

# General Terms and Conditions of Business

Referred to in the following as "GTCB", release 2008

## 1. Quotation

Our quotations are subject to change. Once the Purchaser has accepted our quotation, this acceptance shall encompass all parts of the quotation including these GTCB. This shall also apply if the Purchaser's order/declaration of acceptance contains any deviating conditions, even if these deviating conditions have not been expressly objected to in detail by us.

Dimensions, weights, illustrations, ratings and drawings included with our quotation are only binding on the performance if they have been expressly confirmed by us in writing; otherwise they shall only be approximately relevant.

We reserve all proprietary rights and copyrights to any cost estimates, drawings, samples, catalogues and other documents. If no order is placed with us, such documents are to be returned to us, unsolicited, within 4 weeks of awarding the contract, but at the latest within 6 months following the date of our quotation in each case.

Our quotation, including any drawings, samples, catalogues and other documents, is only intended for the party making the inquiry. Any disclosure to third parties, in original or duplicate, is not permitted without our express consent.

## 2. Order

Any order placed with us is binding on the Purchaser for 4 weeks in each case, even if written confirmation has not yet been issued by us.

Orders are only obligatory for us within the scope of the contract and our applicable GTCB. Any diverging agreements shall only be applicable if they have been expressly accepted by us in writing.

A contract that is binding on us shall only evolve upon written confirmation of order or discharged delivery. Until such a written confirmation has been issued (a delivery which has meanwhile been discharged shall be regarded as the equivalent of such a confirmation), the Purchaser shall in all cases be bound to his order.

Until such time, we reserve the right to return and reject the order under the obligation that we shall, however, issue a preliminary notification to the Purchaser within 4 weeks at the latest as to whether his order has been rejected, or accepted in part or as a whole. In the event of any cancellation of orders, we shall invoice the Purchaser at most the costs arising in connection with processing the order in the individual case, provided we agree to such a cancellation.

## 3. Price

All prices specified by us for commercial transactions are quoted net in euros or in the currency stated in each case, ex works Schwerte, excluding packaging. These prices are based on the relevant applicable material and labour costs. In the event that standard wages, standard salaries, costs for the required raw materials and/or energy costs change by more than 5 % up to the date of delivery, we reserve the right to make appropriate price adjustments provided more than 4 months have expired since the date of concluding the contract. These prices are not binding for repeat orders.

## 4. Minimum order value

In the case of small orders, we reserve the right to invoice administrative expenses.

## 5. Added value tax

Where domestic transactions are concerned, the applicable statutory rate of value-added tax is to be added to all prices specified by us.

The same shall apply to foreign transactions unless it has been determined without a doubt that no value-added tax is to be imposed.

## 6. Term of delivery

The delivery time shall be carefully calculated and adhered to the best of our ability and discretion.

The term of delivery commences on the date on which agreement between the Purchaser and the Supplier has been effected in writing and thus a legally binding contract has ensued.

Adherence to the delivery term can only be demanded if the Purchaser has fulfilled all agreed obligations and the technical feasibility and execution of the ordered object has been completely clarified.

The obligations to be fulfilled by the Purchaser and the contractual undertakings to be discharged by the Purchaser include, in particular, the punctual receipt of the agreed means of payment, the prompt receipt of technical documents, materials and licences to be provided, etc., as well as the timely submission of import licences, currency control and/or transfer permits in the case of export transactions.

If any of the above provisions is not met, the term of delivery shall be extended at least by the period of delay.

Should a prompt completion of the contract not be possible for this reason, the term of delivery shall be correspondingly recalculated as of the day on which all obligations have been fulfilled by the Purchaser. Production interruptions resulting e. g. from the unpunctual receipt of parts to be provided or untimely approval of drawings and documents shall not only entitle us to a corresponding extension of the term of delivery, but also to a claim for additional costs (insofar as additional servicing and set-up times arise).

Should the term of delivery be exceeded for reasons for which we are responsible, an appropriate period of grace shall be set in which performance is to be discharged. Cases of Force Majeur, operational disruptions and shutdowns, transport failures and non-observance of delivery dates on the part of our suppliers shall release us from our obligation to adhere to the term of delivery, possibly even partly or wholly from our obligation to perform.

Should there be any grounds which make it impossible for us to supply the article of sale, we shall be entitled to withdraw from the contract and are only obliged to refund any up-front payment made by the Purchaser, excluding any further claims.

Any claims for damages in the event of any delivery delay or in the case of any withdrawal from the contract are excluded.

The Purchaser is not entitled to cancel the order due to delayed delivery. This is in particular applicable if the ordered goods/object is produced specifically for the Purchaser, production is already in progress and the object to be manufactured cannot be otherwise marketed.

In the event that we make an exception and declare our consent to a cancellation contrary to this provision, contracts for work and services shall be invoiced on the basis of the statutory provisions (§ 649 BGB – German Civil Code).

#### **7. Delivery quantity**

We reserve the right to a supply tolerance of  $\pm 5\%$  for small parts in large quantities.

#### **8. Packaging**

The Purchaser is requested to specify his packaging wishes by 8 days prior to the planned delivery date at the latest. Unless we receive specific information, smaller-volume consignments (postal packages, rail freight parcels, carrier freight parcels, rail express, air freight) will be properly and carefully packed in accordance with customary practice. We require the Purchaser's exact packaging instructions for larger-sized objects (e. g. switch cabinets). Packaging costs shall be invoiced at cost price plus an administration fee.

#### **9. Shipment**

All consignments shall be delivered "carriage forward (c/f)" ex works Schwerte unless other arrangements are expressly made in writing.

All consignments, including any return shipments, are at the expense and risk of the Purchaser. The means of shipment shall be at our discretion unless specifically prescribed. Although we shall endeavour to keep shipments costs as low as possible, we do not accept any responsibility for the same. Any shipping costs disbursed by us in exceptional cases will normally be invoiced to the Purchaser together with the goods or service.

We will insure the consignment for transport risk at the request and expense of the Purchaser.

#### **10. Transfer of risk**

The risk is transferred to the Purchaser upon delivery of the goods to the forwarding agent – independent of who is to bear the freight costs – but at the latest upon leaving our plant, warehouse or premises.

In the event that the goods are ready for shipment and the consignment or acceptance is delayed for reasons for which we are not responsible, the risk shall pass to the Purchaser upon receipt of the advice of readiness for shipment.

In the event that the shipment or dispatch is delayed at the request of the Purchaser, the risk shall pass to the Purchaser in either case on the date of readiness for shipment – without any specific notification.

Should the Purchaser not take delivery of the goods on the agreed date, in particular in the case of collection, the risk shall pass to the Purchaser once the agreed date has expired, without any specific notification being necessary. In such cases, we are, however, willing to take out any insurances required by the Purchaser at his request and expense.

#### **11. Commitment of any technical data and technical changes specified to us**

We are not obliged to check the correctness of technical data specified by the Purchaser. In the case of power data, dimensions and other technical specifications received from the Purchaser, he shall be solely liable for their accuracy. In the event of incorrect information from the Purchaser, he shall be responsible for compensating any additional costs and effort that may be incurred by us.

Should the Purchaser request any technical changes at a later date, any extra costs or cost reduction shall become due.

Any delays in delivery as a result of requests for change shall not be at our expense.

#### **12. Scope of performance – installation, assembly, commissioning**

Unless otherwise expressly agreed, the scope of our supply does not include any erection, installation, assembly and commissioning of the object at the place of operation.

Should these services also be required, a separate agreement shall be entered into.

#### **13. Warranty, guarantee**

We guarantee that planning, development and design shall be carried out with all due care and according to state-of-the-art technology, and warrant flawless construction and production. All components utilised by us are inspected prior to use. Fabricated subassemblies and devices are function-tested before leaving our plant, provided we are aware of the detailed function. If the function is unknown to us, in-depth inspection will ensure there are no production faults.

We grant users a warranty of 2 years following delivery for the proper condition of our products and new goods supplied by us. The warranty term for the supply of second-hand articles to users is 1 year.

The same warranty terms are also applicable in the commercial sector unless other provisions are agreed in the relevant contracts. Any warranty given by us is expressly inapplicable to parts provided by the customer and to typical wearing parts such as e. g. light bulbs, seals and gaskets, wiper blades and sightglass plates.

In the case of sightglass plates, we guarantee accurate dimensions and glass quality in accordance with the acknowledged standard from the date of delivery on. Since the operational reliability of sightglass plates is essentially dependent on the proper installation and observance of operating conditions and correct maintenance, we expressly rule out any further warranties. Should any verifiable material defects or production faults occur during the warranty period or if there is any faulty design – unless this was prescribed, – we shall rework the defective devices and parts at our plant, and shall put them into an acceptable condition, free of cost for the Purchaser. Any warranty on our part does not apply if we are not to blame, in particular in the case of natural wear, faulty operation, incorrect treatment, inadequate or deficient servicing.

In the case of series products, we reserve the optional right to supply a new part as a replacement for the claimed part.

The delivery of the new part is first invoiced and, upon receipt of the claimed used part, a credit note to the partial or full amount is then issued following objective inspection.

In the event that it is not economically justifiable for a part manufactured or supplied by us to be returned to our works for repairs, we are also prepared to conduct inspection and repairs at the place of installation.

If the inspection shows that the fault is covered by a warranty obligation on our part, we shall bear the costs required for us to remedy the defect on site within Germany. On site shall be interpreted as the place of delivery to the Purchaser or the Purchaser's headquarters.

The right to make special agreement for shipments to commercial parties or consumers outside Germany is expressly reserved. We shall remedy any claim that is acknowledged by us as being justified by repair or replacement delivery, at our discretion. In place of a repair, and provided it is not a serious fault, we shall grant an appropriate price discount as an alternative.

If mutual agreement cannot be reached, the Purchaser is entitled to withdraw from the contract.

In the case of a service contract, invoicing shall be carried out on the basis of the statutory provisions analogous to § 649 BGB (German Civil Code).

Any further liability on our part arising from warranty claims is expressly excluded.

We shall only provide a warranty for materials prescribed by the Customer if this has been expressly confirmed on our part.

Any deficiencies entitling any party to warranty claims against us shall be reported to us in writing without delay, but at the latest within 10 days of their occurrence or becoming known.

We reserve an appropriate period for remedying the deficiency, but at least 4 weeks from the date of written notice of such a deficiency.

We shall not be liable for repairs that are carried out by the Customer itself or by others without our express consent.

The term of warranty for the originally supplied overall object shall not be extended as a result of any repair, addition or replacement of the supplied objects.

#### **14. Commissioning and warranty**

Where service contracts and/or projects of a certain scope are concerned, in particular for technically complex configurations, the accrual of warranties is subject to individual contracts and is dependent on commissioning having been carried out by our specialist staff.

#### **15. Patent infringement**

If the goods are manufactured and supplied in a design especially prescribed by the Purchaser, the Purchaser takes on the warranty that the rights of third parties, in particular patents, utility patterns or protective rights and copyrights, are not infringed as a result of this design. The Purchaser is obligated to indemnify us from all claims by third parties that could result from such an infringement.

#### **16. Payment**

With the exception of invoices for assembly work and services (which are payable net and immediately), our invoices are payable net at the latest within 14 days of the date of invoice (receipt of the sum on one of our accounts) unless any other deviating conditions of payment have been agreed in individual cases. Especially in the case of once-off items and/or items with a more extensive value, or if inadequate security is available, we reserve the right to request advance payment of up to 100 % of the value of the object.

In addition to this, and in particular in the case of service contracts, we are always entitled to request payments in accordance with the progress of the work. The remaining amount shall at any rate become due upon notification of readiness for dispatch or once transfer to the Purchaser or to a freight forwarder has taken place.

In the case of extensive installation and other services, advance weekly payments on account are to be paid on request.

If any requested payment on account is not received promptly, we are entitled to interrupt the work until such payment has been received; the delivery period shall be extended accordingly. Supplementary costs such as waiting times, travelling expenses, etc. that may be incurred as a result of such an interruption shall be borne by the Purchaser.

Subsequent to written agreement to be arranged separately with us, payment can also be effected immediately after the invoice has been drawn up by means of a negotiable 3-month bill of acceptance with the usual reservations, which shall be free of charge for us.

Bills shall only be accepted "in lieu of payment". The debt due to us shall remain fully enforceable with all consequent rights arising from the same, and in particular with our reservation of title, until the bill of exchange accepted by us "in lieu of payment" has been discharged in full. Credit periods shall always commence on the date of delivery or on the date of notification of readiness for shipment.

We reserve the right to effect delivery to customers who are unknown to us against cash or advance payment. The Purchaser shall have the option to submit appropriate references in good time together with his order.

Shipments that go beyond the boundaries of the Federal Republic of Germany shall be carried out alternatively against advance payment or against irrevocable letter of credit unless other provisions are made in each individual case. The costs of any letter of credit shall be borne by the Purchaser.

We are, in principle, always entitled to dispatch part shipments and to invoice the same separately.

Payments shall be credited against the oldest debt in each case. The retention of payments due to counter-claims that have not been acknowledged by us is not admissible.

If any credit lines are exceeded, default in payment shall take effect without any special reminder. In the event of any default in payment, we are entitled to claim interest on arrears at the 5 % above the basic interest rate in accordance with § 247 BGB (German Civil Code), without prejudicing all or any other claims.

The non-observance of payment dates, or any circumstances which could reduce the credit standing of the Purchaser, shall cause all our claims for payment to become due immediately and entitle us to send off any outstanding shipments only against advance payment; and also to withdraw from all existing agreements following an appropriate period of respite and to demand compensation due to non-performance. In this event, all payments made shall be used to discharge the oldest debt in each case.

Under such circumstances, we shall furthermore be entitled to prohibit the Purchaser from reselling the articles supplied by us and to take control of the goods.

#### **17. Retention of title**

Dispatched goods or fabricated articles shall remain our property until all our claims against the Purchaser/Customer have been satisfied in full. We reserve all property rights to the goods until all debts owed by the Purchaser/Customer have been paid up. This shall also apply if any individual or all the debts due to us are incorporated in one current account and the balance is calculated and acknowledged.

Should our herewith expressly agreed and asserted reservation of ownership not be acknowledged by the law of the country in which the article of sale is located, or if it is only acknowledged by fulfilling certain conditions, the Purchaser has the duty to notify us of this at the latest before concluding the contract. As long as the goods remain our property, it is not permitted to pledge them or transfer them by way of security. The Purchaser/Customer is only entitled to resell the goods that are subject to retention of title in the normal course of business by herewith assigning to us the debts accruing to him from the sale of our share of the supplied goods to the amount due to us.

If the goods subject to retention of title are sold unprocessed or after being processed or combined with articles owned solely by the Purchaser/Customer, the above assignment shall apply by analogy.

The assignment shall correspond with the amount of the value of the retained goods including all ancillary rights.

Should the value of the existing securities exceed the debts to be secured by more than 20 %, we are obliged to release the same to this extent if so requested by the Purchaser/Customer.

We herewith accept this assignment. The Purchaser/Customer is also authorised to collect these outstanding receivables following assignment. This shall not affect our right to collect such receivables ourselves. We undertake, however, not to collect the outstanding debts as long as the Purchaser/Customer duly discharges his payment and other obligations.

We can demand that the Purchaser/Customer informs us of the assigned receivables and of the relevant debtors, provides us with all information required for collection, surrenders the relevant documents, and notifies the debtors of the assignment.

At the same time, the Purchaser/Customer grants us the right to notify his customer of the assignment made to us and to indicate to him that payments in the assigned amount are only to be made to us in the event of default in payment or under circumstances that could reduce the credit standing of the Purchaser/Customer.

Should any assigned debt accrue to our Purchaser/Customer, he shall hold this money received in trust for us and shall pass on the proportion corresponding to our claim to us immediately.

If any goods/articles supplied by us are attached by any third party, the Purchaser/Customer is obliged to advise the executory officer of our reservation of title and to notify us of any attachment or other impairment of our rights without delay.

All costs incurred by us for proceedings to collect debts due to us shall be borne by the Purchaser/Customer.

Any processing or treatment of the goods subject to retention of title shall be carried out by the Purchaser/Customer on our behalf, without any obligations arising for us as a result.

In the case of the goods subject to retention of title being treated, combined, mixed or blended with other goods that do not belong to us, we shall be entitled to a co-ownership share of the resulting new article proportional to the value of the reserved goods to the other processed goods at the time of such treatment, combination, mixing or blending. Should the Purchaser/Customer acquire sole ownership to the new article, the contracting parties are in agreement that the Purchaser/Customer shall grant us co-ownership rights to the new article proportional to the value of the treated or combined, mixed or blended goods subject to retention of title, and shall safekeep the same for us free of charge.

Any parts supplied by us under reservation of title and installed by our Purchaser or by a third party shall not constitute essential components of any new article unless and until the debt to us has been settled by payment.

Where any liability for a bill is established for us through payment of the purchase price by a bill by the Purchaser/Customer, the reservation of title and the debt arising from deliveries of goods shall not expire before the bill has been discharged by the Purchaser/Customer as the payer.

The same shall apply in the case of cash payments, bank transfers or cheque payments that take place in return for remitting a bill of exchange issued by us and accepted by the Purchaser/Customer.

Our reservation of title shall not expire until the bill of exchange has been discharged by the payer and we are thus released from the liability on the bill.

#### **18. Place of performance and jurisdiction**

The place of performance for deliveries and services shall be Schwerte.

The place of performance for commissioning and other services at places other than our headquarters shall be the place at which the service is rendered.

The place of performance for payments and all other rights and obligations arising from the transaction shall be Schwerte for both parties. The court competent for our headquarters shall be agreed as having sole jurisdiction. We are, however, also entitled to have any legal disputes decided by the court competent for the Purchaser.

#### **19. Applicable law**

All transactions and contracts entered into by us shall be governed solely by German law.

We are, however, also entitled to have decisions made in accordance with the law applicable to the Purchaser or contracting party.

#### **20. Obligations arising from the contract and concluding provisions**

Our General Terms and Conditions of Business shall be solely effective, implicitly excluding the Vienna Convention/United Nations Convention on Contracts for the International Sale of Goods (CISG).

Our General Terms and Conditions of Business are legally binding on both parties, even if they are not individually signed by the contracting parties. Any deviating agreements to our contracts or to these General Terms and Conditions of Business shall only be binding on us to the extent that we have declared our consent to the same in writing.

We acknowledge the Purchaser's conditions of purchase supplementary to our terms and conditions, provided they do not contradict the contractual provisions or our General Terms and Conditions of Business.

Should the Purchaser not accept our contractual provisions or these General Terms and Conditions of Business or any individual items thereof following receipt of our confirmation of order, he shall object to each individual item in writing and shall, within 10 days of receiving our confirmation, declare his requested amendment to the respective item. We reserve the right to acknowledge or reject the requested amendment. If the Purchaser does not receive any notification from us within 10 days of our receiving the requested amendment, our acknowledgement has not been forthcoming and our General Terms and Conditions of Business and our individual contractual provisions shall be expressly and solely applicable.

Should any individual provisions be legally invalid, the remaining parts of the contract shall remain binding. In place of any invalid condition, or to fill in any omission, a suitable provision is to be agreed which comes closest to what the contracting parties wanted or would have wanted in accordance with the meaning and purpose of the contract, if they had taken this issue into consideration.

If the invalidity is due to a performance or time condition, this shall be replaced by the legally admissible rate.