

CONDITIONS FOR SUPPLY OF GOODS

General

1. Any documents of Seller, such as figures, drawings, data on weights, performance and dimensions are approximate and for information purposes only, unless they are expressly identified as being binding. Seller shall retain title and copyright to cost estimates, drawings and any other document (including those in electronic form); such documents shall not be made accessible to a third party and shall be returned to Seller on demand.
2. Unless stated otherwise in writing, quotations are valid for acceptance within six weeks from the issue date.
3. The written order confirmation of Seller or the text of the supply contract and the terms and conditions set out in this document ("Terms and Conditions") shall constitute the entire agreement ("Contract") between the parties relating to the goods and software as may be delivered by Supplier as specified therein ("Goods") and shall supersede any prior agreements, statements and representations of the parties on this subject. Collateral agreements and changes shall only be binding if acknowledged by Seller in writing. Terms and conditions stated by Buyer in conflict with, different from or in addition to the Contract and the Terms and Conditions shall not be binding unless expressly acknowledged by Seller in writing.

Price and Payment

1. Unless expressly agreed otherwise, prices for Goods shall be understood ex works manufacturer's works (according to INCOTERMS in force at the formation of the Contract) including loading, but excluding packing and unloading. Value added tax will be charged in addition to the price at the prevailing legal rate.
2. Buyer shall pay in addition to the price all taxes, customs duties and other levies outside Germany which are imposed on Seller, Seller's personnel, a subcontractor of Seller or the subcontractor's personnel in connection with the Goods specified in the Contract within 14 days on Seller's request.
3. Unless expressly agreed otherwise, payment shall be made against invoice without deduction as follows:
 - 1/3 down payment upon receipt of order confirmation or formation of the Contract,
 - 1/3 when Buyer has been informed that the main components of the Goods are ready for dispatch
 - the balance within 14 days after the passing of risk according to Section IV hereunder.

Payment shall only be deemed effected when Supplier's account has been irrevocably credited in full amount.

4. Buyer shall only be entitled to withhold payments or offset with claims if his claims are acknowledged by Seller or awarded to him by final judgment.

Delivery Periods, Delivery Dates, Delay

1. Delivery periods shall start with receipt by Seller of the order confirmation acknowledged by Buyer or any other written formation of the Contract, the down payment and any agreed payment security, whichever comes later. Delivery periods are conditional upon Buyer having fulfilled his obligations such as the provision of necessary official permits, licenses and approvals and having produced the necessary collaboration to enable Supplier to fulfill his obligations in due time.
2. Delivery periods shall considered to be complied with when the Goods have left manufacturer's works or Buyer has been notified that the Goods are ready for dispatch within the agreed delivery time, whichever comes sooner.
3. If a delivery period has not been met because of force majeure, labour disputes or other events which are beyond Seller's control, such as Buyer's failure to fulfill the preconditions specified in para 1 hereinabove, Seller may suspend performance of his obligations to the extent that such performance is impeded or made unreasonably onerous by any such event, unless it occurs when Seller is already in delay with its obligations. Seller shall inform Buyer of the intervention and cessation of such circumstances without delay.
4. In case of Supplier being perpetually unable to deliver the Goods despite Buyer's ability to accept delivery, Buyer may have the right to terminate the Contract by notice in writing to Supplier prior to the passing of risk set out in Section IV hereunder, in its entirety, even in case of a partial inability, if Buyer has a legitimate interest to reject partial delivery. Otherwise partial delivery shall be accepted by Buyer who shall pay part of the contract price allocated thereto. Buyer shall not be entitled to termination if he caused or substantially contributed to Seller's inability to deliver the Goods.

The right to terminate the contract is Buyer's sole remedy for Seller's breach of Contract prior to the passing of risk save as provided in paragraph 5 of this Section and Section VII.

5. In case of a delay, of delivery of the Goods due to Seller's fault, which results in damage to Buyer, the latter may claim liquidated damages from the 4th week on which delivery should have taken place. The liquidated damages amount of 0.5% for each full week of delay, however in aggregate not exceeding 5 %, each calculated on the value of that part of the Goods which cannot be used in time or as stipulated in the Contract in consequence of the delay.

In case of delayed delivery, Buyer after the due date may fix a reasonable final period to deliver the Goods, and if this period is not met by Seller due to his fault, Buyer may by notice in writing terminate the Contract as provided by law. The liquidated damages are exclusive of any other claims for damages, save as provided in Section VII.

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6. If Buyer is unable to accept delivery of the Goods at the delivery time, Seller may arrange for the storage of the Goods at Buyer's risk. Buyer shall be charged for the cost of storage per month on Seller's premises starting one month after notification that the Goods are ready for dispatch. Charges will be 0.5 % of the invoice amount for the Goods per month. In addition Seller may dispose the Goods otherwise if Buyer fails to accept delivery of the Goods within a reasonable final period fixed by Seller in writing and make delivery to Buyer within a reasonably extended period.
7. All foregoing shall apply accordingly, if the parties have agreed on fixed delivery dates of the Goods.

Passing of Risk and Acceptance of Delivery

1. In any case the risk of loss of or damage to the Goods or part thereof shall pass to Buyer upon loading of the Goods or part thereof, even when Seller undertakes additional obligations including but not limited to shipment and/or assembly of the Goods. If the delivery is delayed or does not take place due to circumstances for which Seller is not responsible, the risk passes to Buyer upon Seller's written notice that the Goods are ready for delivery. In such case Seller shall take out an insurance policy for the Goods as required by Buyer at Buyer's expense.
2. Buyer may not reject the goods unless they show a substantial defect.

Reservation of title

1. Seller shall retain title to the Goods until he has received all payments due for the supply of the Goods.
2. Buyer shall at the request of Supplier assist him in taking any measures necessary to protect Supplier's title to the Goods at their location after shipment.
3. Seller shall be entitled to insure the Goods until transfer of title against theft, breakage, fire, water and other damage at Buyer's cost, unless Buyer has taken out the insurance policy himself.
4. Buyer shall not sell or grant a lien on or pawn the Goods or use it for security in any other manner. In case of seizure, lien, confiscation or other claims to the Goods by a third party, Buyer shall inform Seller immediately.
5. If Buyer is in default with any of its obligations under the Contract, particularly by delayed payment and Buyer has not cured the default within a reasonable time fixed by Seller's written notice, Seller shall be entitled to terminate the Contract and Buyer shall return the Goods to Seller.
6. Seller may terminate the Contract without any notice, and in such case Buyer shall immediately return the Goods to Seller, if Buyer goes into liquidation, becomes bankrupt or makes a general assignment for the benefit of its creditors.
7. Any connection or combination of the Goods with other items shall not affect the reservation of title to the Goods. Otherwise Buyer shall grant Seller co-ownership of the aggregate of the combination according to the proportionate value of the Goods in relation to the value of the other items connected to, or combined with, the Goods prevailing at the time the items were connected or combined. In such case Buyer shall retain ownership or co-ownership as trustee for Buyer, if required.

Seller's Warranties

Seller warrants to Buyer that the Goods covered by the Contract shall be in compliance with the provisions set out in this Section VI, and in case of breach of such warranty. Seller's liabilities are as described hereunder under exclusion of any other warranties, rights and remedies, unless provided otherwise in Section VII.

Quality of the Goods

1. Seller warrants to Buyer that upon passing of risk the Goods conform with the express warranties described in the Contract with the acknowledged state of the art and are fit for the purpose for which Goods of the same description would ordinarily be used. If the use of the Goods is significantly impaired or made impossible due to a breach of any of Seller's warranties or due to another fault by Seller, the Goods shall be repaired or replaced by conforming Goods at Seller's option free of charge to Buyer. Buyer shall examine the Goods as soon as possible and notify Seller in writing about any defects found without delay, including a detailed description of the causes and effects. Replaced parts shall become the property of Seller, if so requested by him before, or within a reasonable period after removal.
2. The warranty shall not extend to defects due to circumstances for which Seller does not take responsibility under the Contract, including without limitation unsuitable or inappropriate storage, use, operation or maintenance, incorrect assembly or start-up by Buyer or third party, normal wear, unsuitable operating materials, unsuitable construction work and building ground.
3. If Buyer after consultation with Seller fails to provide the necessary time and opportunity for Seller to carry out all the repairs and replacements which the latter considers necessary, Seller shall be relieved from any liability for any consequences resulting therefrom. Buyer shall be entitled to remedy the defect himself or by a third party and demand reimbursement of the reasonable costs incurred by the necessary remedial work, in the event that hazards resulting from the operation of the Goods or the prevention of excessive damages require immediate remedial action, in which case Buyer shall notify Seller immediately, or Supplier fails to remedy the defect within a reasonable time fixed by Buyer by written notice to Seller.

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4. Seller shall bear the costs of the repair or the replacement part including the costs of its transport and the costs of dismantling and re-assembly including the costs of its fitters and auxiliary workers (including travel costs) to the extent that any such costs will not be unreasonable onerous to Seller.
5. Where Seller fails to remedy a defect within a reasonable time fixed by Buyer by written notice to Seller (or without notice in case the law does not require such notice) Buyer shall be entitled in lieu of the remedies set out in para 3 above to terminate the Contract as provided for by the law in case of a substantial defect. Otherwise Buyer is entitled to a price reduction in proportion to the reduced value of the Goods.
6. All foregoing remedies are Buyer's sole and exclusive remedies in case of defective Goods save as provided in Section VII.
7. Seller shall not be liable for any consequences resulting from improper rectification of defects by Buyer or a third party and from changes to the Goods made without Seller's prior written consent.

Industrial and Intellectual Property Rights

8. Seller warrants to Buyer that the Goods shall not infringe any industrial property and intellectual property, when used in the country of agreed destination.

In case of a breach of this warranty Seller shall at its option and at its own expense obtain a perpetual irrevocable license to use the Goods or shall modify the Goods in a way reasonable for Buyer to make them non-infringing. If this is not possible at reasonable conditions or within a reasonable period, each Buyer and Seller shall be entitled to terminate the Contract. In addition, Seller shall indemnify Buyer against claims of the owners of the industrial property, when undisputed or awarded by final judgment.

9. Subject to Section VII, the liabilities of Seller specified under Section VI.8 are exclusive of any other rights and remedies for the infringement of industrial property and intellectual property. Seller's liabilities are conditional upon the following:
 - Buyer shall inform Seller of a claim of infringements related to industrial property and/or intellectual property immediately.
 - Buyer shall reasonably support Seller to defend such claim or enable Seller to carry out the modifications in accordance with Section VI. 8.
 - Buyer shall grant Seller the right to take all measures of defence including out-of-court settlements.
 - The infringement is not based on an instruction or specification of Buyer and/or
 - the infringement was not caused by Buyer altering the Goods without Seller's consent combining it with other equipment and software not supplied by Seller using them in a way which is not specified in the Contract or applying a production process not specified to Seller on the formation of the Contract at the latest.

Liability / Disclaimer

1. If the Goods cannot be used by Buyer as specified in the Contract as a result of erroneous consultation by Seller, including without limitation proposals and recommendations made by Seller, Seller's failure to provide consultancy as agreed or as necessary to use the Goods (irrespective if made or should have been made until or after the formation of the Contract) or of Seller's breach of other contractual obligations (in particular instructions for operation and maintenance of the Goods), the provisions under Section VI and VII.2 shall apply accordingly.
2. Notwithstanding Seller's liability for damages to the Goods, Seller shall be solely and exclusively liable for any other damages (for whatever legal reason) resulting from Seller's breach of obligations and/or warranties, if:
 - a) the breach occurs through a wilful act on the part of Seller or through gross negligence on the part of Seller, its bodies or its senior managers
 - b) the damage consists of injury to life, body or health due to negligent or wilful act or omission on the part of Seller
 - c) the damage results from defects to the Goods, which have been fraudulently concealed or the absence of which is guaranteed by Seller and/or from defective Goods, to the extent that the Produkthaftungs-gesetz (German product liability act) stipulates liability for injury to persons or damage to property of privately used items.

In case of a breach of a fundamental obligation, Seller shall also be liable for damages due to the gross negligence of any of its employees and for ordinary negligence, in the latter case, limited to reasonable damage typically foreseeable under the circumstances of the Contract.

Limitation of Actions

All claims and remedies by Buyer – for whatever legal reason – shall expire after 12 months from the date stipulated by law except for claims for damages according to Section VII and defects to a construction or to Goods, which are used for a construction according to their ordinary purpose causing the defective construction.

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Use of Software

If the Goods entail software, Seller grants to Buyer a non-exclusive right to use the software and related documentation in connection with the other Goods for which it is intended. Using the software on more than one system and for more than one machine and for the purposes of a third party shall not be permitted.

Buyer shall be allowed to replicate, revise or translate the software or convert the object code into the source code only to the extent provided by law. Buyer shall not remove manufacturer's brand (particularly copyright notes) or alter it without the prior express consent of Seller.

All other rights to the software and documentation, including copies thereof, shall be retained by Seller or software manufacturer. The grant of sublicences shall not be permitted.

Applicable Law and Place of Jurisdiction

1. All relationships between Seller and Buyer shall be governed by substantive German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The exclusive place of jurisdiction shall be the court having jurisdiction at the head office of Seller. This shall also apply to proceedings relating to bills of exchange or cheques.
3. However, Seller shall be entitled to file an action before the court having jurisdiction at the head office of Buyer.

With best regards,

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