

# General Sales, Delivery and Payment Terms and Conditions

## Edition: January 2012

### § 1 General / Scope of Application

- Our Sales Terms and Conditions are exclusively applicable; we do not recognise contrary terms and conditions by the Purchaser or terms and conditions deviating from our Sales Terms and Conditions unless they have been explicitly approved by us in writing. Our Sales Terms and Conditions shall be applicable even if we carry out delivery to the Purchaser without reservation and with the knowledge of contrary terms and conditions or terms and conditions deviating from our Sales Terms and Conditions.
- All agreements made between us and the Purchaser in view of performance of the present contract have been stipulated in writing in the present contract.
- Our Sales Terms and Conditions are only valid vis-à-vis a contractor within the meaning of § 14 BGB [German Civil Code].
- Our Sales Terms and Conditions shall also be valid for subsequent orders. For current and future business relations the Sales Terms and Conditions shall be valid as framework terms and conditions even if not explicitly agreed upon in future.
- In addition to our General Terms and Conditions our 'Installation Guidelines', 'Installation Instructions' and 'Product Information' as well as the technical data sheet shall be valid.

### § 2 Offer / Offer Documentation

- Our offer is subject to alterations unless otherwise specified in an order confirmation. Insofar as an order confirmation is sent, such order confirmation is authoritative for the content of the contract.
- Warranty of a quality or acceptance of an independent guarantee on contract conclusion moreover must be explicitly identified in writing accordingly.
- Subsequent modifications of the contract contents must also be made in writing.
- We reserve property rights and copyrights in illustrations, drawings, calculations and other documents; they must not be made available to third parties. This is especially applicable to such written documents identified as being 'confidential'. Prior to their transmittal to third parties the Purchaser requires our explicit written approval.

### § 3 Prices / Payment Terms and Conditions

- Unless otherwise specified in the order confirmation, our prices are to be understood 'ex works' excluding packing and transport charges, insurance and other contingencies; these shall be invoiced separately. In the event that the goods are not supposed to be delivered within four months after contract conclusion, we reserve the right to reasonably adjust our prices, if modifications occur after contract conclusion due to labour agreements or the like. We shall prove these modifications to the purchaser on request. If changes in excess of 5% compared with the original price result, the purchaser is entitled to withdraw from contract.
- For pieces or parts which are produced on a special demand of the Purchaser, the Purchaser is informed of the production quantity by us. The Purchaser engages itself to take the quantities which have been confirmed to it. Statutory value-added tax is not included in our prices; it will be shown separately on the invoice on the day of invoicing in the amount stipulated by law.
- Discount deduction requires a special written agreement. Independent of such a written agreement it is stipulated that a discount of 3% on the invoice value shall be granted, if payment is received within 10 days as from date of invoice. Otherwise the payment shall be due for payment within 30 days as from date of invoice without any discount. No discount will be granted on new invoices as long as still open balances from former invoices exist. Payments will always be used for settlement of the oldest debt item.
- The purchaser defaults without a reminder, if he does not comply with the payment term according to 3.4. The Purchaser shall only be entitled to setoff rights, if his counterclaims have legal force, are undisputed or have been recognised by us. If the purchaser puts forward notices of defect, the purchaser shall be allowed to withhold payments which are in reasonable proportion to the exhibitor's defects occurred. The Purchaser shall be entitled to exercise a general lien in so far as his counterclaim is based upon the same contractual relationship.
- We are not obliged to accept bills of exchange or cheques. If bills of exchange or cheques are accepted, this will only be made on account of performance. If an accepted bill of exchange or cheque is not honoured in time, or a payment target granted is exceeded, all debts still open at that time, also debts for which a respite has been granted, and debts for which bills of exchange or cheques have been given, become immediately due for payment.

### § 4 Delivery / Delivery Time

- Prior to start of the delivery time indicated by us all technical questions must have been clarified. If we inform the Purchaser about delivery times, such information generally is without engagement and only represents a probable delivery date.
- Observance of our delivery obligation moreover requires timely and orderly fulfilment of the Purchaser's obligations, especially observance of the agreed upon payment terms and conditions. The defence of lack of performance of the contract remains reserved. This right also exists for not entirely fulfilled obligations from former deliveries.
- If the Purchaser is in default of acceptance or if he violates any other duties of cooperation, we shall be entitled to request indemnification of the damage incurred to us to that extent including eventual surplus expenditure. Further claims remain reserved.
- If the prerequisites of item 4.3 exist, the risk of an accidental loss or an accidental deterioration of the object purchased passes onto the Purchaser at that point in time when the Purchaser has been put in default of acceptance or is in debtor's delay.
- If non-observance of the delivery time is due to Force Majeure such as for example natural disaster, war, riot or similar incidents such as for example strike, lockout, the delivery time is extended by the duration of the incidents causing the delay insofar as these impediments can be proven to have a major influence on completion or delivery. The same applies, if these circumstances have occurred at subsuppliers.
- Partial deliveries are admissible within a reasonable extent.
- We shall be liable in general only for delay in delivery in accordance with statutory provisions.
- Moreover we shall be liable in accordance with statutory provisions in so far as the delay in delivery is based upon an intentional or grossly negligent contract violation for which we are responsible; we shall also be responsible for a fault caused by our representatives or vicarious agents.
- In so far as the delay in delivery is merely based upon simple fault and no mandatory liability is applicable due to injury of life, body or health, our liability for default damages is limited in such a way that the Purchaser can request 0.5 percent each for each completed week of delay but in total not more than 5 percent of the price for that delivery portion which due to the delay could not be put into useful operation. This is not connected with a modification of the burden of proof to the Purchaser's disadvantage. The Purchaser's legal right to rescind remains unaffected.
- Goods which have been reported to be ready for shipment have to be called by the Purchaser immediately but not later than after a delay of 20 calendar days after having been informed of the readiness for shipment. If no call occurs, we shall be entitled to put the goods on stock and store them in our own discretion at Purchaser's risk and treat them as delivered ex works.
- If shipment or delivery of the goods is delayed on request or upon instigation of the Purchaser, storage charges may be invoiced starting from one month after notification of readiness for shipment in the amount of 1% of the invoice value for each month started. The storage charges shall be limited to 5% of the invoice value unless higher storage charges can be proven by us.
- Fulfilment of our obligation in accordance with the German Packaging Regulations has been transferred by us to an authorized Company, who sets up appropriate collecting boxes for packing material, which has to be taken back in places where large quantities and small quantities of packing material occurs. Overwraps and sales packages will be taken back by us only via this authorized Company. Outside the scope of application of the Packaging Regulations no packing material will be taken back by us.

### § 5 Participation Duties of our Customers

- Participation duties by the Purchaser, which are explicitly or tacitly agreed upon within the scope of the contract, will be performed without special remuneration unless specified otherwise.
- The Purchaser shall be obliged to inform us on all facts in time from which it results that stock and products in store with us which have been placed at disposal in view of production capacities reported to us cannot be used or cannot be fully used. If residual stock remains, the Purchaser will accept the stock and eventual charges for their destruction in case of premature modification of his disposition. The same applies also to products for which we had to order minimum quantities from our suppliers in so far as we had pointed out this fact to our customer in advance.
- The Purchaser guarantees that the products supplied by him for further processing are suitable for this purpose. We are not obliged to inspect the products supplied by the customer for their property and fitness in view of further processing. Within the scope of current business relations as well as when a processing item has primarily been inspected, tested and released, the purchaser shall be obliged to inform us of his own accord about each product change in writing. In cases of current processing of items the purchaser shall be further obliged – for each modification of the production conditions in his plant especially when replacing tools, machines or when introducing new production procedures – to inspect the item to be processed by us for variations and modifications and to inform us in writing of such variations and modifications.
- We shall not be obliged to check the correctness of instructions given by our purchasers, material selection or other provisions made by our purchaser.
- Therefore the purchaser must check all instructions he is giving as well as the quality of the materials specified or made available to us for compliance with statutory and technical provisions.
- If the customer defaults regarding his duty of procurement or participation after written reminder, we shall be entitled to statutory rights.
- The taking back of goods by us requires an explicit written agreement. Taking back of the goods moreover requires that a collection order for the goods is placed by us at the purchaser's expense. We are entitled to arrange this through the customer's account. If cost are incurred by us due to the fact that goods for taking back have been tendered to us unjustified, we shall be entitled to invoice such cost to the purchaser. All risks incurred are at the expense of the purchaser. Item 5.7 is applicable only insofar as we are not obligated by law to take back the goods, anyway.

### § 6 Passing of Risk

- Unless otherwise specified in the order confirmation, delivery shall be deemed to be agreed upon 'ex works'.
- The risk for delivery passes onto the purchaser when leaving our works, at the latest with shipment of the consignment and/or delivery to the carrier or forwarding agent, even if partial deliveries are made or if exceptionally we carry out transport at our own expense or with our transportation means, unless otherwise specified.
- If shipment is delayed due to circumstances for which the purchaser is responsible, the risk passes onto the purchaser with receipt of the notification of readiness for shipment.
- In case of return shipment (clause 5.7), the risk of loss remains with the purchaser until the products have been accepted at our works. Other provisions within the scope of a statutory obligation to take back remain unaffected.
- If the purchaser so requests, we will effect a transport insurance for the shipment; the charges connected with it will be borne by the purchaser.

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### § 7 Redhibitory Defects

We shall be liable for redhibitory defects as follows:

- All such parts or services have to be reworked, newly delivered or rendered again free of charge upon our choice which within the statutory limitation – irrespective of the operating period – show a redhibitory defect in so far as its cause existed at the time of passing of risk.
- Claims due to redhibitory defects become barred by the statute of limitations in 12 months unless a longer time period exists imperatively by law. The time period starts with the passing of risk (item 6).
- The purchaser must notify obvious redhibitory defect to us within 20 days as from delivery in writing. The provision of Section 377 HGB [German Commercial Code] remains unaffected.
- First of all we shall be granted the possibility of subsequent performance within an adequate delay.
- If subsequent performance fails, the Purchaser may withdraw from contract – without prejudice to eventual damage claims – or reduce payment. Replacement for fruitless expenditure can only be requested by the Purchaser, if we are responsible for the defect due to intent or gross negligence.
- Claims as a result of defects do not exist in case of only minor variation from the agreed upon quality, in case of only minor impairment of usefulness, in case of natural wear and tear or damages occurring after passing of risk due to wrong or negligent treatment, excessive load, inappropriate consumables or due to special external influences which are not assumed according to contract as well as in case of non-reproducible software errors. If the Purchaser or third parties carry out modifications or repair work in an inappropriate way, no claims exist for it nor the resulting consequences. The same applies in so far as our specifications for handling and other instructions are not observed.
- Claims by the Purchaser for expenditure necessary for the purpose of subsequent performance including but not limited to transport, road, work and material charges are excluded to the extent that the expenditure increases because the time of delivery has subsequently been taken to another place than the establishment of the Purchaser, unless this change of location corresponds to its use according to purpose.
- Legal recourse claims by the Purchaser towards us exist only in so far as the Purchaser has not made any agreements with his customer beyond statutory claims due to defects.
- For damage claims item 9 applies. Further or other claims than those stipulated in this item or in item 9 for redhibitory defects are excluded.
- If a notice of defects has been wrongly made, we are entitled to demand damages from the Purchaser for the expenses incurred by us in this connection.

### § 8 Industrial Property Rights and Copyrights, Defective Titles

Unless otherwise agreed upon, we shall be obliged to render delivery only in the country of the place of delivery free from industrial property rights and copyrights by third parties (hereinafter called property rights). In so far as a third party due to violation of property rights by deliveries rendered by us and used according to contract, puts forward justified claims against the Purchaser, we shall be liable to the Purchaser within the delay determined in item 7.2 as follows:

- Upon our choice and at our own expenses we will either obtain a right of use (usufructuary right) for the deliveries concerned, modify them in such a way that the property right will not be violated or replace them. If this is not possible for us under adequate terms and conditions, the Purchaser shall be entitled to statutory rights of withdrawal or reduction. The Purchaser shall only be allowed to request indemnification for fruitless expenditure, if we are liable for intent or gross negligence. Our obligation to pay damages is governed by item 9.
- The above mentioned obligations exist only in so far as the Purchaser informs us immediately in writing about the claims put forward by the third party, does not recognise a violation and all defences and composition proceedings are reserved for us. If the Purchaser ceases to use the delivery for reasons of damage reduction or for other important reasons, he shall be obliged to inform the third party that no acknowledgement of a violation of property rights is connected with cessation of use.
- Claims of the Purchaser are excluded in so far as he is responsible for the violation of property rights.
- Claims of the Purchaser are also excluded in so far as the violation of property rights is caused by particular specifications of the Purchaser, by an application unforeseeable by us or by the fact that the delivery is modified by the Purchaser or used together with products not delivered by us.
- In case of violations of property rights for the claims of the Purchaser stipulated in item 8.1 the provisions of items 7.4, 7.5 and 7.9 apply accordingly.
- Further claims of the Purchaser or other claims of the Purchaser than those stipulated in the present item 8 against us or our vicarious agents for defective title are excluded.

### § 9 Total Liability

- Claims by the Purchaser for indemnification – irrespective of the legal nature of the claim put forward – are excluded.
- Excluded from this provision are:
  - Damages due to violation of substantial contractual obligations (cardinal obligations). In case of simple negligence, however, liability for indemnification shall be limited to the foreseeable damage typically occurring.
  - Damages due to injury of life, body or health.
  - For other damages based upon an intentional or grossly negligent breach of duty with us being equally responsible for a breach of duty by our legal representatives or vicarious agents.
  - Indemnification for impossibility or inability.
- No modification of the burden of proof at the Purchaser's disadvantage is connected with the above provision.
- Liability according to the liability for products' law remains unaffected.
- In so far as liability for indemnification towards us is excluded or restricted, this applies also to personal liability for indemnification by our employees, our commercial agents and our vicarious agents.

### § 10 Retention of Title

- The objects of the deliveries (goods under retention of title) remain our property until payment of all claims against the purchaser to which we are entitled from the business relationship. In so far as the value of all security interests to which we are entitled against the Purchaser, exceeds the amount of all claims secured by more than 10%, we will release a corresponding share of the security interest on request by the Purchaser.
- During existence of the retention of title the Purchaser shall not be permitted to pledge the goods or transfer them by way of security and resale is only permitted to resellers in normal dealings and only with the proviso that the reseller receives payment from his customer or makes the reservation that transfer of title to the customer will only occur, if the customer has met his payment obligations.
- In case of attachments, seizures or other orders or interference by third parties the Purchaser must inform us immediately so that we can institute a claim according to Section 771 ZPO [German Civil Practice Act]. In so far as the third party is not able to reimburse the court costs and extrajudicial costs of a claim according to Section 771 ZPO, the Purchaser shall be liable for the loss incurred by us.
- The Purchaser is obliged to take good care of the item purchased; especially he is obliged to insure the item purchased at his own expenses sufficiently at original value against fire, water damage and theft. In so far as maintenance and inspection work are required, the Purchaser must carry out such work in time at his own expense.
- In case of breaches of duty by the Purchaser including but not limited to delay of payment, we shall be entitled to withdrawal and taking back; the Purchaser is obliged to restitution. Taking back and/or exercise of the retention of title does not require rescission by the Supplier; these actions or an attachment of the goods under retention of title by us does not represent a withdrawal from contract unless this has explicitly been declared by us.
- If the Purchaser has resold the purchased item in the ordinary course of business, he assigns, however, to us already now all debts in the amount of the final invoice value (including value-added tax) of our claim accruing for him from resale against his customers or third parties regardless of whether the purchased item has been resold without or after further processing. The Purchaser remains authorised to collect this debt also after assignment. Our authority to collect the debt ourselves remains unaffected. But we undertake not to collect the debt as long as the Purchaser meets his payment obligations from the proceeds taken in, does not default in payment and in particular no petition for opening of insolvency proceedings has been filed or insolvency exists. But if this is the case, we can request that the Purchaser informs us about the debts assigned and their debtors, gives all information necessary for collection, hands out the respective documents and informs the debtors (third parties) of the assignment.
- Processing or reshaping of the purchased item by the Purchaser will always be made on behalf of us. If the purchased matter is processed with other objects not belonging to us, we acquire joint ownership in the new object in the ratio of the value of the purchased item (final invoice value including value-added tax) to the other processed objects at the time of processing. To the object created by processing moreover the same applies as for the purchased item delivered under retention of title.
- If the purchased item is mixed inseparably with other objects not belonging to us, we acquire joint ownership in the new item in the ratio of the value of the purchased item (final invoice value including value-added tax) to the other mixed objects at the time of mixing. If the mixing occurs in such a way that the item of the Purchaser has to be considered the main item, it is deemed to have been agreed upon that the Purchaser transfers pro rata joint ownership to us. The Purchaser holds in custody for us the exclusive ownership or joint ownership thus created.

### § 11 Place of Performance, Venue, Governing Law

- For all rights and duties resulting from our deliveries and services for both parties the registered office of our company shall be considered to be the place of performance.
- In dealings with fully qualified merchants within the meaning of the German HGB [Commercial Code] and legal persons under public law for lawsuits for which district courts have jurisdiction in rem, the Velbert District Court, and for lawsuits for which county courts have jurisdiction in rem, the Wuppertal County Court shall have general jurisdiction.
- The contractual relationship shall be governed by the law of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- The data specified by the Purchaser will be stored and processed by electronic data processing to the extent that this is admissible in accordance with the Federal German Law on Data Protection (Sections 28, 29 BDSG).