



General Terms of Sale *

I. General Provisions, Usufructuary Rights

1. The scope of the deliveries or services (referred to hereinafter as "Deliveries") shall be governed by the written statements produced by both parties. Customer's General Terms of Business shall only apply insofar as the party making the delivery or rendering the service (referred to hereinafter as "Supplier") has expressly consented to them in writing; otherwise they shall be refuted entirely. These General Terms of Sale shall also apply to future transactions even if they are not expressly agreed anew.
2. Supplier reserves without restriction all its exploitation rights under property law and copyright law in all estimates, drawings and other records (referred to hereinafter as "Documents"). Third parties may only be given access to the Documents with Supplier's prior approval, and if the order is not placed with Supplier then the Documents must be returned to the latter without delay on request. Clauses 1 and 2 shall apply *mutatis mutandis* to all Customer's documents; however, they may be disclosed to those third parties to whom Supplier has legitimately assigned the Deliveries.
3. Customer shall have the non-exclusive right to use standard software with the agreed functions in an unaltered form on specifically agreed equipment. Customer may make a back-up copy without express permission.
4. Part deliveries are admissible provided Customer may be expected to accept them.
5. On signing the purchase contract, Customer declares that it also agrees to receive electronic messages from us, such as emails containing invitations to trade fairs, presentations of new products, etc. However, Customer is entitled to cancel this service at any time.

II. Prices, Terms of Payment

1. Prices are ex works (EXW in accordance with Incoterms) excluding packaging and plus the statutory turnover tax applicable at the time.
2. If Supplier has assumed the task of setting up or assembling the goods, and if nothing is agreed otherwise, then apart from the agreed remuneration Customer shall pay all the ancillary costs incurred, such as travel expenses, costs for transporting tools and personal belongings, and daily allowances.
3. Payments must be made free of charges to Supplier's appointed paying agent. Payment date: net without deduction 30 days after date of invoice, or as agreed.
4. Customer may only offset demands such as are undisputed or have been established *res judicata* in a declaratory judgment. Customer is authorised to exercise right of retention insofar as its counter-claim is based on the same contractual relationship.

III. Reservation of Title

1. Supplier reserves title to all the goods delivered until such time as Customer has paid all existing claims and any claims created at a later date on the basis of the business transaction.
The reservation of title also includes substitute or spare parts such as e.g. engines, controlling equipment, etc., even if they are installed, because they do not thus become essential components as defined in German Civil Code *Bürgerliches Gesetzbuch - BGB § 93*.
When payment is made using cheques or bills of exchange, the reservation of title shall continue beyond the payment by cheque and until the parties to the bill

of exchange are released from their liability.

In the event of a current account relationship (business relations) Supplier shall reserve title until such time as all payments under the existing current account relationship have been received; this reservation of title also applies to the accepted balance; in such cases, the provisions of this Article shall apply *mutatis mutandis*.

2. If Customer breaches the contract, in particular in the event of default in payment, Supplier shall be entitled to take back the goods after a set deadline has expired to no avail. Merely recovering the goods shall only be deemed a rescission of the contract if a reasonable deadline set by Supplier has expired to no avail and an express declaration of rescission has been made.
The costs incurred on Supplier on taking back the goods (in particular transport costs) shall be at Customer's expense.
Moreover, Supplier is entitled to prohibit Customer from doing any manner of resale, processing, combination or intermixture in respect of the goods delivered subject to reservation of title, and to revoke the direct debit authorisation (Item 5).
Customer may only demand the delivery of goods recovered without an express declaration of rescission after the purchase price and all costs have been paid in full.
3. Customer is under obligation to treat the goods with care (incl. any inspections and maintenance required).
4. Customer may not pledge the object of the delivery and the claims thus created, nor may it transfer ownership thereof or assign same by way of security.
In the event of pledges or other third-party interference, Customer shall inform Supplier in writing without delay so that the latter can bring action pursuant to German Code of Civil Procedure *Zivilprozeßordnung - ZPO § 771*.
Any residual costs of such action with which Supplier is left even on winning the litigation pursuant to ZPO § 771 shall be borne by Customer.
5. During the normal course of business, Customer is entitled to resell, process or intermix the item purchased, whereby however it here and now assigns to Supplier all its claims based on such resale, processing or intermixture, or based on other legal causes (in particular insurance policies or tort) up to the amount of the agreed invoiced total (incl. value added tax *Mehrwertsteuer*). If the goods supplied are resold along with other items not belonging to Customer, Customer shall assign to Supplier the accounts receivable thus created up to the amount of the agreed gross amount.
Customer shall remain authorised to collect such receivables even after making this assignment, whereby Supplier's authority to collect the receivables itself shall remain unaffected.
However, Supplier undertakes not to collect the receivables as long as Customer performs its payment obligations using the proceeds taken, does not default in payment, and does not cease making payments, and as long as no petition for the institution of insolvency proceedings has been filed.
If any of the above is the case, however, Customer must on request disclose the assigned accounts receivable and the names of the debtors, provide all the information required in order for collection to be made, hand over the appurtenant documents, and inform the debtor (third party) about the assignment.
6. The reservation of title also covers the products created by processing or reworking the goods supplied up to their full value, whereby such acts shall be done on Supplier's behalf such that the latter shall be deemed to be the

* translated from the original Terms of Sale in German ("Verkaufsbedingungen")

manufacturer. If, when processing or re-working involves third-party goods, said third party's reservation of title is upheld, then Customer shall grant Supplier co-ownership in proportion to the objective value of such goods, whereby it is agreed here and now that in any such case Customer shall carefully store the goods on Supplier's behalf.

If the goods subject to reservation of title are combined or inextricably mixed with other movable chattels to create a uniform object, and if such object is to be regarded as the main object, then Customer assigns to Supplier proportionate co-ownership insofar as the main object belongs to it; the jointly owned property thus created shall be stored by Customer on Supplier's behalf. In all other respects, the same shall apply to objects thus created as to items supplied subject to reservation of title.

7. Customer also assigns to Supplier all and any claims securing its own supplier's accounts receivable that are created vis-à-vis a third party when the goods supplied are combined with real property.
8. The collateral to which Supplier is entitled shall not be included once the estimated value of the collateral exceeds the nominal value of the claims being secured by 50%, whereby Supplier shall decide which collateral is released.

IV. Delivery Periods, Default

1. Observance of delivery dates shall be contingent upon punctual receipt of all the documents having to be supplied by Customer - including any permits and releases required, in particular plans - and Customer's compliance with the agreed payment terms and other obligations. If these requirements are not met in good time, then the periods shall be extended to a reasonable degree; this shall not apply if Supplier is responsible for the delay.
2. If any unforeseen obstacles occur which are beyond Supplier's sphere of influence, and which Supplier is unable to avert despite taking the amount of care reasonably to be expected under the circumstances irrespective of whether such circumstances occur at his own business or at an in-supplier's business, such as *force majeure* (e.g. war, mobilisation of troops, revolt, fire and natural disasters), delays in the delivery of essential primary products and raw materials, etc., then Supplier shall be entitled to rescind the delivery agreement or to prolong the delivery period by the duration of the obstacle. Supplier shall be entitled to the same rights in the event of strikes or lock-outs at its own business or at in-suppliers' businesses. Supplier shall inform Customer about any such circumstances without delay.
3. In the event of default in delivery, Customer may rescind the contract once a reasonable period of grace has expired to no avail; in the event of impossibility of performance, it shall be entitled to this right even without a period of grace having to be granted.

Claims to damages (including any consequential damages) are excluded, notwithstanding Item 4 below which aims to avoid the reversal of the burden of proof; the same applies to the reimbursement of expenses.

4. Insofar as the default in delivery is due to a deliberate or grossly negligent violation of duty attributable to Supplier, then Supplier shall be liable in accordance with statutory regulations, whereby fault on the part of those assisting it in performing its tasks shall be attributable to Supplier itself. The same applies in the event of injury to life or limb or damage to health, or if the delivery period has been guaranteed.

Insofar as Supplier is at fault in violating a cardinal duty although it has not done so deliberately, liability shall be limited to the foreseeable damage typical for the type of contract; otherwise it is excluded pursuant to Item 3 above.

The above shall apply *mutatis mutandis* to the reimbursement of costs.

If a fixed delivery date has been agreed, Supplier shall be liable in accordance with the statutory regulations; the same applies if Customer is able to claim that it is no longer interested in performance of the contract due to the delay for which Supplier is responsible.

5. At Supplier's request, Customer is under obligation to declare within a reasonable period whether it is rescinding the contract due to the delay in delivery, or whether it insists on the delivery being made.
6. If, at Customer's request, consignment or delivery is delayed for more than one month after notice of readiness for dispatch has been issued, then for each month commenced Customer may be charged storage fees amounting to 0.5% of the price of the goods concerned, or at the most 5% of said price. Supplier is at liberty to prove that the losses or expenses are higher; Customer is at liberty to prove that no or considerably smaller losses or expenses have been incurred.

V. Passing of Risk

1. Even in the event of delivery being made freight paid, risk shall pass to Customer as follows:
 - a) In the case of Deliveries not involving installation or assembly, when the goods are ready for dispatch or are fetched. At Customer's request and expense, Deliveries shall be insured by Supplier against the usual transport risks.
 - b) In the case of Deliveries involving installation or assembly, on the date on which Customer accepts the goods at its own business, or if so agreed after a successful trial run.
2. If dispatch, delivery, commencement and completion of installation or assembly, acceptance of the goods at Customer's business, or the trial run are delayed for reasons for which Customer is responsible, or if Customer defaults in accepting the goods for any other reason, then the risk shall pass to Customer.

VI. Installation & Assembly

Unless otherwise agreed in writing, or unless special assembly terms are included, the following provisions shall apply to installation and assembly:

1. At its own expense, Customer shall assume and complete or provide the following in good time:
 - a) all excavation, building and other incidental work involving different lines of business, including the skilled workers and labourers, building materials and tools required to this end;
 - b) the items and materials needed for assembly and commencement of operation, such as scaffolding, lifting equipment and other facilities, fuel and lubricants;
 - c) energy and water supplies at the place of operation, including connections, heating and lighting;
 - d) at the point of assembly, sufficient suitable, dry and lockable space for storing engine parts, apparatus, materials, tools, etc., and suitable work- and rest-rooms for the assembly staff, including sanitary facilities reasonable in the circumstances; apart from this, Customer must take the same measures for protecting Supplier's property and assembly staff on the building site as it would take to protect its own property;
 - e) protective clothing and facilities such as are required due to the specific circumstances prevailing at the point of assembly.
2. Prior to commencement of the assembly work, Customer must provide unsolicited the necessary information as to where concealed electricity cables, gas and water pipes and suchlike are installed, and any statistics required.
3. Prior to commencement of installation or assembly, the materials and items required in order for the work to be done must be placed at the point of installation or assembly, and all preliminary work before installation can begin must have reached such an advanced stage that the installation or assembly can be commenced as agreed and carried out without interruption. Access routes and the point of installation or assembly must be levelled and cleared.

4. If the installation, assembly or initial operation are delayed for reasons for which Supplier is not responsible, then Customer shall pay reasonable costs for waiting times and any additional journeys which the assembly staff have to make.
5. On a weekly basis, Customer shall confirm without delay the times which the assembly staff have worked, and the completion of installation, assembly or initial operation.
6. If Supplier demands formal acceptance of the delivery on completion, then Customer must do this within two weeks. If this is not done, formal acceptance shall be deemed declared. Similarly, formal acceptance shall be deemed declared once the items delivered are put into operation (after an agreed trial phase has been completed, if applicable)

VII. Acceptance

Customer may not refuse to accept Deliveries due to minor defects, notwithstanding its rights pursuant to Art. VIII below.

VIII. Material Defects

Supplier shall be liable as follows for material defects in the items delivered, insofar as Customer is a registered business, but only as long as the latter has duly performed its obligations to inspect the goods and lodge a complaint (the complaint must be lodged in writing) as laid down in German Commercial Code *Handelsgesetzbuch - HGB* § 377:

1. If there is a defect in the item bought, Supplier is entitled to remedy the defect or deliver an item in perfect condition (post-performance), at its own option.
This is provided that the defect involved is not merely a minor defect.
If either or both of these types of post-performance are impossible or out of all proportion, then Supplier shall be entitled to refuse to perform them.
When complaints are lodged, Customer may retain payments which are in reasonable proportion to the material defects which have been established. If the complaint about a defect is not well-founded, Supplier shall be entitled to demand that Customer refund to it any expenses which have been incurred.
2. If the post-performance specified in Item 1 above is impossible or fails, then Customer may choose between either reducing the purchase price accordingly, or rescinding the contract in accordance with the statutory regulations; this applies in particular if post-performance is culpably delayed or refused, or if it fails for the second time.
Notwithstanding Item 4 below, further claims for whatsoever legal cause on Customer's part (in particular claims based on *culpa in contrahendo*, violation of the principal and secondary obligations under the contract, reimbursement of expenses except in accordance with BGB §. 439 (II), tort and other tortious acts) are excluded; this applies in particular to claims for losses beyond the item purchased, and for claims to compensation for lost profits; it also includes claims not resulting from the defect in the item purchased.
3. The above provisions also apply in the event of delivery of a different item or a short quantity.
4. Supplier shall be liable in accordance with statutory regulations if it, or the persons assisting it in performing its tasks, or its statutory representatives violate obligations either deliberately or due to gross negligence. The statutory provisions shall also apply if a cardinal duty is culpably breached; as long as no intent is imputed here, the remaining liability shall be limited to the foreseeable damage typical for the type of contract.
Supplier shall also be liable in accordance with statutory regulations if liability for harming life and limb or for health hazards is involved; similarly if liability in accordance with the Product Liability Act *Produkthaftungsgesetz* is the case. The same applies when a guarantee is assumed or when a certain characteristic is warranted, if a defect thus covered triggers off Supplier's

liability.

The above shall also apply by analogy to the reimbursement of costs. A reversal of the burden of proof is not intended here.

5. No guarantee is assumed for damage caused for the following reasons: unsuitable or improper usage, wrong assembly by Customer or third parties, natural wear and tear, wrong or negligent treatment, unsuitable means of operation, defective building work, ground which is unsuitable for building purposes, substitute materials, the impact of chemical, electro-chemical or electrical factors (insofar as Supplier is not responsible for them), alterations or maintenance work done by Customer or third parties that are inappropriate and that have not been approved by Supplier beforehand.
6. Claims based on defects shall become statute-barred one year after the item purchased has been delivered, provided Supplier may not be accused of intent, or harming life and limb, or causing a health hazard.

In the case of an item which has been used for a building construction in line with its intended purpose and which has caused a defect to such building construction, the prescriptive period shall be 5 years.

The rights to reduce the price or exercise the right of rescission are excluded once the claim to post-performance becomes statute-barred.

Where Clause 3 applies, Customer may however refuse to pay the purchase price to the extent to which it would be entitled in the event of rescission of the contract or reduction of the purchase price; in the event of the exclusion of rescission and subsequent refusal to pay, Supplier is entitled to rescind the contract.

When the business has recourse to BGB §§ 478 f., the statutory prescriptive periods remain unaffected.

7. Warranties and guarantees are only effective if they are expressly stated in writing.
8. Exclusion of Supplier's liability also covers its statutory representatives and those assisting it in performing its tasks.

IX. Industrial Property Rights & Copyright; Legal Defects

1. Unless otherwise agreed, Supplier is under obligation to make Deliveries free of third-party industrial property rights and copyrights (referred to hereinafter as "Proprietary Rights") only in the country where the place of delivery is located. If a third party imposes legitimate claims on Customer because Deliveries made by Supplier and used in accordance with the contract constitute an infringement of Proprietary Rights, then Supplier shall be liable vis-à-vis Customer as follows during the period specified in Art. VIII Item 6:
 - a. At its own option and expense, Supplier shall either obtain a usufructuary right for the Deliveries concerned, or alter them such that the Proprietary Right is not infringed, or replace them. If it is unable to do this on reasonable terms, then Customer shall be entitled to its statutory rights to rescind the contract or reduce the price.
 - b. Supplier's obligation to pay damages and refund expenses shall be governed by Art. X below.
 - c. The aforementioned obligations shall only be brought about provided Customer immediately notifies Supplier in writing about the claims being asserted by the third party, provided it omits to acknowledge any infringement, and provided all the defensive measures and settlement negotiations are reserved for Supplier. If Customer ceases using the Deliveries so as to keep losses to a minimum or for other important reasons, it is under obligation to draw the third party's attention to the fact that the cessation of usage is not linked to any acknowledgement of a violation of Proprietary Rights.
2. Customer's claims are excluded if it is solely responsible for the violation of the Proprietary Rights.
3. Moreover, Customer's claims are excluded if the violation of the Proprietary

rights is caused due to Customer specifying certain standards or due to the item being used in a manner not foreseeable by Supplier, or due to the fact that Customer has altered the Deliveries or used same in conjunction with other products not supplied by Supplier.

4. In all other respects, in the event of infringements of Proprietary Rights, the provisions laid down in Art. VIII Item 1 above shall apply by analogy to Customer's claims arranged in accordance with Item 1 a) above.
5. In the event of any other legal defects, the provisions laid down in Art. VIII above shall apply *mutatis mutandis*.
6. Customer's claims for legal defects vis-à-vis Supplier or its statutory representatives or those assisting it in performing its tasks, which go beyond or differ from those provided for in this Article, shall be excluded in accordance with Art. X below.

X. Other Compensation Claims, Rescission

1. The following provisions apply to breaches of duty beyond liability for material defects, and are not intended to exclude or limit the statutory right of rescission. Similarly, statutory and contractual rights and claims to which Supplier is entitled are not intended to be excluded or limited either.
2. Further claims on Customer's part for whatsoever legal cause (in particular claims based on *culpa in contrahendo*, violation of principal and secondary contractual obligations or the legal duty to give advice, reimbursement of expenses, tort and other tortious acts) are excluded; this applies in particular to claims for damages beyond the item purchased and to claims to compensation for lost profits; it also covers claims not resulting from material defects in the item purchased.

Supplier shall be liable in accordance with the statutory regulations insofar as it or its statutory representatives or those assisting it in performing its tasks breach duties with intent or due to gross negligence; the statutory regulations shall also apply if Supplier culpably violates a cardinal duty; provided it is not accused of intent, the remaining liability shall be restricted to damages foreseeable for the type of contract.

Supplier is also liable in accordance with the statutory regulations if it is accused of being liable for harming life or limb or for causing a health hazard. The same applies when a guarantee is assumed or when a certain characteristic is warranted, if a defect thus covered triggers off Supplier's liability.

The above shall also apply accordingly to the refunding of expenses. No reversal of the burden of proof is intended.

3. Any exclusion of Supplier's liability shall also have effect for its statutory representatives and those assisting it in performing its tasks.

IX. Place of Performance, Venue, Governing Law, Allocation of Burden of Proof

1. Place of performance shall be the place of dispatch (works or storage place).
2. If Customer is a merchant, a public corporation or a special fund under public law, sole place of performance for all and any disputes arising either directly or indirectly from the contractual relationship shall be the location of Supplier's registered headquarters. However, Supplier is also entitled to bring action at any other admissible place of jurisdiction.
3. The legal relations which this contract involves shall be governed by German law, excluding CISG.
4. None of the clauses agreed in the overall terms is intended to alter the statutory allocation of the burden of proof, or that ensuing from court rulings.

XII. Binding Nature of the Agreement

If any provision of these terms is wholly or partly inoperative or null and void, this shall not affect the remaining terms. The parties to the Agreement undertake to agree on an arrangement by means of which the intents and purposes of the inoperative or invalid provision are largely attained in commercial terms.

© 2004 MICRO-EPSILON MESSTECHNIK GmbH & Co. KG