay after its detection.

39. The customer shall also be obliged to inform us in writing of any other violation of the contract caused by us, without delay after its detection, unless it is, or must already be, positively known to us. Should he neglect this obligation of notification, the customer shall not be able to derive any claims from this violation of the contract.

## LIMITATIONS FOR THE ASSERTION OF CLAIMS

40. Claims due to defectiveness of the delivered goods shall expire, in deviation from § 438 Section 1 No. 3 BGB, after one year.

41. The reductions of the warranty periods pursuant to Nos. 40 and Fehler! Verweisquelle konnte nicht gefunden werden. shall not apply if the customer's claims are based on intent or gross negligence by ourselves or our assistants or vicarious agents.

## DISPUTES AND APPLICABLE LAW

42. For all disputes resulting from the contractual relationship, legal action is to be taken at the court competent for the place of our registered office if the customer is a business company, a public law legal entity or a public law special estate. We also are entitled to file legal action at the place of the customer's registered office.

43. The laws of the Federal Republic of Germany, excluding UN Sales Law, shall apply exclusively for all legal relationships between ourselves and the customer.

## PARTIAL INVALIDITY

44. Should individual provisions be invalid, either entirely or in part, the remaining provisions shall maintain their validity. The invalid provisions shall be replaced by such regulations which come as close as possible to the economic intent of this contract, adequately considering the interests of both parties; if this is not possible, the statutory regulation shall apply.