

General Terms and Conditions for Supply for Systems

1. Scope

1.1.

The relationship between Supplier and Buyer is governed exclusively by these General Terms and Conditions of Supplier; contradicting or deviating conditions of Buyer shall apply only, if Supplier has given written consent.

1.2.

These General Terms and Conditions of Supply shall apply also to subsequent supplies and to supply of replacement parts, regardless of whether the Supplier has made any further reference hereto.

1.3.

All side agreements and guaranties as well as changes and completions of a written contract or contract by telex shall be in written form.

1.4.

In the event that certain provisions of these General Terms and Conditions of Supply shall be legally invalid, the remaining provisions hereof shall remain binding upon both parties.

2. Offer and Confirmation

2.1.

Quotations shall be binding upon the Supplier only if they state a validity period. Purchase orders shall be binding upon the Supplier only if they have been confirmed in writing by the Supplier.

2.2.

Illustrations, drawings, computations and other documents that are part of a quotation remain the Supplier's property and shall not be made available to any third parties without the Supplier's prior written consent.

3. Goods and Services to be Supplied

3.1.

Deliveries and performances are defined by the written declarations of both parties. In case there are no corresponding declarations, they are defined by the Supplier's written confirmation of an order.

3.2.

Facts and data given in brochures, catalogs or items of general technical documentation shall be binding upon the Supplier only if there is a written reference to them.

3.3.

The Supplier shall be separately reimbursed for expenses, including travel expenses, incurred in conjunction with mutually agreed installation and assembly work, unless other arrangements have been mutually agreed in writing.

3.4.

If software is part of the scope of the Supplier's performance, the Buyer has a non-exclusive right to use the software. The Buyer shall be entitled to utilize, duplicate or edit any such software only within the statutory limits.

4. Prices and Terms of Payment

4.1.

All prices are in Euro net, unless stated otherwise. Prices shall be ex works and exclude packaging.

4.2.

Prices stated do not include value-added taxes, which shall be invoiced separately at the rate(s) stipulated by applicable law as of the respective date of invoice.

4.3.

Discount may be deducted only with Supplier's prior written consent.

4.4.

The price is due within thirty (30) days from the date of Supplier's invoice, unless the confirmation of the order shows another agreement.

4.5.

If the Buyer fails to comply with the times for payment he shall be obliged to pay without further reminder interest for delay in an amount of eight (8) percent above the basic interest rate according to § 247 of the German Civil Code, beginning with the day payment was due. The right to liquidate further damages remains unaffected.

4.6.

Buyer shall be entitled to set off only those claims against Supplier that are undisputed or against which no legal recourse is possible.

4.7.

With respect to alleged defects or missing items Buyer may withhold payments only if the Buyer's notification of the defect occurred or of items missing is acknowledged by the Supplier as justified.

5. Schedules for the Delivery of Goods or Provision of Services

5.1.

Schedules for the delivery of goods or provision of services are fixed by written declarations of both parties, or, if corresponding declarations are missing, by the Supplier's written confirmation of the order. Compliance with said schedules shall be contingent upon prompt receipt from the Buyer of all items of documentation, required approvals and releases to be provided by Buyer, as well as the Buyer's compliance with payment terms and the Buyer having met all of his other obligations with respect to the Supplier. Said schedules shall be correspondingly extended in the event that the Buyer shall fail to meet any of the foregoing conditions.

5.2.

Schedules for the delivery of goods shall be considered to be met if the products are brought to dispatch or are collected within the fixed time and in proper operating condition. In the event shipments are delayed due to circumstances under Buyer's control, to meet the fixed time it is sufficient that the Supplier notifies the Buyer that the products are ready for dispatch.

5.3.

In the event that shipments shall be delayed due to circumstances under the Supplier's control, the Buyer shall be entitled to claim compensation for every full week of delay up to maximum 0,5 percent of the value of dispatch, if he demonstrably suffered a loss from the delay. However, under no circumstances shall the total amount of any damages for late deliveries exceed five percent (5%) of the total value of the items involved.

5.4.

The right of Buyer to withdraw from the contract upon expiry of a deadline set to the Supplier to effect the supplies remains unaffected. The deadline has to be adequate and shall last at least four (4) weeks beginning with a corresponding notification of Supplier.

6. Transfer of risk; Transport Insurance, Packaging

6.1.

Unless agreed upon otherwise, transfer of risk from Supplier to Buyer takes place no later than with dispatch or departure of the goods ex works. If assembly and erection was agreed upon as part of delivery, transfer of risk shall take place at the time the goods involved are accepted by the Buyer or, if agreed upon, at the time the goods involved are initially placed in operation.

6.2.

In case dispatch is delayed due to reasons not attributable to the Supplier, transfer of risk shall take place at the time which was agreed upon for the delivery ex works.

6.3.

On Buyer's demand and costs consignment shall be insured against damages out of breakage, transport or fire. In case such insurance is effected, the Buyer has to notify the Supplier immediately of a damage occurring during transport.

6.4

Shipments shall be packed in the Supplier's standard packaging in all cases. The Supplier shall be entitled to choose the particular types of packaging that he considers necessary. All expenses incurred by the Supplier in conjunction therewith shall be borne by Buyer.

7. Setup, Installation and Initial Operation

7.1.

In the event that a system cannot be set up / installed immediately after arrival at its destination, the Buyer shall be obliged to provide for proper storage of the supplies in accordance with Supplier's guidelines.

7.2.

System setup/installation shall be performed by trained specialists only, and in accordance with the Supplier's guidelines and applicable technical standards only.

7.3.

Initial system operation shall be handled by technicians authorized by Supplier only, and in accordance with Supplier's guidelines only. The technicians involved shall be entitled to refuse to start up a system in the event that the operating conditions provided by Buyer do not permit safe system operation. Any and all expenses incurred by the Supplier due to delays in initial system operation resulting from inadequate operating conditions to be provided by Buyer shall be born exclusively by Buyer.

7.4.

The Supplier shall prepare reports on system setups/installations and initial system operations that Buyer shall sign and return to the Supplier.

8. Warranty

8.1.

If the parts delivered by the Supplier turn out to be defective because they do not have the agreed quality or because they are not suited for the agreed or common use, the Supplier has to repair the concerned parts or deliver replacement free of charge and at its own choice.

8.2.

The Buyer shall give the Supplier the opportunity to remove defects within a reasonable period of time. If the Buyer denies opportunity for repair or replacement, the Supplier shall become free of his warranty obligations.

8.3.

The Buyer shall notify any defects to Supplier in writing and without undue delay.

8.4.

All claims for damages caused by natural wear and tear or for damages arising after the transfer of risk from faulty or negligent handling, or damages caused by use of delivered products or commissioning of machines under conditions not assumed under the contract, shall be excluded.

8.5.

There shall be no claims of Buyer based on defect in case of insignificant deviations from the agreed or usual quality.

8.6.

The Supplier does not bear supplementary expenses including costs of transport, labour and material, to the extent that such expenses are increased because the object of supply was subsequently brought to another location than the Buyer's branch office, unless doing so complies with the intended use of the Supplies.

8.7.

In any case the Buyer is obliged to undertake all possible and reasonable measures in order to reduce the expenses of any supplementary performances of Supplier necessary to remove any defects.

The Supplier shall not be liable for any portion of expenses involved in recall campaigns unless such campaigns are mandatory by facts and law.

8.8.

The Buyer is obliged at free choice of the Supplier to send back defective products to Supplier or to keep them ready for inspection and testing.

9. Warranty Period

9.1.

The period for warranty is twelve (12) months, unless statutory law obligatorily prescribes a longer period. The period starts with the transfer of risk, unless setup/installation and initial operation have to be performed by the Supplier, in which case the warranty period shall start on the date of setup, installation or initial operation.

9.2.

In suitable cases the warranty period may be extended to twenty-four (24) months, provided that the Buyer concludes a maintenance agreement covering the entire warranty period.

10. Defects in Title

If a third party asserts a justified claim against the Buyer based on an infringement of an intellectual property right, including copyrights, with respect to the products delivered by the Supplier, the Supplier is obliged to provide to the Buyer the possibility or the right of the further use of the products. If this can not be achieved at economically reasonable conditions, both the Supplier and the Buyer have the right to withdraw from the contract.

11. Guaranty and Product Description

11.1.

Guaranties in the sense of § 443 of the German Civil Code are only valid if they are explicitly named so in written form.

11.2.

Data in catalogs, documentation submitted in conjunction with quotations, and other written documents as well as general statements in advertisements shall not be construed as representing offers to conclude an agreement on guaranties.

12. Liability and Liquidated Damages

12.1.

Claims for damages and reimbursement of expenses of the Buyer, based on whatever legal reason, including infringement of primary or ancillary obligations arising under contract or tort, are excluded.

12.2.

This shall not apply in the case of intent, gross negligence, injury of life, body or health, and in the case of a material breach of contract. In the case of a material breach of contract the Supplier shall also be liable for slight negligence; in this case liability is limited to the typical and reasonably foreseeable damage.

12.3.

In all other cases liability for damages is given only if and to the extent this is provided for by mandatory law.

12.4.

Liability under the German Product Liability Act shall remain unaffected by the foregoing provisions.

12.5.

The statute of limitations for any and all damage claims by the Buyer shall be the warranty period as stated under § 9.1 above.

13. Retention of Title

13.1.

All goods supplied shall remain the Supplier's property until each and every claim Supplier has against Buyer under the contract has been fully met.

13.2.

The Buyer is obliged to maintain all items of Supplier adequately and in good condition and to insure them on his own costs for the period of retention of title.

13.3.

For the period of the retention of title, the Buyer may not pledge the items or use them as security.

13.4.

In the case of continued failure of payment and following the expiry of a reasonable time set by the Supplier, the Supplier has the right to withdraw from the contract and to take the retained products back. The Buyer shall be obliged to return to the Supplier any goods for which payment has not been received.

14. Data protection

14.1.

For the purpose of deciding whether to establish, to conduct or to terminate the contractual relationship Supplier collects or utilizes probabilities which are calculated by using inter alia address data.

15. Venue and applicable Law

15.1.

Sole venue for all disputes arising directly or indirectly out of this contract shall be the courts for the Supplier's principal place of business. However, the Supplier may also bring an action at the Buyer's principal place of business.

15.2.

The Supplier's home country language version of these General Terms and Conditions for Supply shall be authoritative even if translations into other languages should be prepared and accepted.

15.3.

The law of Federal Republic of Germany is solely agreed upon with the exception of its rules on conflicts of laws and the United Nations Convention on the International Sale of Goods (CISG).