

# Terms and conditions

## of scale and supply for the supply of machinery, plant and replacement assembly components.

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### 1 General provisions

**1.1** All supplies and services of the Supplier (in the following referred to as 'supplies') shall be based solely on these terms and conditions.

Any general terms and conditions of the Purchaser shall apply only to the extent that the Supplier has expressly consented to them. The scope of supplies shall be determined by the corresponding written declarations of both parties.

**1.2** The Supplier reserves its unrestricted rights of title and copyright in relation to samples, cost estimates, drawings and other documents. These may only be made available to third parties with the prior consent of the Supplier, and shall be returned to the Supplier immediately on demand if the contract is not awarded to the Supplier.

The Supplier undertakes to divulge information and documents designated as confidential by the Purchaser to third parties only with the Purchaser's consent.

**1.3** The Purchaser shall have the non-exclusive right to use standard software and firmware with the agreed features in unmodified form on the agreed devices. The Purchaser may create a backup copy of the standard software without express agreement thereon.

**1.4** Partial deliveries shall be permitted provided that they are not unreasonable for the Purchaser.

**1.5** Fulfilment of the contract shall be subject to the condition that it encounters no impediments pertaining to German, US or any other applicable national, EU or international foreign trade regulations, and is not subject to any embargoes or other sanctions.

**1.6** The contract shall remain binding even if individual provisions prove to be legally ineffective,

unless adherence to the contract represents an unreasonable hardship for one of the parties.

### 2 Prices and payment

**2.1** Unless otherwise specifically agreed, the prices shall apply ex factory, excluding packaging, plus the applicable statutory sales tax (VAT).

**2.2** If the Supplier is responsible for assembly or installation, the Purchaser shall bear all required incidental costs such as travel, transport and allowances, in addition to the agreed purchase price.

**2.3** Payments shall be ex paying agent of the Supplier.

**2.4** The Purchaser shall only be entitled to offset amounts payable against claims that are undisputed or have been established as legally enforceable.

### 3 Delivery period, delivery delay

**3.1** Compliance with the delivery period shall as a precondition require prompt receipt of all documents to be furnished by the Purchaser, the fulfilment of all obligations incumbent upon the Purchaser, such as the provision of necessary approvals and releases, as well as compliance with the agreed payment terms and other obligations. If this should not be the case, the delivery periods shall be extended adequately. This shall not apply if the Supplier is responsible for the delay. If failure to comply with delivery deadlines results from

**a)** force majeure, e.g. mobilisation, war, acts of terror, civil unrest or similar events (e.g. labour disputes or lockouts);

**b)** virus or other attacks by third parties on the Supplier's IT system, where said attacks took place in

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spite of implementation of security measures in accordance with common standards of due diligence;

c) impediments pertaining to German, US or any other applicable national, EU or international foreign trade regulations, or to any other circumstances beyond the Supplier's control;

or

d) failure to make deliveries to the Supplier in a timely or proper manner, the delivery periods shall be extended adequately. If the Supplier delays fulfilling its obligations, and the Purchaser suffers loss as a result, for each week of delay the Purchaser shall be entitled to flat-rate compensation amounting to 0.5 %, though only to a maximum of 5 %, of the price of the portion of the supply which could not be used in accordance with the contract as a result of the delay.

**3.2** Compliance with the delivery period shall be subject to correct and timely delivery of supplies and materials. The Supplier shall provide notification of impending delays as soon as possible.

**3.3** The delivery period shall be deemed to be complied with if the delivery item has left the Supplier's premises before its expiry, or if its readiness for shipping has been announced. Should formal acceptance be required, the acceptance date shall be applicable or, alternatively, notice of readiness for acceptance – except in cases of justified refusal of acceptance.

**3.4** Compensation claims of the Purchaser relating to delayed delivery, as well as claims for compensation in place of performance, shall be excluded in all cases of delayed delivery, even after expiration of any deadline imposed on the Supplier, to the extent that the said claims exceed the loss due to delay pursuant

to Section 3. This shall not apply to that extent in cases of wilful intent, or gross negligence, or in case of liability for injury to life, limb or health. Where responsibility for the delay in delivery lies with the Supplier, the Purchaser may only withdraw from the contract on the grounds provided by law. Any change to the burden of proof disadvantageous to the Purchaser shall not be linked to the above provisions.

**3.5** The Purchaser undertakes, on request, to inform the Supplier within a reasonable period whether it intends to make use of its right to withdraw.

**3.6** Should shipping and delivery be delayed by more than one month after advice of readiness to ship at the request of the Purchaser, for each additional month, or part thereof, the Supplier shall be entitled to charge the Purchaser for storage in an amount of 0.5 % of the price of the items being supplied, though not more than 5 % in total. The parties shall be at liberty to furnish evidence of higher or lower storage costs as appropriate.

### **4 Transfer of risk, formal acceptance**

**4.1** The risk shall be transferred to the Purchaser as soon as the goods have left the shipping point in the factory or, in the case of a delivery delay the Purchaser is responsible for, as soon as they are ready for dispatch.

**4.2** Should formal acceptance be required, it shall be decisive to the transfer of risk. Formal acceptance must be performed without delay on the acceptance date or, failing that, after the Supplier's notification of readiness for acceptance. The Purchaser may not refuse acceptance due to an inconsequential defect.

Should shipment or acceptance be delayed or fail to occur for reasons that are not attributable to the Supplier, the risk shall be transferred to the Purchaser

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on the date on which notification of readiness to ship or readiness for acceptance is given. The Supplier undertakes to take out insurance demanded by the Purchaser at the latter's expense.

### 5 Installation

**5.1** The Purchaser shall be obligated to provide technical assistance for installation and assembly, in particular:

**a)** providing the necessary qualified personnel and conducting all earthwork, construction, foundation and scaffolding work, including procurement of the required construction materials and tools

**b)** providing the required devices and heavy-duty tools (such as lifting gear and required equipment and consumables such as lubricants and fuel) for installation and commissioning

**c)** providing heating, lighting, power and water and the required connections

**d)** providing necessary dry and lockable rooms for storage of tools belonging to installation personnel, machine parts, appropriate and theft-proof rooms for work and breaks (with heating, lighting, washing and sanitary facilities) and first aid for installation personnel

**e)** protective clothing and protective devices required by the special conditions present at the installation site

**5.2** On its own initiative, the Purchaser shall provide necessary information about the positions of all hidden supply lines (gas, water, electricity etc.) as well as structural information to the Supplier before the start of the installation work.

**5.3** Prior to the beginning of installation or assembly, all required provisions must be present at the installation or assembly site. It must be possible to perform the installation or assembly without interruptions, and the approaches for transport must be suitable and accessible.

**5.4** Should performance or commissioning be delayed due to circumstances beyond the Supplier's control, the Purchaser shall bear the Supplier's appropriate costs.

**5.5** The Purchaser shall inform the Supplier of the working hours of the installation personnel on a weekly basis and shall immediately confirm the completion of installation, assembly or commissioning.

**5.6** The Purchaser is obliged to acceptance of the installation once the Purchaser has been notified of its completion. If acceptance is delayed due to no fault of the Supplier, acceptance shall be deemed to have occurred after 2 weeks have elapsed since notice of completion of installation was given. This shall also apply if the delivery – after completion of any agreed test phase – is put to use.

### 6 Retention of ownership

**6.1** The Supplier shall retain right of title to the supplied items until all its claims against the Purchaser arising from the business relationship have been fully satisfied.

The Purchaser shall be prohibited from pledging or assigning the goods by way of security while the retention of title is in force. The Purchaser may only sell on the goods subject to the condition that it does so as a reseller under the normal terms of business, and that the reseller receives payment from its customer, or agrees with the customer that title shall

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only be transferred to the customer when the customer has fulfilled its payment obligations.

**6.2** The Supplier shall be entitled to insure the delivery item at the Purchaser's expense against theft, breakage, fire, water and other damages insofar as the Purchaser has not demonstrably taken out such insurance on its own.

**6.3** The Purchaser hereby assigns to the Supplier by way of security all future claims against its customers arising from the resale, with all ancillary rights, including any balancing claims, without need of further specific assertion. Where the goods subject to retention are sold on together with other items, without agreement of an itemised price for the said goods subject to retention, the Purchaser shall assign to the Supplier the portion of the overall receivable price corresponding to the price of the goods subject to retention invoiced by the Supplier.

**6.4** The Purchaser shall be permitted to process the goods subject to retention, or to combine or join them with other items. The processing shall be carried out on behalf of the Supplier, and to the extent that new items are created as a result, the Purchaser shall keep the said items for the Supplier with application of due diligence. The new item shall be considered as goods subject to retention.

Where combination or joining with other items not belonging to the Supplier results in the creation of a new item, the Supplier and Purchaser hereby agree that the Supplier shall be assigned shared right of title to the new item in the amount of the value of the combined or joined goods subject to retention as a proportion of the value of the remaining goods at the time of combining or joining. The new item shall likewise be considered as goods subject to retention. The provisions of Section 3 shall likewise apply to the resultant goods subject to retention. The assignment

shall, however, only apply to the amount which corresponds to the value of the processed, combined or intermingled goods subject to retention invoiced by the Supplier.

Where the goods subject to retention are combined with property or moveable assets, the Purchaser shall, without need of further specific assertion, also assign to the Supplier by way of security its claim arising as remuneration for the combination, with all ancillary rights, in the amount of the ratio of the combined goods subject to retention to the remaining combined goods at the time of combining.

**6.5** The Purchaser shall be authorised to collect assigned claims arising from resales until such authorisation is revoked. Where good cause exists – particularly in the event that payments are delayed or suspended, insolvency proceedings are opened or if there are similar, justified indications suggesting that the Purchaser is over-indebted or will be unable to pay – the Supplier shall be entitled to revoke the Purchaser's authorisation to collect.

The Supplier shall further be entitled, on prior notification, and observing an appropriate period of notice, to disclose the assignment, to realise the assigned claims, and to demand that the Purchaser disclose the assignment to the customer.

**6.6** The Purchaser shall notify the Supplier immediately if any distraint, confiscation or other disposal or intervention by third parties occurs. The Purchaser shall immediately furnish the Supplier with all information and documentation necessary to assert its rights against the customer, where a justified interest is credibly established.

**6.7** In the event of any infringement of obligations on the part of the Purchaser - in particular in case of delayed payment - the Supplier shall, after having set

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the Purchaser an appropriate period of grace without success, be entitled to withdraw from the contract as well as take back the goods. The legal provisions relating to the dispensability of a period of grace shall remain thereby unaffected. The Purchaser shall be obliged to hand over the goods. The taking back of goods and assertion of retention of title, or pledging of the goods subject to retention, by the Supplier shall not represent a withdrawal from the contract, unless the Supplier has explicitly stated such.

**6.8** If the value of all security interests to which the Supplier is entitled exceeds the amount of all secured claims by more than 20 %, the supplier shall release an adequate part of the security interests if requested by the Purchaser. The Supplier shall be entitled to choose between different rights of security in relation to the release.

### 7 Material defects

**7.1** All items or service elements exhibiting material defects shall be repaired free of charge, redelivered or redone at the discretion of the Supplier, provided the cause of the material defect was already present at the point of transfer of risk. The Supplier shall be provided with an opportunity to make repair within an appropriate period of time. Any claims of the Purchaser shall be submitted immediately in writing. If the corrective action fails, notwithstanding any claims for damages pursuant to Section 6 the Purchaser may withdraw from the contract or reduce its payment.

Claims of the Purchaser relating to expenditure for corrective action - in particular transport, travel, labour and material costs - shall be excluded to the extent that the expenditure is increased because the subject of the supply was subsequently moved to a location other than the Purchaser's branch establishment, unless the said relocation is in

accordance with its intended use. This shall also apply to the extent of the Purchaser's recourse against the Supplier pursuant to Section 478 subsection 2 of the German Civil Code (BGB).

**7.2** In the event of claims in relation to material defects, the Purchaser may only retain payments proportionate to the defects that have occurred, and only if the claim has been asserted and no doubts exist as to its justification.

Where the statute of limitations on claims in relation to material defects has expired, the Purchaser shall have no right of retention. The Supplier shall be entitled to demand reimbursement of the expenditure it has incurred from the Purchaser if a claim has been unjustifiably made.

**7.3** Claims shall not exist in the event of only insignificant non-conformity to the agreed characteristics, in the event of only insignificant impairment of usability, or in the event of natural wear and tear or damage occurring after transfer of risk as a result of defective or negligent handling, overloading, use of unsuitable equipment, defective construction works, unsuitable ground, or as a result of external factors which are not provided for in the contract. This shall also apply in the event of non-reproducible software errors. If the Purchaser or any third party makes improper changes or errors in carrying out repairs, no claims shall be allowable in respect of the said cases or of resultant consequences either.

**7.4** Claims for corrective action, withdrawal and reduced payment shall expire 12 months from the statutory beginning of the limitation period. This period shall not apply to the extent that the law stipulates longer periods (Sections 438 subsection 1 no. 2, 479 subsection 1, 634a subsection 1 no. 2 BGB), in case of wilful intent, where defects have been

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fraudulently concealed, or in case of failure to fulfil a warranted characteristic. The legal provisions relating to suspension of expiry, suspension and restarting of periods shall remain thereby unaffected.

**7.5** The Purchaser's recourse against the Supplier pursuant to Section 478 BGB shall be allowable only to the extent that the Purchaser has reached no agreements with its customer extending beyond the legal claims in relation to defects.

**7.6** Additional claims for damages of the Purchaser in respect of material defects shall be excluded where no liability exists in relation to fraudulent concealment of the defect, failure to fulfil a warranted characteristic, injury to life, limb or health, or in case of wilful or grossly negligent infringement of obligations on the part of the Supplier. All further claims of the Purchaser relating to material defects shall be excluded. Any change to the burden of proof disadvantageous to the Purchaser shall not be linked to the above provisions.

### **8 Defects of title / Intellectual property rights / Copyright**

**8.1** Should the use of the delivery item lead to infringement of any industrial property rights or copyrights in Germany, the Supplier shall, at its own cost, procure the right for the Purchaser to continue using the delivery item, or shall modify the delivery item in a manner acceptable to the Purchaser, such that the property rights are no longer infringed.

Should this not be possible under economically acceptable conditions or within a reasonable period of time, the Purchaser shall be entitled to withdraw from the contract. The Supplier shall also be entitled to withdraw from the contract under the aforementioned conditions.

Furthermore, the Supplier shall indemnify the Purchaser against any undisputed claims or legally enforceable claims by the concerned holders of the property rights.

**8.2** The obligations of the Supplier set out in Section 1 shall, subject to Section 10, be final and conclusive in the event of any infringement of intellectual property rights or copyright.

They shall only apply:

- a) if the Purchaser immediately notifies the Supplier of any infringement of property rights and copyrights which have been asserted;
- b) if the Purchaser supports the Supplier to a reasonable extent in its defence against the asserted claims, or enables the Supplier to perform the modification measures referred to in Section 8;
- c) if the Supplier retains the right to take all defensive measures including out-of-court settlements;
- d) if the defect of title is not attributable to an instruction given by the Purchaser; and
- e) if the violation was not caused by the Purchaser having independently modified the delivery item or used it in a way not in accordance with the contract.

### **9 Impossibility**

**9.1** If delivery is impossible, the Purchaser shall be entitled to demand compensation, unless the reason for impossibility is beyond the Supplier's control. The Purchaser's claims for compensation shall, however, be limited to 10 % of the value of the portion of the delivery which cannot be used for its intended purpose due to impossibility. This limitation shall not apply to that extent in cases of wilful intent, or gross negligence, or in case of liability for injury to life, limb



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or health. Any change to the burden of proof disadvantageous to the Purchaser shall not be linked to the above provisions. The right of the Purchaser to withdraw from the contract shall remain thereby unaffected.

**9.2** If events under the terms of Art. 3 Sections 1 a to c significantly alter the economic importance or content of the delivery, or impact significantly on the Supplier's operations, the contract shall be amended appropriately in good faith. If this is not economically viable, the Supplier shall be entitled to withdraw from the contract. The same shall apply if necessary export licences are not issued or are not usable. If it wishes to exercise this right of withdrawal, it shall notify the Purchaser immediately on discovering the extent of the event - including when an extension of the delivery period had initially been agreed with the Purchaser.

### 10 Other claims for damages

**10.1** Damages claims of the Purchaser - on whatever legal grounds, in particular in relation to infringement of obligations arising from the debtor relationship and to inadmissible actions - shall be excluded, unless otherwise stipulated in the terms and conditions of supply.

**10.2** This shall not apply in case of liability:

- a) in the event of wilful intent;
- b) in the event of gross negligence on the part of the proprietor, the executive bodies or senior managers;
- c) in the event of culpable injury to life, limb or health;
- d) in the event of fraud;

e) in the event of failure to fulfil a guarantee;

f) pursuant to product liability legislation.

In the event of culpable infringement of material contract obligations, the Supplier's liability shall be limited to the typical foreseeable damage or loss under the contract, unless any other of the aforementioned cases occurs. No change to the burden of proof disadvantageous to the Purchaser shall be linked to the above provisions.

### 11. Disposal

The Purchaser, to the extent permitted by law, assumes the obligation to dispose of the delivered goods after termination of use at its own cost and in compliance with legal regulations.

### 12 Applicable law and place of jurisdiction

**12.1** The law of the Federal Republic of Germany applicable to the mutual legal relationships between domestic parties shall be exclusively valid for all legal relationships between the Supplier and the Purchaser.

**12.2** The place of jurisdiction shall be that of the Supplier's headquarters. However, the Supplier shall be entitled to instigate proceedings at the Purchaser's headquarters.