

General Terms and Conditions of Delivery for Foreign Business (effective March 2017)

§ 1 Validity

(1) All deliveries, services and offers of the Vendor are provided exclusively on the basis of these General Terms and Conditions of Delivery. These are part of all contracts the Vendor concludes with his contractual partners (hereinafter also referred to as "Buyer") for the deliveries and services offered by him.

(2) Terms and conditions of business of the Buyer or third parties shall not apply even if the Vendor does not separately object to their validity in individual cases. Even if the Vendor refers to a letter which contains or refers to terms and conditions of business of the Buyer, this does not imply any acceptance of the validity of such terms and conditions of business.

§ 2 Offer and contract conclusion

(1) All offers of the Vendor are subject to change and non-binding, unless they are expressly defined as binding or contain a specific term for acceptance. The Vendor may accept orders or contracts within 14 days after receipt.

(2) The legal relationships between the Vendor and the Buyer are solely governed by the contract concluded in writing, including these General Terms and Conditions of Delivery. A contract shall be deemed concluded upon receipt by the Buyer of the confirmation that the Vendor accepts the order ("order confirmation").

(3) If standard commercial terms are agreed, the rules of interpretation of the INCOTERMS in their latest version shall apply, unless otherwise provided.

§ 3 Prices and payment

(1) The prices apply to the scope of services and deliveries as specified in the order confirmations. Additional or special services are invoiced separately. The prices are quoted in EURO ex works (Oelde) according to INCOTERMS 2010, excluding value-added tax, packaging, freight, postage and insurance.

(2) Unless otherwise agreed, payment is to be made without any deduction to Vendor's account, namely: 1/3 of the total value after receipt of the order confirmation and 2/3 of the total value upon delivery or before delivery upon notification of readiness for dispatch if delivery is delayed due to reasons the Vendor is not responsible for.

(3) Invoice amounts shall be paid within 10 days without any deduction, unless otherwise agreed in writing. The relevant date of payment is the day of receipt by the Vendor. Statutory regulations shall apply with respect to the consequences of late payment.

(4) The offset with counterclaims of the Buyer or the retention of payments because of such claims shall only be permissible, if the counterclaims are undisputed or have been ascertained as legally binding.

§ 4 Delivery and delivery time

(1) Unless otherwise agreed in writing, delivery shall take place ex works (Oelde) according to INCOTERMS 2010.

(2) The time of delivery is based on the agreements of the parties. Compliance with the agreed time of delivery by the Vendor shall be subject to the fulfillment of the contractual obligations and accessory obligations by the Buyer in due time, such as timely receipt by the Vendor of all documents to be provided by the Buyer, necessary approvals and releases, in particular of plans as well as the compliance with the agreed terms of payment and other obligations by the Buyer. If this is not the case, the time of delivery shall be extended accordingly. This shall not apply insofar as the Vendor is responsible for the delay.

(3) If the non-compliance with the time of delivery is due to force majeure (such as natural disasters, war, armed conflicts, terrorism, sabotage, strikes, legal lockouts) or other events beyond Vendor's control, the Vendor shall be exempted from his performance obligations for the duration of the event of force majeure and the time of delivery shall be reasonably extended. The Vendor shall notify the Buyer of the beginning and the end of such circumstances as soon as possible.

Should the event of force majeure last longer than 6 months, the parties shall meet shortly to agree on a mutual agreement for the continuation of the contract.

(5) The Vendor shall be entitled to make partial deliveries insofar as these are reasonable for the Buyer.

(6) If the Vendor is in delay for reasons he is responsible for and the Buyer thereby incurs a damage, the Buyer shall be entitled to claim for liquidated damages for delay at a rate of 0,5 % for each full week of delay, however, maximal limited to 5 % of the contract price of the delayed part of delivery. The first two weeks shall not constitute a claim for liquidated damages for delay.

(7) After reaching the maximum amount of liquidated damages for delay according to the above clause 6, the Buyer shall be entitled to terminate the contract. The claims of the Buyer arising out of or in connection with delay shall be expressly and finally regulated in this § 4. Any further rights and remedies for delay as stated in this § 4, in particular claims of the Buyer for damages, are explicitly excluded. This limitation of liability shall not apply in case of intent or gross negligence of the Vendor.

§ 5 Place of fulfillment, dispatch, packaging, transfer of risk, acceptance

(1) The place of fulfillment for all obligations arising out of the contractual relationship is Oelde, unless otherwise agreed. If the Vendor is also responsible for installation, the place of fulfillment shall be the place where the installation is to be effected.

(2) The type of dispatch and packaging shall be subject to the due discretion of the Vendor.

(3) The risk is transferred to the Buyer at the latest with hand-over of the object of delivery to the forwarding agent, freight carrier or third party designated to carry out shipment. This shall also apply to partial deliveries or in cases the Vendor has assumed other services (i.e. dispatch or installation). If dispatch or hand-over is delayed for reasons the Buyer is responsible for, the risk shall be transferred to the Buyer from the day on which the object of delivery is ready for dispatch and the Vendor has notified this fact to the Buyer. If an acceptance has to take place, this shall be decisive for the transfer of risk. Acceptance has to be carried out without delay on the acceptance date, alternatively after notification of the Vendor of the readiness for acceptance. The Buyer shall not be entitled to refuse acceptance in the event of a minor defect.

(4) Storage costs after transfer of risk shall be borne by the Buyer. In case of storage by the Vendor, the storage costs amount to 0,25 % of the invoice amount for the objects of delivery to be stored for each full week, however, max. 5 % of the invoice amount. The assertion and the provision of evidence of further or lower storage costs shall remain reserved.

§ 6 Warranty

(1) The warranty period is one year from the date of delivery or, insofar as an acceptance needs to take place, from acceptance and covers manufacturing defects and material failures. If delivery or, if an installation is required, acceptance is delayed for reasons the Vendor is not responsible for, the warranty period shall end 24 months after notification of readiness for dispatch at the latest.

(2) The obligation of the Vendor to remedy a defect shall be subject to the notification of the Buyer of a defect during the warranty period immediately after discovery in writing. If the Buyer does not immediately notify the Vendor of a defect in writing, the object of delivery shall be deemed to be approved with regard to these defects.

(3) In the event of a defect, the Vendor shall be entitled to remedy this defect or to deliver an item free from defects (“supplementary performance”); within the scope of supplementary performance the Vendor reserves the right to choose the form of supplementary performance. Any replaced parts become the property of the Vendor.

(4) The Buyer has to give the Vendor the necessary time and opportunity for supplementary performance. Where this requirement is not met, the Vendor shall be relieved from the liability for defects. Only in urgent cases that endanger operational safety or to prevent unreasonably greater damages, whereby the Buyer has to inform the Vendor immediately, the Buyer shall be entitled to remedy the defect himself or to have the defect remedied by a third party and to demand reimbursement of the necessary expenses from the Vendor.

(5) For repaired or replaced parts of the deliveries the warranty period shall commence anew and last 12 months from the remedy of the defect.

(6) In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the Buyer shall be entitled to terminate the contract. If the defect is immaterial, the Buyer shall only have the right to demand reduction of the remuneration (price reduction).

(7) For the purpose of supplementary performance the Vendor shall bear all necessary costs, in particular, costs for transport, travel, labor and materials; cost assumption is excluded insofar that extra charges will arise as a result of the transportation of the object of delivery to a place other than the place of destination. In addition the Vendor shall bear the costs for installation and removal which may be necessary, if these were subject of the original performance.

(8) The warranty for material defects shall be excluded unless material defects are proven to be based on faulty material, faulty construction or bad workmanship or, if to be provided, inadequate instructions for use. The warranty shall be in particular excluded for the consequences of incorrect use, inappropriate storage conditions, faulty installation by the Buyer or third parties, normal wear and tear as well as excessive use and improper maintenance.

(9) The claims arising out of or in connection with the contract or the breach thereof are expressly and finally regulated in this contract. These limitations of liability shall not apply in case of gross negligence or unlawful intent.

§ 7 Property rights

(1) The Vendor shall be responsible for that the object of delivery is free of industrial property rights or copyrights of third parties.

(2) In the event that the object of delivery violates an industrial property right or copyright of third parties, the Vendor shall at his option modify or replace the object of delivery in such a way that no further rights of third parties are violated, however, the object of delivery still fulfills the contractually agreed functions or shall provide the Buyer with the rights of use by concluding a license agreement. If the Vendor fails to do so within a reasonable period of time, the Buyer shall be entitled to terminate the contract and to demand reimbursement of the price paid for the object of delivery or to reduce the purchase price appropriately. Further rights and claims of the Buyer due to a violation of industrial property rights than specified in § 7, in particular the right to claim for damages, are excluded.

§ 8 Limitation of liability

(1) All claims of the Buyer for the compensation of damages not caused to the object of delivery itself, i.e. compensation of losses of use, loss of contracts, loss of profit, claims of third parties or compensation of indirect damages or consequential losses, for whatever legal reason such damages are claimed for, are excluded. The liability of the Vendor arising out of or in connection with the contract or its improper fulfillment shall be limited in total to the price paid by the Buyer for the provided deliveries.

(2) Claims of the Buyer arising out of or in connection with the contract or the breach thereof are explicitly and finally regulated in this contract. Other and further claims are excluded.

(3) This limitation of liability shall not apply in case of intent or gross negligence of the Vendor or insofar mandatory law provides otherwise (e.g. as per the Product Liability Act).

§ 9 Retention of title

The object of delivery shall remain the property of the Vendor until fulfillment of the payment obligation by the Buyer and receipt of the payments as per contract in full by the Vendor.

§ 10 Applicable law, place of jurisdiction

(1) The law governing the contract shall be the Swiss substantive law to the exclusion of the private international law/conflict of laws and the United Nations Convention on Contracts for the International Sales of Goods of 11.04.1980 (CISG).

(2) All disputes arising out of or in connection with the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said rules. The arbitration tribunal shall meet in Zurich (Switzerland). The language for arbitration proceedings shall be English.

§ 11 Final provisions

In case any provision of this contract should be void or become invalid, this shall have no effect on the validity of the remaining provisions. The void or invalid provision shall be replaced by a valid provision which is closest to the legal and economic purpose of the invalid one. As far as an interpretation of contract should not be sufficient to fill a corresponding regulatory gap, the Vendor and the Buyer commit themselves to conclude supplementary agreements, taking account of the principles outlined above.

(2) The Vendor reserves the ownership or copyright of all submitted quotations and estimates as well as drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and auxiliary materials provided to the Buyer. Without explicit consent of the Vendor, the Buyer may not as such or in their contents make them accessible to third parties, disclose them, use or copy them himself or by third parties. At Vendor's request, the Buyer shall return to the Vendor these objects completely and destroy any copies made, if they are no longer required by him in the proper course of business or if negotiations do not result in the conclusion of a contract. Excluded thereof is the storage of electronically provided data for the purpose of usual data backup.

(3) Any kind of assignment of rights and obligations arising out of this contractual relationship to third parties as well as changes thereof shall be deemed null and void, unless agreed and confirmed in writing by both contractual parties.