



1. Contracts

- a) All deliveries and services shall be exclusively governed by the terms and conditions set forth below, even if no specific reference to these terms and conditions is made in future transactions or the other contracting party (i.e. the "Buyer") uses different terms and conditions. Such other terms and conditions are deemed to have been agreed to only if acknowledged in writing by us. Our terms and conditions of sale and delivery shall also apply to any and all future deliveries, services or quotations to our Buyers even if they were not separately agreed upon once again. Should we refer to a letter that contains or refers to the terms and conditions of the Buyer or any third party, this does not imply our agreement with the application thereof.
- b) All of our quotations are subject to change. A contract shall be deemed to have been entered into only upon (i) our written confirmation of the order, or (ii) a written agreement signed by the Buyer and us, or (iii) our delivery of the goods and Buyer's taking receipt thereof.
- c) Any oral promises made prior to the conclusion of a contract are not legally binding. Any oral agreements between the parties to the contract shall be superseded by the written confirmation of order unless any such oral agreement expressly provides that it shall be binding in the future as well. Any and all amendments of or supplements to agreements made, including these Standard Terms and Conditions, must be made in writing in order to become effective. With the exception of managing directors or holders of the special statutory authority referred to as "Prokura" in a number sufficient to represent us, our employees are not entitled to reach any oral agreement deviating from the above. The written form shall be deemed to have been observed by transmissions via facsimile; all other telecommunications transmissions, by e-mail in particular, are not considered sufficient.
- d) Weights, measures and performance data provided in catalogues, prospectuses, flyers, advertising material, pictures and price lists are provided for information purposes only and do not represent warranted qualities. Customary deviations in the industry (manufacturing tolerances) shall in any case be permitted.

2. Prices, terms of payment

- a) All prices are net prices in the currency set out in the contract or the confirmation of order and do not include sales tax, which shall also be paid by the Buyer in the amount specified by the law as applicable from time to time. Unless otherwise expressly agreed, the Buyer is responsible for the payment of freight, packaging, incidentals, public charges and duties.
- b) Unless otherwise agreed upon in writing, invoices are due and payable within fourteen (14) days of the date of invoice without discount. Sec. 366 (1) German Civil Code [*Bürgerliches Gesetzbuch "BGB"*] shall be excluded, payments shall be appropriated as provided in Sec. 366 (2) *BGB*.
- c) The Buyer may not withhold or offset any payments based on counterclaims whatsoever including warranty claims, unless such counterclaims have been recognized, are ripe for judgment, or have been established as final and absolute.
- d) From maturity of the payment we are entitled to claim maturity interest in the amount of 5% p.a.. Should the term of payment be exceeded, we are entitled to claim default interest in the amount applicable by law from time to time. We reserve the right to assert any further default damages.
- e) We shall be entitled to make outstanding deliveries or provide services only against advance payment or the provision of security if, after having entered into the contract, we become aware of circumstances that may considerably impair the Buyer's creditworthiness,

thereby jeopardizing the payment of our outstanding claims under the respective contractual relationship (and other individual orders under the same master contract).

3. Delivery and late delivery

- a) Delivery is ex works of the manufacturer (EXW according to Incoterms 2000, no. 1). The *place of manufacturing* is our main warehouse in Jena. Upon the Buyer's request, we can also make delivery ex our facilities in Bremen if this is agreed upon in writing.
- b) The Buyer shall be responsible for any back charges by the customs office.
- c) Delivery schedules are only approximate unless a fixed delivery date or delivery period was expressly promised by us or mutually agreed upon. Delivery schedules are deemed to have been observed upon notice of readiness for dispatch if the goods cannot be shipped on time through no fault of our own.
- d) Deadlines and set dates shall be extended by the period during which the Buyer fails to comply with its responsibilities and obligations towards us (in particular, the release of drawings, forms, samples, etc.) or delays delivery in any other manner (in particular by requests for changes). Costs caused thereby shall be borne by the Buyer.
- e) We shall be entitled to postpone and/or suspend our respective obligation to make delivery in the event of
 - a. war, acts of God
 - b. strike, lock-out
 - c. any disruption of operations of any kind, or difficulties subsequently occurring in the procurement, shipment or transportation of the goods, unless these were caused due to willful misconduct or gross negligence by us, our corporate bodies or persons employed by us in the performance of our obligations entrusted with special management tasks
 - d. failure to receive proper or timely supplies ourselves, for which we are not responsible.

Should the events described above greatly impede or render the delivery of goods or the performance of services impossible and if such hindrance is not temporary in nature, we shall be entitled to rescind the contract.

- f) In the event of the Buyer's failure to take receipt of the goods, we will place the goods in storage at the Buyer's risk and expense.
- g) At the Buyer's request, we will insure the goods at the Buyer's expense against theft, breakage, transport, fire and water damage or any other insurable risks.
- h) We shall be entitled to partial performance unless this is unacceptable to the Buyer.
- i) In the event of our breach of duty, our liability for damages of any kind shall be governed exclusively by the provisions set forth in Clause 7 hereof.

4. Retention of Title

- a) We shall retain full title to the goods that have been delivered (goods subject to retention of title or "Reserved Goods") until the Buyer has discharged all claims due to us regardless of the legal basis thereof, including claims arising in the future or conditional claims under contracts entered into simultaneously or later. The Buyer is obligated to store Reserved Goods separately and to mark them as such, free of charge. If third parties access the Reserved Goods (in particular by way of attachment, etc.) the Buyer shall notify such third parties of our title to said goods, and shall inform us accordingly.
- b) If the Reserved Goods are processed by the Buyer, it shall be agreed that such processing is done on our behalf and for our account and that we acquire direct (co-)ownership of such new item on a pro-rated basis of the value of the processed Reserved Goods in



proportion to the total value of the item produced after processing.

- c) The resale of Reserved Goods shall be allowed only in the ordinary course of business. The Buyer assigns to us any and all claims for the payment of the purchase price, compensation, replacement or any other claims due to the Buyer from third parties as a result of the sale of, damage to, or loss of the Reserved Goods, and Buyer shall be entitled to collect these claims, provided that it holds the collected amounts in trust and separately from its other assets and pays such amounts to us without delay.
- d) If the value of the collateral available to us exceeds our total receivables by more than 20%, we shall be obligated, upon the Buyer's request, to release the respective amount of collateral of our choice.

5. Warranty

- a) The warranty period for warranty claims is twelve (12) months from the time of dispatch or of acceptance where acceptance is required.
- b) The Buyer is obligated to inspect the goods within seven (7) working days pursuant to Section 377 German Commercial Code [*Handelsgesetzbuch "HGB"*]. Upon our request, the rejected goods must be returned to us carriage prepaid. In the event of a justified notice of defect, we shall, at our discretion, either replace the defective goods or remedy the defect and reimburse the costs of the least expensive shipping method unless the goods are at a different location than that of their intended use.
- c) In the event of defects in other manufacturer's components, which we are not in a position to remedy due to conflicting license terms or actual obstacles, we shall – at our choice – either assert warranty claims against the manufacturer or supplier of such components or assign such claims to the Buyer. Claims arising from these defects may be asserted against us only if the enforcement thereof in court has been unsuccessful or is futile (in particular due to insolvency). The period of limitation of the respective claims of the Buyer against us shall be suspended for the duration of the litigation.
- d) In the event of rescission by the Buyer, the Buyer shall be liable for deterioration, loss and benefits it has failed to derive from the goods, not only from its obligation to exercise the care customarily exercised in its own affairs but also from any fault due to negligence or willful misconduct.

6. Limitation of liability

- a) Notwithstanding Clause 5, claims for damages of any kind shall be excluded, except in cases where we, or any person for whose conduct we are responsible, acted with intent or gross negligence, violated an essential contractual obligation or are responsible for the loss of life, physical injury or impairment of health of the Buyer, or in cases where we are liable for breach of warranted characteristics or under the Product Liability Act.
- b) Damage claims shall be limited to damages that are foreseeable and typical of this type of contract, unless they are based on any of the acts or failures to act provided above.
Furthermore, indirect and consequential damages resulting from defects in the item delivered shall be eligible for compensation only if such damages may be typically expected to occur to the item delivered when it is used for its intended purpose.

Except for the violation of essential obligations, liability for slight negligence shall be excluded, unless provided for in the foregoing paragraphs of this Clause, but, in any event, shall be limited to the amount of the purchase price.

- c) The liability due to defects shall be excluded in any event for services performed or items provided to accommodate the Buyer.

7. Violation of third party rights

Where items to be delivered are based on plans, drawings, models, or any other data provided by the Buyer and thereby violate third party rights, including, but not limited to, proprietary rights, the Buyer shall indemnify and hold us harmless from any and all such claims upon our first request.

8. Copyrights, intellectual property

- a) Should the item delivered infringe upon any third party industrial property right or copyright, we shall, at our option and expense, either modify or exchange the item in such manner as to exclude the infringement of third party rights and, at the same time, maintain its agreed-upon function, or provide the Buyer with the right of use by way of a license agreement. Should this fail within a reasonable period of time, the Buyer shall be entitled to rescind the contract, reduce the purchase price or claim damages in accordance with Clauses 5 and 6 hereof.
- b) The Buyer is hereby granted a non-exclusive and non-transferable right of use of any software and related documentation, including their updates for its internal use together with the products for which the programs are provided (any other rights in the programs and documentation, including any copies and updates thereof, shall be held by us). The Buyer must ensure that these programs and documentation are not available to any third party without our prior written consent. Copies may generally not be made for purposes other than archiving and data back-up or troubleshooting. The provision of source programs shall be subject to a separate written agreement. Should the original copies bear a copyright notice, such notice must be reproduced by the Buyer on all copies thereof. Unless otherwise agreed, the right of use shall be deemed granted upon each confirmation of order and delivery of the programs, documentation and updates.

9. Place of fulfillment, jurisdiction, applicable law

- a) Should any dispute arise, the parties shall endeavor to settle it amicably.
- b) The place of payment by the Buyer shall be Bremen, Federal Republic of Germany, the place of performance of our obligations shall be the location of our warehouse.
- c) Bremen, Federal Republic of Germany, shall be the agreed-upon place of jurisdiction for any and all disputes arising under and in connection with this contract. This shall also apply to summary action based on unpaid checks and summary bill enforcement procedures.
- d) Any legal relationship between the Buyer and us shall be governed exclusively by the law of the Federal Republic of Germany without giving effect to conflict of law provisions and uniform laws regarding international contracts on the sale of movable property or any other international treaties.
- e) The Buyer takes notice that we store data arising under the contractual relationship in accordance with Sec. 28 Federal Data Protection Act for the purpose of data processing and reserve the right to transfer such data to third parties (e.g. insurance companies) if required for the performance of the contract.