

# General Terms and Conditions of Sale and Delivery (Domestic/International)

On the basis of the terms and conditions recommended by Verband Deutscher Maschinen- und Anlagenbau e.V. (VDMA) (= German Machine and Plant Engineering Association)

March 2016

## 1. To be applied to any agreement with:

- 1.1. any person acting in performance of her/his commercial or independent professional business (entrepreneur) when entering into any respective agreement,
- 1.2. any public legal entity or any public separate estate.

## 2.1. General Remarks & Rules

- 2.1. Supplier's General Terms and Conditions of Sale and Delivery apply exclusively; General Terms and Conditions of Orderer on the contrary to or differing from Supplier's General Terms and Conditions of Sale and Delivery will not be accepted by Supplier unless he agrees on their validity in writing. Supplier's General Terms and Conditions of Sale and Delivery also apply in case he carries out delivery without reservation while being aware of Orderer's General Terms and Conditions on the contrary to or differing from his General Terms and Conditions of Sale and Delivery.
- 2.2. All agreements entered into between Supplier and Orderer concerning the execution of this Agreement are made in writing and are part of this Agreement.
- 2.3. Supplier's General Terms and Conditions of Sale and Delivery apply as well to any future business transactions between Supplier and Orderer.

## 3. Offer

- 3.1. Any descriptive documents pertaining to any respective offer, such as pictures, drawings, and particulars as to weight and measures, shall only be deemed to be rough standards unless explicitly identified as binding standards under any respective agreement.
- 3.2. Supplier hereby reserves to itself any of its property and copyright interests in any cost estimates, drawings and other descriptive documents. Such cost estimates, drawings, and other descriptive documents shall not be made accessible to any third party.

## 4. Scope of Delivery

- 4.1. Supplier's written acknowledgment of any respective order shall determine the content of any respective agreement and any performance due thereunder.
- 4.2. There are no oral ancillary agreements.
- 4.3. Any ancillary agreement and any modification of any agreement entered into shall be subject to Supplier's written acknowledgment thereof.

## 5. Price and Payment

- 5.1. Unless provided otherwise in acknowledgement of order, all prices shall apply in EURO and are to be understood ex Supplier's works inclusive of loading up at Supplier's works but exclusive of packaging and customs clearance, and plus sales tax in the amount prescribed by any respective applicable law. Partial invoicing of partial deliveries shall be permitted.
- 5.2. Supplier reserves the right to increase prices correspondingly after expiration of 4 months since conclusion of the contract if costs increase, especially due to conclusion of a collective agreement or to material price increases. Supplier will provide evidence to Orderer on request.
- 5.3. Unless provided otherwise in acknowledgement of order, purchase price shall be due immediately without any discount. Deduction of cash discount requires a separate agreement in writing.
- 5.4. Unless agreed on other terms of payments, default occurs after reminder-letter to Orderer or 14 days after issuing of invoice. Default interest shall amount to 8 percentage points above the basic interest rate. Assertion of further damage shall not be excluded hereby.
- 5.5. Any right to withhold payment may only be exercised if it is based on claims of Orderer's arising from the same transaction between the parties and if it is either acknowledged as meritorious by Supplier or declared to be meritorious by a final and unappealable judicial decision.
- 5.6. Orderer shall not be entitled to set off any claims against Supplier's claims unless such claims are either acknowledged as meritorious by Supplier or declared to be meritorious by a final and unappealable judicial decision.

## 6. Time of Delivery

- 6.1. Time of delivery shall commence upon dispatch of the acknowledgment of any respective order, in no case, however, prior to the submission of all documents, licenses, and releases to be produced by Orderer, nor prior to receipt of any stipulated down payment.
- 6.2. Delivery shall be deemed to be on time if, upon expiration of the delivery period, the respective ordered item has either left Supplier's works or if notice of readiness for its shipment has been given, and, in case Supplier is obligated under any respective agreement to ship out any respective ordered item, provided that such shipment is effected without culpable delay after notice of readiness for its shipment has been given.
- 6.3. Any term of delivery shall be adequately extended in any case of industrial action, particularly strike and lock out, and as well in any case of an occurrence of important unforeseeable obstacles beyond Supplier's will, provided that such obstacles are proven to substantially affect the completion or shipping out of any respective ordered item. The same shall apply if sub-suppliers are affected by such circumstances.
- 6.4. Even if such industrial action, in particular a strike or a lock out, or an obstacle beyond Supplier's will, provided that such obstacle is proven to substantially affect the completion or delivery of any respective ordered item, occurs while Supplier is defaulting, Supplier shall not be held responsible therefor. German Civil Code (BGB) § 287 sentence 2 shall be contracted out. In important cases, Supplier will give Orderer immediate notice of any appearance and disappearance of such obstacles.
- 6.5. If Orderer incurs any damage on account of a culpable failure solely of Supplier's to observe any respective time limit for delivery, then Orderer shall, to the exclusion of any other claims it has or may have, be entitled to claim compensation for such delay. For each full week of such delay, such compensation shall amount to 0.5 % of the value of that particular part of the entire delivery, which cannot be used in time or in the manner provided in any respective agreement, the total of such compensation shall not exceed 5 % hereof, however. This liability limitation clause shall not apply in any case of an intentional or grossly negligent act or omission committed by any executive body or manager of Supplier's or if, by way of exception, observance of any respective time limit constitutes a so called essential contractual obligation. Moreover, this liability limitation clause shall not apply to damages resulting from culpably caused injuries to life, body and / or health.
- 6.6. Commencing one month after notice of readiness for dispatch has been given, Orderer shall be charged any accruing storage costs, amounting to no less than 0.5 % of the amount of the pertinent invoice if such storage is performed at Supplier's works, provided that dispatch has been delayed at Orderer's request, unless Orderer proves that no such damage has occurred at all or that any such damage is substantially less.
- 6.7. Following the fixing and fruitless expiration of a reasonable period of time, Supplier may, however, dispose of any respective ordered item otherwise and provide supply to Orderer under a reasonably extended time limit.
- 6.8. Any term of delivery shall be suspended from running while Orderer does not fully perform its contractual duties, including but not limited to the timely provision of samples (e.g. packaging and filling materials).

## 7. Passing of Risk and Acceptance of Delivery

- 7.1. The risk shall pass to Orderer at the latest when any respective ordered parts are made available at Supplier's ramp.
- 7.2. The passing of risk upon any respective ordered parts being made available at Supplier's ramp shall even then be deemed agreed upon between the parties, when partial deliveries are made, or when Supplier has agreed to perform additional services, such as installation and commissioning.
- 7.3. In any case of delay of a shipment due to circumstances Orderer is responsible for, the risk shall already pass to Orderer on the day Supplier is ready for dispatch, provided, however, that Supplier shall, upon Orderer's request and at Orderer's cost, obtain the insurance coverage Orderer demands.
- 7.4. Delivered items showing only non-material defects shall be accepted by Orderer, without prejudice, however, to any of its rights under section 9 hereof or under law.
- 7.5. Partial deliveries shall be permitted.

## 8. Retention of Title

- 8.1. Supplier retains its property rights in any respective ordered item until having received all payments due from Orderer under the parties' business connection. Supplier shall be entitled to take back the delivery item if Orderer commits a breach of contract, particularly in case of default of payment. The redemption resp. assertion of retained property rights does not require rescission by Supplier. Those actions or the execution of delivery item do not constitute rescission of contract, unless expressly declared by Supplier. Supplier shall be entitled to realize delivery item after its redemption. Realization proceeds shall be credited on Orderer's liabilities – less reasonable realization charges.
- 8.2. If property rights cannot be validly retained in a foreign country or state, provided that the laws of such country or state are applicable, then Orderer shall be bound to cooperate in taking all measures, including without limitation to give any declaration required from its side, for providing Supplier with securities equivalent to a retention of property rights.
- 8.3. Orderer shall be obliged to handle the delivery item with care and, on Supplier's demand and while retention of property rights lasts, to insure it against damages sufficiently. Orderer herewith assigns claims against insurance to Supplier.
- 8.4. Orderer shall give Supplier immediate written notice of any attachment or other interference made by any third party in order that Supplier can take legal action according to Section 771 Code of Civil Procedure (ZPO). To the extent to which third party shall not be able to reimburse judicial and extra-judicial costs of an action according to Section 771 ZPO, the Orderer shall be liable for the loss occurred to Supplier.
- 8.5. Orderer shall be entitled to resell delivery item in the ordinary course of business; however, he herewith assigns all claims arising from resale to his purchasers or third parties amounting to invoice amount (including VAT), regardless of whether the delivery item was resold before or after processing. Orderer shall be entitled also after assignment for collection of such claims; power of Supplier to collect such claims himself remains unaffected. However, Supplier shall be obliged not to collect claims while Orderer meets his financial obligations from proceeds received, while he is not in default with payments and in particular did not file for insolvency or stop payments. If this obligation does not apply, Orderer shall, on Supplier's demand, announce assigned claims and debtors thereof, state everything necessary for collection, deliver all appendant documents and inform debtors about assignment.
- 8.6. Processing or transformation of delivery item by Orderer shall be made only for Supplier. In case delivery item is processed with other objects not owned by Supplier, Supplier acquires co-ownership in new object at the rate of delivery item's value to other processed objects at the time of processing. The same applying for item delivered with reservation applies for object emerging from processing.
- 8.7. In case the delivery item is inseparably mixed or connected with other objects not owned by Supplier, Supplier acquires co-ownership in new object at the rate of delivery item's value to other mixed or connected objects at the time of mixture or connection. In case Orderer's object is to be regarded as main object after mixture or connection, transfer of co-ownership in main object shall be deemed to be agreed on. In doing so, Orderer preserves incurred sole or co-ownership for Supplier.
- 8.8. Supplier shall be obliged to release securities due to him on Orderer's demand insofar as the realizable value of his securities exceeds the claims to be secured by 10 %; Supplier shall select the securities to be released.
- 8.9. As far as the law in which area the delivery item is located does not permit retention of title, Supplier shall be entitled to exercise all rights he is able to reserve to delivery item. Orderer shall be obliged to participate in actions in respect of protection of his property right or instead thereof, of another security interest in delivery item.

## 9. Liability for Defects

- 9.1. Orderer shall be obliged to carefully examine the completeness and accordance of the ordered item immediately after receipt. The notice of defects according to section 377 subsections 1 and 2 HGB shall amount to 8 days; Supplier's receipt of written (also by fax) notice of defect shall be decisive.
- 9.2. In case Orderer intends to assert claims arising from defects of the ordered item, he shall be obliged to hand over to Supplier ordered item or parts thereof for inspection, unless this is technically not possible or impossible (e.g. fixed large systems). Provided that notice of defect is justified and in due time, Supplier shall at his option either remedy the defect or deliver a faultless item. Costs for removal of defects including costs for transport, toll, labor and material shall be borne by Supplier. This shall also apply for delivery and shipment costs according to sentence 1 in the ordinary scope. In case costs to remedy defect increase because Orderer placed ordered item at another than the place of delivery, Orderer shall bear additional costs.
- 9.3. Supplier shall be entitled to refuse subsequent performance according to the provision of the law. Orderer shall, in case of refusal of subsequent performance, its failure or impossibility for Orderer, be entitled to cancel the contract or to reduce the purchase price according subsequent section 9.4.
- 9.4. Orderer shall only be entitled to resign from the contract – provided that such cancellation is not illegal – or to reduce the purchase price after unsatisfied expiration of reasonable notice for remedy of defects determined by Orderer, unless the fixing of such notice is disposable according to the provisions of law. In case of a cancellation of contract, Orderer shall not only be liable for deterioration, loss and non-derived profit for the own ordinary care, but also for each and every negligence and intended fault.
- 9.5. The provisions in section 10 shall apply for any possible claims for damages and expenses of Orderer.
- 9.6. Supplier's liability for defects does not apply if Orderer does not follow operating and service instructions, changes parts or uses consumables not complying with original specifications, unless Orderer provides evidence that defect is not based thereon.
- 9.7. Liability for defects of the ordered item or parts thereof originating from the ordinary wear is basically excluded.

- 9.8. The period of limitation for all defects related claims shall be one year as of the date on which the limitation period commences to run under law. The statutory period of limitation provided under BGB section 438 subsection 1 no. 2 and section 634a subsection 1 no. 2 shall, however, apply to any structure, and to any item that, according to its ordinary manner of use, has been used for such a structure and that has caused the defectiveness of that structure. In any case of intentional misconduct or intentional misrepresentation, and in any case provided for under BGB §§ 478, 479, the statutory periods shall apply as well.
- 10. Supplier's Liability, Exclusion of Claims for Damages**  
Unless otherwise provided under these Terms and Conditions, Supplier shall only and exclusively be liable to the extent set out hereinafter:
- 10.1. According to legal provisions, Supplier shall be liable if Orderer asserts claims for damages or expenses (hereinafter: claims for damages) based on malice or gross negligence – including intent or gross negligence caused by his vicarious agents or representatives if Supplier culpably violated a material contractual duty as well as in cases of violation of life, body or health.
- 10.2. Damage for breach of a material contractual duty shall be limited to the foreseeable, typically occurring damage.
- 10.3. Any further claim for damage – regardless of the legal nature of asserted claim – shall be excluded. Therefore, Supplier shall not be liable for damages not having occurred to delivery item itself.
- 10.4. Mandatory provisions of Product Liability Act (Produkthaftungsgesetz) shall remain unaffected hereof.
- 10.5. Orderer's claims for expenses shall be limited to amount of interest it has in performance of contract.
- 10.6. As far as Supplier's liability is excluded or limited, the same applies for his employees, staff, representatives and agents.
- 10.7. Orderer has been informed and hereby acknowledges that by operation of mandatory law any and all of Orderer's warranty and/ or contractually accorded guarantee claims expire if and when Orderer modifies and and/ or all part(s) of the items delivered under any and all sales and/ or delivery agreement(s). This expiration specifically but not exclusively applies to software components of any and all delivered machines. Besides, Supplier hereby informs Orderer and Orderer acknowledges its awareness that any and all of the aforementioned modifications may constitute an infringement of Supplier's intellectual property rights.
- 11. Orderer's Right of Rescission**
- 11.1. Orderer shall have the right to rescind any respective agreement if full performance by Supplier becomes definitely impossible before the risk passes. The same shall apply in any case of Supplier's incapability to perform its obligations under any respective agreement. Section 10 shall apply if such impossibility / incapacity affects essential contractual duties. Orderer shall also have the right to rescind any respective agreement if performance of a delivery in fulfillment of an order of items of the same kind becomes impossible as to a part of its quantity, provided that Orderer has a meritorious interest in rejecting a part delivery; otherwise, Orderer shall have the right to reduce its counterperformance correspondingly.
- 11.2. Orderer shall have a right of rescission in any case of default of performance pursuant to section V hereof provided that Orderer fixes an additional period of time for the defaulting Supplier to perform its duties connected with the explicit warning that it will refuse to accept Supplier's performance after the expiration of that additional period of time, and further provided that Supplier fails to perform its duties within that additional period of time.
- 11.3. If Supplier's performance becomes impossible while Orderer is in default of acceptance of delivery or if such impossibility is due to Orderer's fault, then Orderer shall remain liable to counterperform.
- 11.4. Moreover, Orderer shall have a right to rescind any respective agreement if, due to Supplier's fault, any repair or replacement of any defect in terms of these Terms and Conditions of Sale and Delivery Supplier is responsible for fails to be completed within such additional period of time reasonably fixed to Supplier. Orderer shall also be entitled to rescission if such repair or replacement by Supplier has become impossible or if Supplier has become permanently incapable of providing such repair or replacement.
- 12. Supplier's Right of Rescission**
- 12.1. Any respective agreement shall be reasonably adjusted in any case of an unforeseeable event as defined under section V hereof, provided that event materially changes the economic importance or the subject matter of the performance due under that agreement, or provided that event considerably affects Supplier's business, or in any case in which performance of any respective agreement subsequently turns out to be impossible.
- 12.2. Supplier shall have the right to rescind any respective agreement in whole or in part if adjusting that agreement is economically unreasonable. Orderer shall not be entitled to collect any damages caused by such a rescission.
- 12.3. Supplier shall give Orderer notice of its intent to rescind any respective agreement immediately after having become aware of the consequences of any such event, and that shall even apply if an extension of any respective time for delivery was initially agreed upon between Supplier and Orderer.
- 13. Place of Performance, Place of Jurisdiction, Applicable Law, Other Terms and Conditions, Acceptance, Final Provisions**
- 13.1. The place of performance of any respective delivery shall be at its respective place of dispatch, the place of performance of any respective payment shall be at Schwaebisch Hall.
- 13.2. The exclusive place of jurisdiction, even for summary draft enforcement proceedings, summary check enforcement proceedings and summary proceedings restricted to documentary evidence, shall be at the respective court of general jurisdiction over Schwaebisch Hall without prejudice, however, to Supplier's right to resort to the court of general jurisdiction over the place of Orderer's domicile.
- 13.3. The contractual relationship between Supplier and Orderer shall exclusively be governed by the substantive laws of Germany under the exclusion of the United Nations Convention on the International Sale of Goods (CISG) and the provisions of German Private International Law (deutsches Internationales Privatrecht).
- 13.4. The ordered items are designed, manufactured and installed in accordance with the legal provisions applicable in the Federal Republic of Germany. If Orderer desires the ordered items to be installed according to provisions differing from the German legal provisions, it shall give Supplier notice hereof upon placing the order or immediately thereafter. At the same time, it shall transmit such provisions differing from the German legal provisions to Supplier either in German and/ or in English. Supplier reserves the right to reasonably adjust any respective price and delivery time to the extent required by such desire of Orderer's.
- 13.5. It shall be any foreign orderer's duty to take any measures beyond the legal provisions in effect in the Federal Republic of Germany for the purpose of protecting the operating personnel and any other person against any chemical, biochemical, electrical, electro mechanical, electroacoustic and similar effects caused by any respective machine or by any packing materials, packaging means and filling materials.
- 13.6. If any particular provision of these Terms and Conditions is or becomes invalid, such invalidity shall not affect the validity of the other provisions hereof. The parties to any respective agreement shall agree upon a new provision serving the purpose pursued by the provision having become invalid at best.
- 13.7. These Terms and Conditions shall only apply towards supplies and deliveries. Our "Terms and Conditions of Repair and Installation Services (Domestic/International)" shall apply to all repair and installation services.
- 13.8. The above terms and conditions are the General Terms and Conditions of Sale and Delivery (Domestic/International) of  
 • METALL + PLASTIC GmbH, Bodmaner Str. 2, 78315 Radolfzell-Stahringen  
 - hereabove referred to as Supplier -