



All supplier's offers and deliveries are subject to the following terms and conditions. They only apply to contractors and public authorities. With conclusion of the contract the buyer/purchaser (in the following referred to as the customer) declares his agreement with our general terms and conditions for sales and delivery. The supplier expressly contradicts to any deviations from our general terms and conditions; these shall only apply with our written consent. Our general terms and conditions for sales and deliveries shall also be applicable to future delivery contracts even, if they are not in particular referred to.

#### **I. Offers**

The documents forming part of our offers, e.g. illustrations, drawings, weight and dimension specifications, are only approximations and not binding. Calculations, drawings, plans, electronic data and other documents that are also constituent part of the offer remain our property. We reserve title to all and any copyrights in these documents. They may not be made accessible to third parties. If a contract is not performed, all these documents shall be returned immediately.

#### **II. Order acceptance and scope of supply**

All orders, including those accepted by our agencies, shall only be binding on us upon our written confirmation. In the event that for any reason beyond our control, the timely performance of the delivery should not be possible, we shall be released from the period of delivery, even with confirmed orders. We are entitled to partial deliveries.

#### **III. Price and payment**

1. Our prices depend on the general development of prices or values for goods and performances on the market, which have a direct influence on our total production cost for the execution of the order (in particular changes in material prices or collective agreements). Changes (reductions as well as increases) of such initial costs are passed on to our customer to the extent, as they as cost elements effect our prices. On request we shall furnish the customer proof of this. Apart from that the supplier shall be bound by the quoted prices for a period of maximum 90 days.
2. If the customer is in arrears with payments – or, if agreed, with an installment – completely or partially, we are entitled to withdraw from the contract without prejudice to our rights from paragraph VI, figure 3) after fruitless expiry of an adequate period and claim damages instead of performance.
3. In case of delayed payment, default interest in the amount of 8% above the basic interest rate shall be paid. The supplier reserves the right to enforce a higher claim for damage caused by delay.
4. The right of the customer to offset against our accounts receivable shall be excluded, unless his claim made for offsetting has undisputedly or legally been awarded. The customer shall be entitled to a right of retention in case of claims from the same contract only.

#### **IV. Delivery time**

1. Delivery time indications are nonbinding. The period of delivery shall commence upon dispatch of the order confirmation, but no earlier than upon provision of the records, permits and releases to be obtained by the customer, and not before receipt of an agreed advance payment.
2. The period of delivery shall be deemed as observed, if the delivery item has left the works or notification of readiness for dispatch has been given.
3. The period of delivery shall be extended appropriately in case of measures within the scope of industrial disputes, in particular strikes and lockouts as well as with the occurrence of unforeseeable obstacles beyond the will of the supplier, to the extent that such obstacles can be shown to have a significant influence on the completion or delivery of the delivery item. This shall also apply in case that subcontractors are affected by such circumstances. The above mentioned circumstances shall not be the responsibility of the supplier even, if they occur while he is already in default. In important cases, the supplier shall inform the customer as soon as possible about the beginning and the end of such obstacles.
4. In the event that the dispatch is delayed on request of the customer, the costs for storage or, in case of storage at the works of the supplier, at least ½ per cent of the invoice amount shall be charged to the customer's account for each

month, beginning one month after notification of readiness for dispatch. However, upon grant and futile expiry of an appropriate period, the supplier shall be entitled to dispose otherwise of the delivery item and to supply the customer within an appropriately extended period of delivery.

5. The observance of the period of delivery shall be subject to the fulfilment of the contractual obligations of the customer.

#### **V. Passing of risk and acceptance**

1. Supplier's deliveries take place ex works. Provided that the customer is a merchant, the risk shall pass to him with the notification of readiness for dispatch, at the latest, however, with handing over the goods to the forwarding agent/carrier. To other customers the risk passes with handing over the goods to the forwarding agent/carrier. This also applies to partial deliveries.
2. In the event that the dispatch is delayed because of circumstances due to the customer's fault, the risk shall pass to the customer starting from the date of notification of readiness for dispatch.
3. The customer is entitled to refuse acceptance of the goods only, if they obviously deviate from the order.

#### **VI. Retention of title**

1. Until the receipt of all payments from the delivery contract the supplier reserves the property in the goods delivered by him. If the customer is a merchant, the supplier reserves property in all goods delivered by him until receipt of all payments from the business relationship with the customer. Processing or reshaping of goods still in our ownership always takes place by our order, without liabilities arising from that. If goods in our ownership are mixed, combined or connected, the customer already now assigns his ownership and co-ownership rights in the new items to us and shall carefully keep safe the items for us. The customer shall only sell goods being in our ownership in the regular course of business, unless he is not in delay of payment. Already now, with conclusion of this contract, he preventively assigns claims he is entitled to against his customers from sales or for another legal ground with all ancillary rights to the supplier in full amount. The customer remains entitled to the collection of debts as long as he does not default payment towards the supplier.
2. If the amount of securities due to us exceeds the claim to be secured by more than 20%, the supplier is obliged, to release the securities due to him on request of the customer; it resides with him to select the securities to be released. Provided the customer fulfills his obligations from the retention of title and does not default of payment, he shall be entitled to the possession and use of the delivery item. If the customer gets in arrears with his payment or if he does not fulfill his obligations in connection with this retention of title, the supplier shall be entitled to resign from the contract after fruitless expiry of an appropriate period set by us and to demand from the customer restitution of the delivery item to us.
3. Pledging or transfers by way of security, hiring out or passing on to third parties of conditional commodities shall only be allowed by written consent of the supplier.
4. In the event of attachment of the conditional commodities by third parties, in particular seizure, the customer shall immediately notify us in writing and point out to the third party that these commodities are owned by the supplier. To the extent that the third party is not able to reimburse the supplier for the actual and judicial costs incurred in connection with ownership by way of security, the customer shall be liable for these costs.
5. The supplier shall be entitled to insure the conditional commodities at the cost of the customer against fire, water and other damage for the period ownership in the commodities is reserved, unless the customer himself proves sufficient insurance coverage.
6. During the period ownership in the conditional commodities is reserved, the customer is obliged, to keep the conditional commodities in proper condition and to have all necessary maintenance work and repairs carried out immediately.

### **VII. Liability for defects in delivery**

The supplier shall be liable for defects in delivery including the lack of expressly guaranteed properties and excluding any further claims, without prejudice to the rights under item IX, as follows:

1. The customer shall immediately check incoming goods and without delay give written notification of faults. Insofar as faults were detected at the delivery item at the transfer of risk, the supplier shall at his choice be entitled to the correction of these faults (reworking) or delivery of goods free of faults (replacement delivery). Replaced items become our property.
2. The customer shall not be entitled, to correct faults by himself or have them corrected, unless the supplier delays in the correction of the faults or he is forced, owing to urgent operational requirements, to correct the faults.
3. For replacement deliveries our warranty is limited to the costs of the replaced item and the delivery charges. These will only be accepted, insofar as they arise within the Federal Republic of Germany. Costs for reworking arising abroad shall be carried by us only insofar as these costs would also have arisen at a domestic place of reworking.
4. If reworking of the goods or a replacement delivery fails for reasons in the responsibility of the supplier or the supplier does culpably not comply with the period set for subsequent performance, the customer shall be entitled – within the scope of legal provisions – at his choice, to reduce the contract price or to rescind from the contract.
5. The customer shall not have the right to claim for damages, in case of defects due to unsuitable or improper use of the delivery item, faulty assembly or commissioning through the customer or third parties, natural wear and tear, damages due to faulty or careless handling, improper maintenance, the use of inappropriate operating means, improper storage or other circumstances in the responsibility of the customer or third parties.

### **VIII. Limitation of actions**

All customers' claims for damages shall be statute-barred after one year from the passing of risk. For intent or fraudulent behaviour as well as claims according to the product liability law, the periods prescribed by law are applicable. The periods prescribed by law also apply to culpable injury to life, limb and health.

### **IX. Liability**

1. Insofar as nothing to the contrary results from the following, the supplier's liability shall be excluded – for whatever legal reasons soever. The supplier shall not assume liability for damages, which have not occurred directly at the delivery items, in particular the supplier shall not assume liability for loss of profit or other property losses of the customer.
2. This disclaimer of liability shall not apply to intent or gross negligence. Apart from that it is not applicable to defects fraudulently concealed or the absence of which has been guaranteed as well as to culpable injury to life, limb and health.
3. In the event that we infringe an essential obligation of contract by negligence, our liability shall be limited to foreseeable damages.

### **X. Installation work**

If installation work is performed by us, the general terms and conditions recommended by the German Engineering Association (*Verband Deutscher Maschinen- und Anlagen e.V. - VDMA*), i. e. the general terms and conditions of the mechanical engineering sector for installation work carried out at home, as at July 2008, referred to in the following, shall in principle be agreed upon. In addition to the relevant VDMA-regulations there are the following, additional contractual provisions, which in case of doubt are to be considered with priority:

1. Our general terms and conditions including the VDMA-regulations referred to shall also apply to foreign business transactions. To all contractual relationships, also at future performances, German law shall apply exclusively, except the Uniform Sales Law. The contractual language is German.
2. Remuneration for damage caused by default may only be demanded from us, if the purchaser after occurrence of default has set us an appropriate period of grace of at least ten working days and the default continues after expiry of the deadline.  
Independent of all other liability limits our liability - irrespective of the legal ground, i. e. also for liability for defects - shall in any case be limited to the predictable damage, except for cases of intent or liability in accordance with the principle of product liability.
3. In the event that due to faulty purchase orders of the purchaser damages occur or that for this reason the total workmanship is faulty, the purchaser shall release the supplier from any claims.
4. Our assembly technicians are not entitled to make legally binding declarations. The implementation of the contract shall exclusively be incumbent on the managing directors or project managers.
5. At our express request minutes are to be drawn up during acceptance testing of our performance, in which in particular all claims for damages are to be noted down, the assertion of which is reserved by the purchaser. This also applies to partial performances and individual construction stages. The acceptance report shall be signed by the respective representatives of both contracting parties. Before starting follow-up work at technical installations assembled by us, the final acceptance test shall be made or it shall be considered as being accepted as free of defect.

### **XI. Miscellaneous**

Place of fulfilment is the supplier's principle place of business. This place also is the exclusive place of jurisdiction for all disputes from the business relationship, provided the customer is a merchant. The supplier is, however, also entitled, to sue at the customer's principal place of business. The supplier's relationship with the customer is exclusively subject to the law of the Federal Republic of Germany, the UN Convention on Contracts for the International Sale of Goods (CISG) excluded. In the event that individual or several conditions or provisions of the above mentioned clauses are or become ineffective, the remaining conditions and provisions shall remain effective.

As at: August 2011