

## Terms of Delivery and Payment (as of 08/2008)

All deliveries and services supplied to companies as defined by § 14 BGB [*Bürgerliches Gesetzbuch* = German Civil Code] are subject to these Terms and to other individually concluded agreements. Customer's terms of purchase which are at variance with these Terms of Delivery and Payment will not be contractually binding, even if the Supplier accepts the order.

The Supplier's Terms of Delivery and Payment also apply to all follow-up orders.

### 1. Quotes

1.1 The Supplier's quotes are subject to change. An order can only be considered accepted and the scope of delivery as definitive when they have been confirmed by the Supplier in writing, which can also take the form of a bill of delivery or an invoice. The Supplier's Terms of Delivery are agreed upon for all orders for immediate delivery, whether the order is placed verbally or by telephone; in these cases the bill of delivery or the invoice is regarded as the order confirmation.

Subsidiary agreements and alterations are only effective if they have been confirmed by the Supplier in writing. Any objections against the letter of confirmation must be filed immediately without culpable delay.

1.2 All documents pertaining to the quote such as illustrations, drawings, specifications of weight and measurements are only approximately authoritative, unless they have expressly been declared binding. The same applies to specifications regarding performance or consumption. The Supplier retains the absolute title and intellectual property rights to all quotes, illustrations and similar information, whether in material or immaterial form or in electronic form; they may not be made available to any third party or parties. The Supplier undertakes to make information and documents designated by the Customer as confidential only accessible to a third party or parties after receiving the Customer's permission.

### 2. Prices and payment

2.1 Unless otherwise specifically agreed upon, all prices are ex works and include loading in the works, excluding packaging, freight and unloading, plus the currently applicable sales tax. The Supplier's most recent price list shall apply.

2.2 Unless specifically otherwise agreed upon, payment must be effected as follows:

a) orders to the value of less than € 10,000.-- within 10 days from the date of invoice with 2 % discount or within 30 days net,

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- b) Orders to the value of more than € 10,000.-- 1/3 on receiving confirmation of the order, 1/3 3 weeks prior to the confirmed date of delivery, 1/3 within 10 days of the date of invoice, in each case net.
  - c) For orders to the value of less than € 25.-- a minimum sum of at least € 50.-- will be charged plus freight and packaging.
  - d) Timeliness of the payment is determined by the date on which the Supplier receives the monies.
- 2.3 The Customer has no right to retain or offset payments against counterclaims unless the Customer's counterclaims are indisputable or have become res judicata.
- 2.4 In the event that the Supplier is made aware of a substantial deterioration in the Customer's financial circumstances after concluding the contract, then the Supplier will be entitled to demand advance payment, to retain consignments which have not yet been shipped and/or to withdraw from the contract, even if the Customer can provide a bill of exchange or another form of financing, if otherwise the rights of the Supplier would be jeopardized.
- 2.5 If it is agreed that the ordered goods or services are to be supplied more than 4 months after conclusion of the contract, then the Supplier is entitled to adjust the price within reason to any changes in standard wages and/or costs of materials occurring between conclusion of the contract and delivery.
- 2.7 For all intra-EU deliveries the Customer must state his VAT ID number and provide all information necessary to verify the tax exemption together with all records and documents necessary for verification. If the Customer does not provide the necessary documentation in good time, the Supplier will not treat the consignment as tax exempt. The Supplier will then be entitled to additionally calculate and claim the VAT accruing. If the Supplier wrongly treats a consignment as tax exempt on the basis of incorrect information provided by the Customer, then the Customer must indemnify the Supplier for the tax liability and additionally bear all costs accruing.
- 3. Delivery period, Delay in delivery**
- 3.1 The delivery period begins with the dispatch of the order confirmation by the Supplier, however not before the Customer has furnished all documents and information regarding technical details, permits, approvals and all advance payments agreed upon. For call orders the call must be placed at least 3 months prior to the required delivery date.
- 3.2 The delivery period has been complied with if the goods have left the works or the Customer has been informed that the goods are ready for shipping by the time the delivery period has expired. If an inspection with approval is required, then – with the exception of a legitimate refusal of acceptance – the relevant date will be the commissioning date or, alternatively, the communication that the articles are ready for commissioning.

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- 3.3 The agreement of a delivery date does not represent a fixed date; deadlines and dates are only approximate unless they have been expressly referred to as binding in the order confirmation.
- 3.4 In all cases in which the Supplier is unable to manufacture and supply the articles or unable to provide them in due time due to reasons for which the Supplier cannot be held responsible (e.g. force majeure, strike, lock-out, lack of raw materials or supplies, etc.), the term for delivery shall be extended correspondingly. This also applies if the Supplier's subcontractors are affected by such circumstances as outlined above.  
The Supplier can likewise not be held responsible for the above-mentioned circumstances if they occur when the Supplier was already behind schedule. In important cases, the Supplier shall inform the Customer of the beginning and end of such difficulties as soon as possible.
- 3.5 When a delivery period is exceeded the Supplier shall only be considered to be behind schedule if the Customer has set the Supplier an additional period of one month and this period has expired without results. Insofar as the Supplier would be liable for a compensation for delay, the amount of this compensation is limited, amounting to 0.5% for every full week of delay but not exceeding 5% of the value of the part of the delivery which cannot be utilized in good time or according to contract due to the delay. All other claims are determined exclusively in accordance with Clause 7.  
The right of the Customer to rescind from the contract after expiry of a grace period without results shall be unaffected.  
If the shipment or the commissioning of the supplied articles is delayed by the Customer, then, starting from one month after notification that the articles are ready for shipping or commissioning, the Customer will be charged the costs accruing from the delay – if the articles to be delivered are stored on the Supplier's premises these costs will amount to at least 0.5% of the invoiced total for every additional month. The contractual parties are free to furnish proof and claim higher or lower costs.
- 3.6 In the event of non-acceptance of a delivery or refusal after receiving notification that the goods are ready for shipment, the Supplier is entitled to set an additional period of 4 weeks. Thereafter the Supplier can withdraw from the contract and demand compensation for non-fulfillment.
- 3.7 Adherence to the delivery period requires the prior fulfillment by the Customer of his contractual obligations.

#### **4. Passing of risk, Acceptance and Assembly**

- 4.1 The risk passes to the Customer at the latest on the date of dispatching a consignment even if the dispatch consists of a part-shipment or the Supplier has agreed to render additional services, e.g. the freight costs or delivery and assembly. On the Customer's request, the Supplier will insure the consignment against theft, breakage, transportation, fire and water damage as well as other insurable risks.

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- 4.2 If shipment is delayed due to circumstances for which the Customer is responsible, then the risk shall pass to the Customer on the day on which the goods were ready for shipment. The Supplier is entitled to invoice the goods and, on request by the Customer, must secure the insurance coverage which the Customer demands at the Customer's expense.
- 4.3 Goods which are delivered must be accepted by the Customer, even if they possess negligible defects, without prejudice to the Customer's rights as outlined in Clause 6.
- 4.4 Partial deliveries are permissible insofar as this does not constitute an unreasonable difficulty for the Customer.
- 4.5 Assembly, commissioning and demonstrations, unless otherwise agreed upon, must be paid for without any deductions. Preparation, travel and waiting times will be billed as working hours. The necessary substructure must be completed before arrival of the Supplier's assembly operators and the appliances must be ready at the place of assembly.  
The necessary hoisting gear, assistants, materials, etc. must be provided for the Supplier's assembly operators in good time and without charge, even in the event that assembly is included in the price of the individual deliveries or a lump-sum price was agreed upon for assembly. The preparations for commissioning a machine must be made by the Customer; this includes the electrical connection for the machine. Lump-sum prices agreed upon for assembly, and free assembly and demonstrations do not include surcharges for overtime, night work, and work on Sundays or public holidays, if they should become necessary, nor are surcharges for waiting times due to insufficient preparations on the part of the Customer included. These surcharges will be additionally billed to the Customer. With the trial commissioning of the facility all assembly work in connection with the installation of the product is considered complete.
- 4.6 If the Customer exports the goods, the Customer undertakes to comply unconditionally with the relevant regulations of the EU, of EU member states and of the USA.
- 5. Retention of title**
- 5.1 The goods delivered by the Supplier shall remain the property of the Supplier until full payment of all claims arising from the business relationship has been effected, including any refinancing bills or reverse bills of exchange.
- 5.2 The Supplier is entitled to insure the goods against theft, breakage or other damages, at the Customer's expense, unless the Customer can furnish proof of having taken out insurance.
- 5.3 The Customer is not entitled to pledge the goods or to assign them as collateral. The Supplier must be notified immediately of any attachments, sequestrations or other court orders by third parties.

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- 5.4 The Customer is permitted, subject to revocation at any time, to resell the goods in the ordinary course of business, unless the claims arising out of the resale have already been assigned to another party or parties or an assignment in advance to the Supplier is excluded. The Customer assigns all claims arising out of the resale of the goods already now to the Supplier as collateral. If the value of the collateral exceeds the outstanding claims by more than 20%, then the Supplier must release individual securities on request by the Customer; the choice of security to be released is at the Supplier's discretion.
- 5.5 In the event of behavior contrary to contract on the part of the Customer, in particular default of payment, the Supplier is entitled to take back the goods and the Customer must surrender them; the authorization for collection as outlined in sub-clause 5.4 will be terminated. Due to the retention of title the Supplier may only demand the return of the goods if he has withdrawn from the contract.
- 5.6 The filing of an application to initiate insolvency proceedings entitles the Supplier to withdraw from the contract and demand the immediate return of supplied articles.

## 6. Customer's duty of notification

The Customer shall inform the Supplier on request whether a supplied article has been sold to another company, and if so, which company has taken delivery of the goods.

## 7. Claims for defects

The Supplier is liable for material defects and defects of title of the supplied goods to the exclusion of additional claims – subject to Clause 7 – as follows:

### Material defects:

- 7.1 All parts found to be defective due to circumstances occurring either prior to or at the time of passing of risk must be repaired or replaced by parts free of defects; such repairs or replacement are free of charge. The choice of carrying out repairs or of replacing defective parts is at the Supplier's discretion. The Supplier must be informed immediately and in writing of any identified defects. Replaced parts become the Supplier's property.
- 7.2 After notifying the Supplier, the Customer must allow the Supplier sufficient time and opportunity to perform all repairs or replacements considered necessary by the Supplier, otherwise the Supplier shall be released from his liability for any consequences ensuing. The Customer may only rectify the defects himself or commission a third party to rectify the defect and demand that the Supplier reimburse the costs accruing in urgent cases where the operational safety is threatened or to prevent disproportionate damages; in such cases the Supplier must be notified immediately.

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- 7.3 With regard to the direct costs arising in connection with the repair or replacement – provided the complaint is legitimate – the Supplier will bear the costs of the replacement part including shipping costs. The Supplier will additionally also bear the costs of removal of the defective part and installation of the new part together with the cost of providing the necessary service technician and assistants, as long as this does not constitute a unreasonable burden on the Supplier. If the complaint turns out to be unwarranted, then the Customer must reimburse the Supplier for all costs accruing in connection with the inspection of the complaints, based on the Supplier's current price list.
- 7.4 The Customer has the right to withdraw from the contract in compliance with the legal regulations if the Supplier – after due consideration of the special statutory exemptions – allows a reasonable period of grace given him for the rectification or replacement of the defective parts to expire fruitlessly. If the defect is merely a non-serious defect, the Customer is only entitled to abate the contract price. The right to abate the contract price is excluded unless the subsequent fulfillment has failed.
- 7.5 No warranty is given for the following cases:  
All further claims are determined in accordance with Clause 7 of these Terms.  
unsuitable or improper use, faulty assembly or commissioning by the Customer or a third party, natural wear and tear, faulty or careless handling, improper maintenance and servicing, the use of unsuitable equipment, faulty construction work, unsuitable foundations, or chemical, electrochemical or electrical factors – provided that the Supplier is not responsible for them.
- 7.6 If the Customer or a third party carried out incorrect repairs, the Supplier will not be liable for any consequences resulting therefrom.  
The same applies to any alterations to the supplied article carried out without the prior approval of the Supplier.

Defects of title:

- 7.7 If utilization of the supplied article leads to a violation of industrial or intellectual property rights within Germany, the Supplier will obtain the rights to allow the Customer to basically continue utilizing the supplied article or the Supplier will amend the supplied article in an appropriate and reasonable manner such that it no longer violates the property rights; the costs of obtaining these rights or of amending the article will be borne by the Supplier.  
If this is not possible under reasonable economic conditions or within a reasonable period of time then the Customer is entitled to withdraw from the contract. Under these conditions the Supplier also has the right to withdraw from the contract.  
Moreover the Supplier will release the Customer from all indisputable claims or claims which have become res judicata filed by the respective holder of the property rights.

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7.8 The Supplier's obligations as outlined in sub-clause 6.7 above are – subject to the provisions of sub-clause 7.2 – final for all violations of industrial or intellectual property rights.

These obligations only exist if

- the Customer notifies the Supplier immediately of any assertion of violations of industrial or intellectual property rights,
- the Customer adequately supports the Supplier in averting the asserted claims or allows the Supplier to carry out modifications as outlined in sub-clause 6.7,
- the Supplier has the right to implement all possible defensive measures including extra-judicial settlement,
- the defect of title is not due to instructions issued by the Customer, and
- the violation of rights was not caused by a modification of the supplied articles by the Customer acting without authority or by utilizing the article in a manner not specified in the contract.

## 8. Liability

8.1 If the Customer is unable to utilize the supplied article as specified in the contract in consequence of a fault on the part of the Supplier or due to a failure to carry out or the faulty execution of recommendations and consultations which took place after conclusion of the contract or as a consequence of the violation of other contractual secondary obligations – in particular of the instructions concerning the operation and maintenance of the supplied article – then the regulations of Clause 6 and sub-clause 7.2 above shall apply accordingly, to the exclusion of any further claims by the Customer.

8.2 For damages which do not directly affect the supplied article itself – irrespective of the cause in law – the Supplier shall only be liable

- a) in cases of intent,
- b) in cases of gross negligence on the part of the owner/organs or executive employees,
- c) in cases of culpable damage to life, body or health,
- d) for defects which the Supplier intentionally misrepresented by silence or whose absence the Supplier guaranteed,
- e) for defects of the supplied article insofar as the German Product Liability Act makes the Supplier liable for bodily injury or damage to privately used property.

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In the event of a culpable violation of important contractual obligations the Supplier will also be liable for gross negligence by non-executive employees and for slight negligence; in the latter case the liability is limited to foreseeable damages typical for this kind of contract.

All other claims are excluded.

## 9. **Warranty, Statute of limitations**

All claims of the Customer – irrespective of their cause in law – shall become time-barred after 12 months. For indemnity claims as outlined in sub-clauses 7.2 a – e the statutory periods shall apply. They also apply for any defects of building construction or of supplied articles which were used as typically intended in a building and were responsible for the construction's defects.

## 10. **Software utilization**

Insofar as the delivery also includes software, the Customer has a non-exclusive right to utilize the supplied software together with the documentation. The software is provided for use on the article supplied for this purpose. The software may not be used on more than one system

The Customer may only copy, revise or translate the software or transform the object code into source code within legally permissible bounds (§§ 69 a ff. UrhG [*Urheberrechtsgesetz* = German Copyright Act]). The Customer undertakes not to remove any manufacturer's information – in particular any copyright notations – or to alter them without the Supplier's prior express permission.

The Supplier or the provider of the software retains all other rights to the software and its documentation including the rights to all copies. The granting of sublicenses is not permitted.

## 11. **Applicable law, venue**

11.1 The legal relations between the Supplier and the Customer are governed exclusively by the applicable laws regulating legal relations between domestic parties of the Federal Republic of Germany.

11.2 Venue shall be the competent court having jurisdiction at the Supplier's registered offices. However the Supplier has the right to file a suit at the Customer's registered offices.

11.3 The German wording of the Terms of Delivery and Payment is authoritative.

As per: 08/2008

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