



## GENERAL TERMS AND CONDITIONS OF SALE – Issue 09/2018

### § 1 General, Conclusion of Contract, Cancellation, Confidentiality

1. All deliveries and supply of goods (the “Goods”) made by us shall be based exclusively upon these General Terms and Conditions of Sale, which shall – lacking special agreement - also apply for future business relationships. Contrary conditions of the Purchaser or conditions differing from our General Terms and Conditions of Sale are not recognised by us unless we have explicitly agreed to their validity in writing. Our General Terms and Conditions of Sale apply even if we have unreservedly accepted the order being aware of contrary conditions of the Purchaser or conditions differing from our conditions.
2. A contract - lacking special agreement - will only be effected with our written order confirmation. Agreements by telephone or verbally and/or adjustments of these General Terms and Conditions of Sale shall also not apply unless with our written confirmation. Also the abolishment of the written form requires the written form.
3. If the Purchaser cancels a legally valid contract, we are entitled to claim the agreed price including profit, less possibly saved expenses. We reserve the right to the assertion of further claims.
4. Any copyright, design right or other intellectual property in or associated with the Goods and/or software included with the Goods shall remain vested in us (or the relevant rights-owner). We reserve the right to register label rights or other rights of protection for samples, quotes, drawings and similar information of a tangible and intangible manner - also in electronic form; they shall not be disclosed to third parties nor made available in any other way. Where any information has been labelled as confidential by the Purchaser, we shall not make such information available to third parties except with the consent of the Purchaser. Third parties shall not include any of our Affiliates, where ‘Affiliate’, means any entity which is controlled by us, controls us or is under common control with us. For this purpose, ‘control’ means the authority or ability, whether exercised or not, to control an entity’s business and affairs, which authority shall conclusively be presumed to exist when more than fifty per cent (50 %) of the controlled entity's outstanding shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity, and/or the controlling entity possesses, directly or indirectly, the power to influence the decision-making process, the direction of management, and the policies of the controlled entity.

### § 2 Prices and Payments, Offsetting, Assignment

1. The prices shall apply, lacking special agreement, EX WORKS (INCOTERMS 2000) excluding loading, packaging and unloading. Added to the prices shall be the applicable GST and/or VAT. If we, as an exception, at the request of Purchaser arrange shipment by a transport agent despite an EX WORKS agreement, we only act in the name and on behalf of the Purchaser without bearing any responsibility for fault of the transport agent. If we, as an exception, take over the freight and insurance costs, we are entitled to charge premiums in case of events such as force majeure (e.g. war risk, closure of shipping routes).
2. Unless we explicitly offered fixed prices, prices agreed are based on the cost ratio at the time of order. If the delivery of the delivery item occurs more than 4 months after the order, and if the total amount regarding material, energy, procurement or other costs increases up to this day, we are entitled to charge reasonable premiums for the occurred total cost increases based on the original calculation.
3. Unless otherwise agreed upon, our invoices shall be payable net within thirty (30) days of date of invoice. If the invoice is paid within ten (10) days after date of invoice, the Purchaser shall be entitled to a two (2) % cash discount on the price of the Goods. If the Purchaser is in default with a payment, outstanding accounts shall instantly become due and further works regarding the delivery item shall only be conducted against prepayment. In such event, we shall also be entitled to:
  - a) cancel the contract or suspend any further deliveries of the Goods; and/or



b) appropriate any payment made by the Purchaser to such of the Goods (or the goods or services supplied by us under any other contract between us and the Purchaser) as we may think fit (notwithstanding any purported appropriation by the Purchaser); and/or

c) charge the Purchaser interest on the amount unpaid at the rate of one per cent (1.0%) per month or part thereof until payment in full is made.

4. The Purchaser only has the right to withhold payment or offset with counter claims if his counterclaims are uncontested or are established as legally valid. The Purchaser is only entitled to the assertion of payment-withholding rights based on counterclaims resulting from the same contract-relationship.

5. The right to decline cheques or bills of exchange shall remain reserved. In case of payment by cheque the payment obligation is only fulfilled when the counter value has been credited to our account.

6. In case of reasonable doubts concerning the solvency of the Purchaser, in particular but not limited to default in payment, we will - irrespective of other legal claims - only deliver against prepayment or collateral security. In this case any open cheques and/or other outstanding claims resulting from the delivery relationship with the Purchaser will become due and payable immediately.

7. Unless otherwise explicitly agreed to in writing, credit notes and other rebates occur in any case without the acknowledgement of fault or legal obligation.

8. We are entitled to assign the claims from our business connection. Assignment prohibitions or -limitations are herewith vetoed.

### **§ 3 Term of Delivery and/or Performance, Delay, Force Majeure**

1. The term of delivery and/or performance shall be evident from the agreements of the contractual parties. The adherence by us is subject to all commercial and technical questions having been resolved between the contractual parties and that the Purchaser has fulfilled all his incumbent obligations such as for example official certificates or approvals, presentation of drawings/data or payments. If this is not the case, the delivery term shall be adequately extended. This shall not apply if we are responsible for the delay.

2. The adherence to the term of delivery and/or performance shall be subject to the correct and timely self-supply by the individual sub-suppliers properly and duly appointed by us. We will inform of any impending delays as soon as possible and search for reasonable alternatives in close cooperation with the Purchaser. Any dates quoted for delivery of the Goods are approximate only. Unless previously agreed by us in writing, the time for delivery/performance shall not be of the essence.

3. Delivery takes place according to the relevant INCOTERMS agreed upon by the contractual parties. Lacking special agreement, EX WORKS terms shall apply, in which case delivery of the Goods shall be made by the Purchaser collecting the Goods at our premises at any time after we have notified the Purchaser that the Goods are ready for collection. Save for obligations according to the applicable INCOTERMS or obligations expressly undertaken by the us in writing, we shall have no other obligations, in particular obligations which it might otherwise have according to the provisions of the Sale of Goods Act (Cap. 393).

4. If the non-adherence of the term of delivery and/or performance is due to force majeure (including, but not limited to, general mobilisation, war, terrorism, riots, storm, fire, flood, earthquake, epidemics/pandemics, public travel warnings), industrial action (lock-outs, strikes or other concentrated actions of personnel, either direct or indirect), disturbances of internal operations for which we are not responsible or other events which are outside of our reasonable scope of influence, we shall not be liable to the Purchaser or be deemed to be in breach of the contract, and the term of delivery and/or performance shall be extended adequately. We will inform the Purchaser of the beginning and end of such circumstances as soon as possible.



5. The Purchaser may withdraw from the contract if the execution of a part of the delivery of an order becomes impossible and he has a justified interest in the refusal of the partial delivery. If this is not the case, the Purchaser has to pay the contract price equivalent to the partial delivery. This also applies in case of our inability. If impossibility or inability occurs during the acceptance delay or if the Purchaser is solely or mainly responsible for these circumstances, he shall remain obligated to payment.

6. If the Purchaser, after the due date, sets an adequate time limit for us for the performance and this term is not adhered to, the Purchaser shall be entitled to withdraw from the contract. He shall be obligated to declare in an appropriate timeframe upon our request, whether he is exercising his right of withdrawal. Upon such withdrawal, the Purchaser may claim compensation for actual loss and expense sustained as a result of our non-performance, which was foreseeable at the time of conclusion of the contract and resulting from the usual course of events, subject always to the limitations set out in § 8 of this General Terms and Conditions of Sale.

7. All claims resulting from delay in delivery or non-delivery shall be exclusively determined in accordance with § 8 of this General Terms and Conditions of Sale.

#### **§ 4 Transfer of Risk, Acceptance, Delay, Part- and Over-Deliveries**

1. Lacking special agreement, EX WORKS terms shall apply, in which case the risk shall be transferred to the Purchaser when we notify the Purchaser that the Goods are available for collection.

2. If a different INCOTERM has been agreed upon by the parties, risk shall be transferred to the Purchaser upon delivery of the Goods according to that INCOTERM, or if the Purchaser wrongfully fails to take delivery of the Goods, at the time when we have tendered delivery of the Goods. 2. The Purchaser is deemed to have accepted the Goods when the Goods have been delivered to him and he does any act in relation to them which is inconsistent with our ownership of the Goods. The Purchaser may not refuse acceptance in case of a non-significant defect.

3. We are obligated, at the request and expense of the Purchaser, to take out an insurance against fire. The Purchaser is at liberty to take out additional insurance himself.

4. Acceptance shall be deemed effected if Purchaser does not accept the delivery item (or parts thereof) despite acceptance duty within a reasonable period of time set by us. If shipment and/or acceptance of the delivery item is delayed due to reasons, for which the Purchaser is responsible (delay of acceptance), he will be charged, irrespective of other legal claims, commencing 14 calendar days from the notification of shipment and/or readiness to accept all (storage) expenses incurred due to the delay. Unless the Purchaser can demonstrate a lower damage or no damage at all, these amount to at least 0.5% of the invoice amount for the non-accepted delivery item for each month thereof, however a maximum of 5% of the individual invoice amount. We reserve the right of proof of a higher (storage-) expense. In addition, we reserve the right to:

- a) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the contract provided the price has been paid in cleared funds in full or charge the Purchaser for any shortfall below the price under the contract as the case may be; or
- b) terminate the contract and claim damages.

5. Part deliveries are admissible as far as reasonable for the Purchaser. Technical deviations of ordered amounts are admissible up to +/-10%, unless this is unreasonable. Deviations concerning dimensions, weight or quality shall be allowed when customary in trade or according to applicable standards. Our calculation shall be decisive.

#### **§ 5 Reservation of Title, National Security Rights**



1. We retain ownership on the delivery item up to the fulfilment of all current and future claims - also for possible owing ancillary services - arising from the business relationship with the Purchaser. Until such time as the property in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as our fiduciary agent and bailee and shall keep the Goods separate from those of the Purchaser and third parties and identified as our property, but he shall be entitled to resell or use the Goods in the ordinary course of its business and shall account to us for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Purchaser and third parties.

2. Where the Goods have been incorporated by the Purchaser into any product or article in such a way that the substance and identity of the Goods have been irrevocably altered or destroyed, then property in such new product(s) or article(s) shall immediately upon its or their creation vest wholly in us, and the provisions of this § 5 shall apply mutatis mutandis to such products or articles as if they were Goods remaining as our property. The provisions of this condition shall also apply mutatis mutandis to Goods which have been incorporated by the Purchaser into any product or article in such a way that the substance and identity of the Goods have not been irrevocably altered or destroyed.

3. The Purchaser has to keep the delivery item properly stored and protected, treat it with care and, if necessary, maintain it. The Purchaser is obligated to insure the delivery item against theft, fire, water and other usual damages at his expense up to the complete payment of our outstanding claim. If the Purchaser does not provide sufficient proof hereof, we are entitled to insure the delivery item at the expense of the Purchaser.

4. In case of conduct contrary to the contract by the Purchaser, especially default of payment, we are entitled to the retraction of the delivery item following a reminder and the Purchaser is obligated to surrender the deliver item. If the Purchaser ceases payments or if insolvency or extrajudicial settlement proceedings are applied for, we are entitled to withdraw from the contract and demand immediate return of the delivery item. The right of retention shall be excluded.

5. Prior to the complete payment of our outstanding claims the Purchaser may only on-sell and otherwise neither pledge or assign as security the delivery item in the context of proper business operations under reservation of title. In case of seizure as well as confiscation or other official direction by third parties, the Purchaser has to notify us without undue delay. We are also to be informed immediately regarding legal or actual access to the reserved Goods by third parties as well as damage or loss.

6. Upon our request, the Purchaser shall assign to us all claims with regard to the reserved Goods from on-selling due to the Purchaser. If the reserved Goods are sold with other products not belonging to us or become the subject of contract work, the assignment only applies in the amount of the invoice value of the reserved Goods. Until and unless we request an assignment, the Purchaser is authorised to collect the assigned claims from on-selling. On demand the Purchaser has to advise the creditor of the assignment.

7. As far as the value of the securities exceeds our claims by more than 15%, we will release securities at our discretion at the Purchaser's request.

8. As far as the effective protection requires a registration (of our rights or of a security right) or the like according to applicable local regulations at the point of destination of the delivery item, it shall be the responsibility of the Purchaser to determine the legal situation and to notify us accordingly and - in coordination with us - at his expense effect a registration in our favour or take other required steps. If the reservation of title is illegal at the point of destination, the Purchaser will, at his expense, procure security rights according to the applicable law.

#### **§ 6 Warranty Claims in case of Quality Defects**

1. We are liable for quality defects of the delivery under exclusion of further claims - subject to § 8 of this agreement - as follows:

2. Requirement for any warranty claims by the Purchaser shall be his proper fulfilment of all due inspections and requirement to give notice of defects without delay. Independent of the legally prescribed immediate checking and requirement to give notice,



claims due to obvious quality defects of the delivery item may not be asserted in any case after 2 weeks from receipt of the delivery item. Transport damages are to be noted on the delivery note and must be confirmed by the driver in writing with his signature. If the Purchaser does not give due notification to us in accordance with the above, we shall not be liable for any defect or failure or for any consequences resulting therefrom.

3. In case of delivery according to sample, pattern and/or construction specifications by the Purchaser, warranty claims shall be excluded also in case of latent defects if the delivery item complies with the sample, pattern and/or construction specifications. If the defect is due to materials supplied by the Purchaser himself, all claims shall be excluded.

4. According to our discretion, all those parts have to be repaired or to be replaced free of charge, which have been proven defective due to circumstances occurring prior to the transfer of risk. We have to be notified of the detection of such defects without delay. Replaced parts shall become our property. If we repair or deliver in the context of a warranty claim, it triggers a new begin of the period of limitation only in respect of the new delivery and/or rectification in case of significant rectification of defect and with the explicit written acknowledgement of a new start of the period of limitation.

5. Quality defects where the Goods include software shall only exist if these a) are reproducible by the Purchaser on the contractually agreed hardware, b) do not just represent insignificant deviations from the specifications and c) do not just insignificantly affect the usage.

6. In case of defect remedy we are obligated to bear all expenses necessary for the defect remedy as far as they are not disproportionately increased due to the delivery item being brought to a place different from the contractually agreed place of delivery. Following a three-time unsuccessful remedy of defect, the Purchaser shall be allowed to withdraw from the individual single order or reduce the purchase price.

7. The Purchaser has to provide the necessary time and opportunity for our undertaking of the defect remedy and/or the replacement deliveries after coordination with us; otherwise we are exempt for any consequences arising thereof. The Purchaser has the right to remedy the defect himself or cause the remedy to be effected by a third party at commercially reasonable (third-party) prices and request reimbursement from us regarding the necessary expenses only in urgent cases of danger to the operational safety and/or avoidance of disproportionately large damage, whereby we have to be notified immediately under all circumstances. If the Purchaser or a third party improperly remedies the defect, we shall not be liable and the Purchaser shall indemnify us against each loss damage liability costs charges and expenses arising out of any claims arising therefrom.. This also applies for alterations to the delivery item without our prior consent.

8. No warranty and/or liability shall be accepted, in particular - but not limited to - in the following cases: Unsuitable or improper storage or usage, faulty assembly and/or start-up by the Purchaser or third party, natural wear and tear or deterioration, construction in accordance with samples approved by the Purchaser, faulty material and/or tools provided by the Purchaser, faulty or negligible treatment, deviations from operation manuals and operation instructions and/or therein described environmental factors, improper maintenance, unsuitable operating facilities, faulty construction works, unsuitable building foundation, chemical/electro-chemical/electric/climatic influences - unless we are responsible for them.

#### **§ 7 Warranty Claims in case of Defect of Title**

1. If the usage of the delivery item leads to the infringement of industrial property rights or copyrights in the inland, we will, at our discretion and at our expense, on principle procure the Purchaser's right for further usage or modify the Goods reasonable for the Purchaser in a way that the intellectual rights infringement no longer exists. If this is not possible at economically appropriate conditions or in an adequate timeframe, we as well as the Purchaser are entitled to withdraw from the contract.

2. Our above mentioned obligations are subject to § 8 - final in case of industrial property rights or copyrights infringement. Our obligations only exist if

a) the Purchaser has notified us without delay regarding any alleged claim of infringement,



- b) the Purchaser supports us in the defence against the applied claims to a reasonable and adequate extent and/or allows us the execution of the modification measures according to § 7 Nr. 1 of this agreement,
- c) the right to all defence measures (including extrajudicial regulations) is not limited by actions or omissions of the Purchaser,
- d) the defect of title is not based on circumstances relating to the Purchaser (i.e. parameter of technical specifications, provision of material, samples and software), and
- e) the legal infringement was not caused by the Purchaser arbitrarily altering the delivery item or he has used it in a non-contractual manner.

3. If we are to deliver according to drawings, models, samples, software or under usage of parts provided by the Purchaser, the Purchaser shall be responsible that the copyright or other industrial or intellectual property rights of third parties are not hereby infringed. The Purchaser has to inform us of all third party rights. The Purchaser shall exempt us from all third party claims in this regard as well as all related damages (incl. expenses for bringing an action).

#### **§ 8 Liability, Exclusion of Liability**

1. In any case where we are liable for delay in delivery or for non-delivery, our liability shall be limited to a maximum cumulative amount of 20% of the value of the delayed or undelivered Goods.
2. The Purchaser's exclusive remedies for defects in the Goods itself, which does not cause economic loss, damage to other property or injury to any person, shall be as set out in § 6.
3. Where a defect in the delivery item results in (i) economic loss (such as loss of profit or goodwill, loss of production or revenue or any type of special, indirect or consequential loss whatsoever or (ii) physical damage to other property, we shall only be liable: (subject to § 9)
  - a) in case of wilful misconduct,
  - b) in case of gross negligence of the owner/the management body or executive employees,
  - c) in case of maliciously concealed quality defects.
4. Save as provided in this § 8, all further claims shall be fully excluded.
5. As far as our liability is excluded or limited, this also applies for personal liability of our employees, wage earners, personnel, representatives and vicarious agents.
6. Save for any liability which cannot be excluded by law, our maximum and cumulative total liability (including any liability for acts and omissions of our employees agents and sub-contractors) in respect of any and all claims for defective performance, breach of contract, compensation, indemnity, tort, misrepresentation, negligence at law or equity and any other damages or losses which may arise in connection with its performance or non-performance under the contract, shall not exceed 100% of the total contract price.

#### **§ 9 Period of Limitation**

No action or claim - for what ever legal grounds - shall be brought by the Purchaser later than 12 months from the date of delivery or deemed delivery of the Goods.



## **§ 10 Usage of Software**

1. If the Goods include software, the Purchaser shall have a non-exclusive right to use such software and related documentation. The software is only entrusted to him for the usage on the respective delivery item. The usage of the software on more than one system is prohibited.
2. The Purchaser may only duplicate, adapt, translate or compile it from the object code to the source code with prior written consent from us. The Purchaser shall not remove manufacturer information - especially copyright information - or change it without our explicit prior written permission.
3. All other rights regarding the software and the documentation, including the copies, shall remain with us and/or the software supplier. The awarding of sub-licenses is prohibited.

## **§11 Export and Customs Regulations**

1. In relationships crossing national boundaries the conclusion of contracts and its fulfilment shall be subject to the (timely) granting of a possibly necessary approval by the Federal Office of Economics and Export Control (“BAFA”) and/or any other authorised governmental authority and subject to the absence of embargos and/or other sanctions.
2. The Purchaser shall be obligated to provide us without delay with all information and documentation (especially End-User-Certificate in accordance with BAFA-specimen) which we request for export approval. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, any claims for damages shall be excluded.

## **§ 12 Data Protection**

The Purchaser agrees that his data may be used by us and our Affiliates for the fulfilment of the contract (including but not limited to checking and execution of the order, checking of creditworthiness, passing on to third parties for the purpose of corporate financing and the debtor management).

## **§ 13 Choice of Law, Jurisdiction**

1. The substantive law of Singapore shall apply exclusively. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
2. The Purchaser submits to the non-exclusive jurisdiction of the Courts in Singapore.
3. If one of the regulations of these General Terms and Conditions of Sale should be or become void or ineffective, the validity of the remaining regulations shall remain unaffected hereof.