

# General Terms and Conditions



## I. General Conditions of Sale and Delivery

### **1. Area of application**

**1.1** All ULT AG deliveries, services and offers shall be made solely on the basis of these General Terms of Delivery. These shall be an integral part of all contracts ULT AG agrees with its contractual partners (further, "Customers") in relation to the deliveries and services it offers. They shall also apply to all future deliveries, services and offers to the Customer even where existing contracts are not specifically renewed.

**1.2** Provisions which deviate from these Conditions of Sale or from the statutory regulations shall only be binding on us if approved by us in writing. Unconditional delivery of goods, performance of services or acceptance of payments on our part shall not be treated as acceptance of contrary provisions.

**1.3** The Customer's or third-party terms of business shall not apply even where, in individual cases, ULT AG fails specifically to reject their application. Even where ULT AG refers to correspondence that includes or cites the Customer's or a third-party terms of business, this shall not amount to acceptance of the application of those commercial terms.

### **2. Offer and entry into a contract**

**2.1** All offers by ULT AG shall be without obligation and non-binding unless they are expressly marked as binding or include a specific acceptance period.

**2.2** Only the Purchase Contract made in writing between ULT AG and the Customer, together with these General Conditions of Delivery, shall determine the Parties' legal relations. The Purchase Contract fully reflects all agreements made between the Contracting Parties in relation to the subject matter of the Contract.

**2.3** Oral assents on the part of ULT AG prior to entry into the Contract shall not be legally binding and oral agreements by the Contracting Parties shall be replaced by the written Contract unless in each case it expressly follows from them that they continue to apply.

**2.4** Additions and amendments to the agreements made, including these General Terms of Delivery, shall not be valid unless in writing. Communication by fax or e-mail shall be sufficient to meet the requirement for writing.

**2.5** ULT AG statements in relation to the delivery or service (e. g. weights, measurements, functions, capacity, tolerance levels and technical data) as well as our illustrations of the same (e. g. drawings and images) are only indicative unless use for the contractually-envisaged purpose assumes an exact match. They are not guaranteed features but descriptions or identifiers of the delivery or services. Variations normal in market practice or that arise on the basis of legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, shall be permitted provided they do not compromise the application for the purpose contractually envisaged.

**2.6** ULT AG reserves title or copyright to all offers and cost estimates submitted by it as well as to drawings, images, calculations, prospectuses, catalogues, models, tools and other documents and resources made available to the Customer. Without the express consent of ULT AG, the Customer may neither give third parties access to these items as such nor to their contents, nor shall they disclose them, use or copy or allow third parties to use or copy them.

Version: 06/2011

# General Terms and Conditions



## I. General Conditions of Sale and Delivery

### **3. Prices**

**3.1** The prices shall apply to the range of services and deliveries listed in the order confirmation. Additional or special services shall be charged separately.

Unless agreed otherwise, prices shall be understood as:

- within Germany, door-to-door delivery in Euros, including packaging and transport costs plus statutory VAT,
- in the case of exports, the prices are in Euros, ex Löbau works, plus packaging, transport, customs as well as fees and any other public charges.

### **4. Payment, assignment of payment claims, delayed payment, settlement**

**4.1** Unless agreed otherwise, ULT AG shall indicate the relevant payment date on the invoice. Where a payment date is missed, the Customer shall be treated as in arrears without a further reminder being necessary. Upon expiry of the payment date ULT AG shall be entitled to charge interest of 5% p.a. from the due date; this shall be without prejudice to any claims for higher interest rights and further damages in case of payment arrears.

**4.2** We shall be entitled to assign payment claims against the Customer without the Customer's consent. Where our goods subject to retention of title are processed, mixed or mingled with third party items an assignment in advance of all claims shall be limited to the value of the goods to which title is retained.

**4.3** Where the Customer is in arrears in respect of any payment obligations to us, all existing claims shall immediately fall due.

**4.4** The Customer shall only be entitled to retain payments or set off counterclaims to the extent that its counterclaims are undisputed or have been granted under an unappealable court ruling.

### **5. Delivery, delivery time and delay**

**5.1** The delivery time shall depend on whatever the Contracting Parties have agreed. ULT AG's compliance with the same shall be conditional on all commercial and technical issues between the Parties having been clarified and on the Customer having carried out all its obligations such as, for example, obtaining the required official certificates or consents or paying a deposit. Where that is not the case, the delivery time shall be extended as appropriate. This shall not apply where ULT AG is responsible for the delay.

**5.2** Compliance with the delivery deadline shall be conditional upon correct and timely delivery to ULT AG itself. Any potential delays shall be notified by ULT AG as soon as possible.

**5.3** The delivery deadline is met where, prior to its expiry, the delivery item has left ULT AG's Löbau works or notice of dispatch has been given. Where the item needs to be accepted, compliance with the deadline shall be judged based on the date of acceptance (except in the case of a justified rejection of the item) or, in the alternative, on notice of readiness for acceptance.

**5.4** Where the dispatch or acceptance of the delivery item is delayed on grounds that are the fault of the Customer then it shall bear the costs arising due to the delay from one month following notice of dispatch or readiness for acceptance.

**5.5** The Customer may rescind the Contract without notice where it becomes ultimately impossible for ULT AG to carry out the services before risk passes. The Customer may also rescind the Contract where, in the case of an order, performance of a part of the delivery becomes impossible and it has a justified interest in rejecting partial delivery. Where that is not the case, the Customer shall pay the contract price in respect of the partial delivery. The same shall apply in the case of ULT AG's incapacity. Otherwise Clause 13.2 shall apply. Where the impossibility or incapacity arises during a delay in acceptance or where the Customer is solely or predominantly responsible for these circumstances, it shall remain obliged to perform its side of the Contract.

Version: 06/2011

# General Terms and Conditions

## I. General Conditions of Sale and Delivery



Version: 06/2011

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# General Terms and Conditions



## I. General Conditions of Sale and Delivery

**5.6** Where ULT AG delays performance and the Customer consequently suffers a loss, it shall be entitled to claim a lump sum in compensation for delay. For each full week of delay this shall amount to 0.5% but overall no more than 5% of the value of the relevant part of the total delivery that, due to the delay, cannot be used promptly or in accordance with the Contract. Subject to the statutory exceptions, where the Customer gives ULT AG a reasonable time for performance after performance falls due and that time limit is not met, the Customer shall be entitled to rescind in accordance with the statutory regulations. Further claims in respect of delivery delays shall be determined exclusively in accordance with Clause 13.2 of these Terms.

### **6. Place of performance, dispatch**

**6.1** Unless agreed otherwise, the place of performance for all obligations arising from the contractual relationship shall be Löbau. Where ULT AG is also responsible for installation, the place of performance shall be the place where the installation is to occur.

**6.2** Unless agreed otherwise, we shall determine the means of dispatch, route and haulier.

**6.3** Risk shall pass to the shipping agent, haulier or other person designated with shipping the goods to the Customer no later than transfer of the delivery item (judged by commencement of the shipping process). This shall also apply where partial deliveries are made or where ULT AG has agreed to provide additional services (e.g. shipping or installation).

**6.4** The shipment shall only be insured against theft, breakage, fire or water damage and other insurable risks at the express wish of the Customer and at its expense.

### **7. Transfer of risk, acceptance**

**7.1** Risk shall pass to the Customer upon the delivery item leaving the Löbau works even in the case of partial deliveries or where ULT AG has undertaken other services e.g. shipping costs or delivery and assembly. Where there needs to be acceptance this shall determine when risk passes. This shall be carried out promptly on the acceptance date or in the alternative following ULT AG's notice of readiness for acceptance. The Customer may not refuse to accept the goods except where there is a material defect.

**7.2** Where shipping or acceptance is delayed or does not occur as a result of circumstances not attributable to ULT AG risk shall pass to the Customer from the day of notice of shipment or readiness for acceptance. ULT AG undertakes to take out such insurance as the Customer requests at the latter's expense.

### **8. Retention of title**

**8.1** Sold goods shall remain the property of ULT AG until all claims arising from the commercial relationship are satisfied in full. Should the Customer process, mix or mingle them with other items, we shall acquire joint ownership pro rata to the value of our goods compared with the other items used by the Customer at the time they are processed, mixed or mingled together.

**8.2** The Customer may not pledge the delivery item or assign it by way of security. In case of attachment or other dealings by third parties it shall immediately notify ULT AG of the same.

**8.3** In case of a breach of contract by the Customer, in particular delayed payment, ULT AG shall be entitled to rescind the Contract subject to a warning or reminder giving one week's notice. Upon notice of rescission the Customer shall be obliged to return the delivery item. Where this is not possible or is not reasonable for ULT AG as a result of its having been delivered elsewhere, adapted or processed, the Customer shall be obliged to pay compensation.

Version: 06/2011

# General Terms and Conditions



## I. General Conditions of Sale and Delivery

**8.4** On the basis of retention of title ULT AG may only demand the return of the delivery item where it has rescinded the Contract.

**8.5** An application for the initiation of insolvency proceedings shall entitle ULT AG to rescind the Contract and demand the immediate return of the delivery item.

**8.6** The Customer shall be entitled to dispose of the goods which are the subject of retention of title in the course of normal commercial operations. Where the Customer disposes of these goods on its part without obtaining the full purchase price in advance or concurrently with transfer of the purchase item it shall agree a retention of title with its customer in line with these Terms. The Customer hereby assigns us its claims from such further disposal as well as the rights from the retention of title agreed by it. It shall be obliged at our request to notify the Purchaser of the assignment and to give us the information and supply us with the documents necessary for us to make a claim against the Purchaser. The Customer shall only be empowered to enforce the claims from the onward sale in spite of the assignment where it continues properly to comply with its obligations to us.

**8.7** Where the value of the security granted to us exceeds our claims we shall be obliged at the request of the Customer to release such security as we may choose. In a claim by us in respect of retention of title the Contract shall only be rescinded where we have given express prior written notice of the same.

### **9. Force majeure**

**9.1** In case of force majeure our delivery and service obligations shall be suspended.

**9.2** ULT AG shall not be liable where delivery is impossible or for delays in delivery or for obligations to the extent these are caused by force majeure or other events that were not foreseeable at the time the Contract was made (e.g. any operational disruption of whatever kind, difficulties obtaining materials or energy supplies, transport delays, strikes, legitimate lock-outs, a shortage of personnel, energy or raw materials, difficulties in obtaining necessary official consents, official measures or outstanding, incorrect or late delivery by suppliers) for which ULT AG is not responsible. To the extent that such occurrences render it significantly more difficult or impossible for ULT AG to deliver and the hindrance is not of a temporary nature, ULT AG shall be entitled to rescind the Contract. In the case of hindrances of a temporary nature the delivery or service periods shall be extended or deadlines delayed by the period of the hindrance plus a reasonable start-up period. To the extent that, as a result of the delay, it is not reasonable for the Customer to accept the delivery or service, it may rescind the Contract by immediate written notice to ULT AG.

The same shall apply in the case of energy or raw materials shortages, industrial disputes, official regulations, traffic or operational disruptions or where sub-suppliers fail to deliver to us correctly and on time as a result of events of force majeure or the reasons listed above.

### **10. Product information**

**10.1** Unless specifically agreed otherwise, the quality of the goods owed under contract shall depend exclusively on our product specifications as amended from time to time. Quality, durability and other information shall only represent guarantees if they are expressly agreed in writing and described as such. Our oral and written statements about our products, equipment, facilities and procedures are based on research work and applied technical experience. We share these results, for which we undertake no liability beyond that in the relevant individual contract, to the best of our knowledge but reserve the right to make amendments and further refinements. That does not, however, release the Customer from its own obligation to test our results and procedures for suitability for its own use. The same shall apply with respect to the protection of third-party industrial property rights as well as to applications and procedures.

Version: 06/2011

# General Terms and Conditions



## I. General Conditions of Sale and Delivery

### **11. Complaints**

**11.1** We shall be promptly notified of all complaints, particularly defects, in writing no later than within 10 days of receipt of the goods (in case of hidden defects promptly but no later than within 10 days of their discovery). To the extent the Customer fails to give notice of complaints or defects promptly or in writing as agreed, our delivery and service shall, with regard to the failure to complain or complain in the correct manner or promptly or to make a complaint as to defects in the correct form, be deemed free of defects. Where the Customer accepts our delivery or service in awareness of a defect, it shall only have recourse to rights arising out of the defect to the extent that it expressly reserves its rights in relation to this defect in writing.

### **12. Claims in relation to defects**

**12.1** For material defects and defects of title in respect of the delivery ULT AG shall, provided further claims are excluded, give the following guarantee (subject to Clause 15) as set out below.

#### **12.2 Material defects**

**12.2.1** The guarantee shall extend for a year from delivery or, where acceptance is required, from acceptance.

**12.2.2** The items delivered shall be carefully inspected immediately after delivery to the Customer or the third party designated by the latter. They shall be deemed approved where ULT AG does not receive a written notice of defect with regard to obvious defects or other defects that have become evident in the course of a prompt, careful inspection within seven working days of delivery of the delivery item or otherwise within seven working days of discovery of the defect or such earlier time within which the defect became evident to the Customer in the normal application of the delivery item without closer inspection.

**12.2.3** All such components as prove to be defective as a result of a factor which preceded the transfer of risk shall, at ULT AG's discretion, either be made good or replaced by ULT AG free of charge. Parts that have been replaced shall become the property of ULT AG.

**12.2.4** The Customer shall, following agreement with ULT AG, make available the necessary time and opportunity for the implementation of all improvements and replacement deliveries as ULT AG deems necessary; otherwise ULT AG shall be released from liability for the consequences arising from the same. Only in urgent cases of a threat to operational safety or for the avoidance of material damage, which shall be immediately notified to ULT AG, shall the Customer be entitled to remove the defect itself or using a third party and claim compensation from ULT AG for the necessary expenditure.

**12.2.5** Of the costs arising directly from the making good or replacement of a delivery item ULT AG shall, to the extent the complaint transpires as justified, bear the costs of the replacement item including shipping. In the case of justified claims under the guarantee the Customer shall under Section 438 (2) of the German Civil Code be entitled to compensation for expenditure.

**12.2.6** Under the statutory regulations the Customer has a right to rescind the Contract if ULT AG, taking into account the statutory exceptions, allows a legally reasonable time limit imposed on it for the making good of, or replacement of, a defective item to expire without effect. Where there is only an insignificant defect present, the Customer shall only be entitled to a reduction in the contractual price. The right to a reduction in the contractual price shall otherwise be excluded.

Further claims shall be determined exclusively in accordance with Clause VII.2 of these Terms.

Version: 06/2011

# General Terms and Conditions



## I. General Conditions of Sale and Delivery

**12.2.7** No guarantee shall be given in particular in the following cases:

- unsuitable or inappropriate use
- incorrect assembly or commissioning by the Customer or a third party,
- ordinary wear and tear or negligent treatment,
- improper maintenance, inappropriate equipment, defective construction works, inappropriate subsoil, chemical, electrochemical or electrical influences, to the extent they are not the responsibility of ULT AG.

**12.2.8** Where the Customer or a third party makes inappropriate improvements ULT AG shall not be liable for the consequences arising from the same.

The same shall apply to alterations of the delivery item made without the prior consent of ULT AG.

### **12.3** Legal defects

**12.3.1** Where the use of the delivery item leads to an infringement of intellectual property rights within Germany, ULT AG shall at its own expense procure for the Customer the rights to further use of the same or shall modify the delivery item in a way that is reasonable for the Customer such that there is no longer any infringement of intellectual property rights.

Where this is impossible on terms that are commercially reasonable or within a reasonable period, the Customer shall be entitled to rescind the Contract. ULT AG shall, under the aforesaid preconditions, also be entitled to rescind the Contract.

Furthermore, ULT AG shall indemnify the Customer against undisputed claims or claims that are the subject of an unappealable court ruling by the relevant beneficiary of the intellectual property rights.

**12.3.2** Subject to Clause 13.2 ULT AG's obligations listed in Clause 12.3.1 shall be final as regards infringements of intellectual property rights.

They shall exist only where

- the Customer promptly informs ULT AG of claims in relation to intellectual property rights infringements
- the Customer provides ULT AG with a reasonable degree of support in defending the claims made or makes it possible for ULT AG to carry out modifications under Clause VI.7
- all defence remedies including out-of-court settlements are reserved to ULT AG
- the legal defect does not depend on an instruction from the Customer
- the infringement of the right was not caused by the Customer itself altering the delivery item or using it in a way other than as contractually envisaged.

## **13. Liability**

**13.1** Where through the fault of ULT AG as a result of negligent or defective performance of proposals and advice before or after the Contract was made or through the breach of other associated contractual obligations (in particular, instructions for the operation and maintenance of the delivery item), the delivery item cannot be used by the Customer as contractually envisaged then the provisions of Clauses 12 and 13.2 shall apply respectively, subject to the exclusion of further claims by the Customer.

**13.2** For damage other than to the delivery item itself ULT AG shall be liable, irrespective of the legal grounds, only

- a. in case of intent
- b. in case of gross negligence on the part of the owner or of the company bodies or of the chief executive
- c. in case of culpable loss of life, personal injury or damage to health
- d. in case of defects that are maliciously suppressed or where it has guaranteed the absence of the same

Version: 06/2011

# General Terms and Conditions



## I. General Conditions of Sale and Delivery

- e. in case of defects in the delivery item to the extent that under the Product Liability Act there is liability for personal injury or property damage to objects in private use but subject to a cap of EUR 2 million.

In case of culpable breach of material contractual obligations ULT AG shall be liable also in case of gross negligence on the part of more junior employees and in case of negligence, the latter being limited to such damages as are typical and foreseeable for this kind of contract. Further claims shall be excluded.

### **14. Limitation period**

**14.1** All claims by the Customer, irrespective of their legal grounds, shall expire within 12 months. The statutory limitation periods shall apply to damage claims under Clause 13.2a-e. They shall also apply to defective construction work and to delivery items used in the construction process according to their normal application and which have caused the defect in the same.

### **15. Compliance with statutory regulations**

**15.1** To the extent that this has not otherwise specifically been agreed in writing with the Customer, the Customer shall be responsible for complying with legal and official regulations regarding the importation, transport, storage and use of the goods.

**15.2** Should a legal or official duty to obtain consent for the purpose of carrying out our delivery/service exist at the time of the delivery/service and the consent applied for in this respect not be granted we shall be entitled to rescind the Contract.

### **16. Jurisdiction**

**16.1** The court with jurisdiction at the place of ULT AG's registered office shall be the relevant court. ULT AG shall nevertheless be entitled to bring claims where the Customer has its headquarters.

### **17. Applicable law**

**17.1** For all legal relations between ULT AG and the Customer the laws of the Federal Republic of Germany governing the legal relations between domestic parties shall exclusively apply.

### **18. Commercial Terms**

**18.1** To the extent commercial terms are agreed under the International Commercial Terms (INCOTERMS) INCOTERMS 2010 shall be referred to in matters of their application and interpretation.

### **19. Partial invalidity**

**19.1** Should individual provisions of the Conditions of Sale be legally invalid either wholly or in part, this shall not affect the validity of the remaining provisions.

Version: 06/2011

# General Terms and Conditions



## II. General Conditions of Purchase

### **1. Application**

**1.1** Unless agreed otherwise in writing, these General Conditions of Purchase shall apply to these and all future orders/commissions. The Supplier's contrary or additional general commercial terms shall not be binding on us even where we fail expressly to reject such terms or accept the delivery/service unconditionally.

### **2. Offer, order placement, orders**

**2.1** Offers by the Supplier shall be made free of charge; estimates shall be paid for only after written agreement.

**2.2** Oral side agreements in relation to the order/commission shall be set down in writing.

**2.3** We shall be entitled to give notice of termination of the Contract at any time in writing stating the grounds for the same if the products ordered can no longer be used in our operations due to circumstances arising after the Contract was entered into. In such case we shall pay the Supplier for the partial performance it has carried out.

**2.4** We shall be entitled to rescind the Contract or, in the case of a long-term contractual relationship, to terminate the contractual relationship without notice where there are material grounds within the context of a long-term contractual relationship or where insolvency proceedings are applied for in relation to the Supplier's assets and the Supplier has not yet performed the Contract or not yet performed it in full.

**2.5** A Purchaser shall be bound for 10 working days by its offer to enter into a purchase agreement (order). The Seller may, within that week, accept the offer by a written statement addressed to the Purchaser.

**2.6** Calculations, drawings, plans and other documents also belonging to the offer shall remain the property of the Purchaser who retains all copyright to such documents. The Seller may not pass these documents to third parties without the Purchaser's written consent. Where the Seller does not accept the Purchaser's offer within the time limit under Clause 2.5 these documents shall be immediately returned to the Purchaser.

### **3. Correspondence**

**3.1** The order number and date of the order/commission as well as the description and number of the materials allocated or notified by us shall be quoted in all the Supplier's documents.

### **4. Subcontractors**

**4.1** The involvement of subcontractors shall require our prior written consent. The Supplier shall impose on the subcontractor all obligations regarding the tasks it has taken on and ensure its compliance with those in respect of which the Supplier is bound by an obligation to us.

### **5. Delivery time and delivery, transfer of risk**

**5.1** The delivery time indicated in the order (delivery period or deadline) shall be binding.

**5.2** The Supplier shall be obliged to inform us immediately in writing if circumstances occur or are foreseeable under which the delivery time cannot be met.

**5.3** Where under the Contract it is possible to ascertain the latest day by which the delivery should occur, the Supplier shall, upon expiry of that day, be in arrears with no need for a reminder on our part.

**5.4** In case of a delay in delivery we shall have full recourse to the statutory remedies, including to the right of rescission and a claim for compensation in place of performance upon expiry of a reasonable additional time limit.

Version: 06/2011

# General Terms and Conditions



## II. General Conditions of Purchase

**5.5** In the case of delivery delays and following prior written warning, we shall be entitled to claim from the Supplier a contractual fine in the amount of 0.5% but no more than 5% of the value of the order from time to time for each week commenced while the delivery delay persists. The contractual fine shall be added to the damages for delay to be refunded by the Supplier.

**5.6** A contractual fine agreed and incurred may be claimed by us up until the final payment falls due without our needing to reserve such rights under Section 341(3) of the German Civil Code. The Supplier may only rely on the documents/information required to be delivered by us being outstanding if it has not received these within a reasonable period despite a written reminder.

**5.7** The Supplier shall take note of the address for correspondence indicated in the order/commission. Upon shipment the applicable pricing, transportation and packaging regulations imposed by rail, road, sea and air transport providers etc. shall be complied with.

**5.8** The order details (order no., order date, delivery address or the name of the recipient and the material description and number allocated by us) shall always be indicated in the transportation documents next to the delivery address. Should one or more pieces of information be missing and processing by us within the context of our normal commercial operations be delayed, the payment period shall be extended by the length of the delay.

**5.9** To the extent that sub-suppliers are used, these shall quote the supplier as their customer in correspondence and freight documents below the specification of the order date.

**5.10** The unit weight of individual loads (from 1 tonne and over) shall be indicated in a way that is easily visible and long-lasting.

**5.11** Without prejudice to our ongoing claims the Supplier shall be entitled to provide partial deliveries/services only with our consent.

**5.12** Risk shall pass to us, even where dispatch has been agreed, only once the goods are handed over to us at the agreed designated place.

## **6. Information regarding hazardous materials, product information**

**6.1** The delivery items are to be labelled in accordance with the provisions of the Ordinance on Hazardous Substances and the EU Directives on dangerous substances and on dangerous preparations.

**6.2** The Supplier undertakes to provide us with all necessary product information, in particular regarding assembly and durability, e.g. safety data sheets, processing instructions, labelling instructions, installation instructions, occupational safety measures etc., including any amendments to the same promptly prior to the delivery/service.

## **7. Evidence of performance and acceptance**

**7.1** Any contractually required evidence of performance and acceptance shall be undertaken for us free of charge and recorded in writing by both Parties.

## **8. Weights/amounts**

**8.1** Without prejudice to our ongoing claims, in the case of weight discrepancies the weight determined by us at the time that receipt is confirmed shall apply unless the Supplier proves that the weight calculated by it was correctly determined according to a generally accepted method at the time risk passed. The same shall apply by analogy with respect to amounts.

## **9. Prices, payment terms, invoice information**

**9.1** The price stated in the order shall be binding.

**9.2** In the absence of a written agreement to the contrary the price shall include delivery and transport to the delivery address indicated in the Contract, including packaging.

Version: 06/2011

# General Terms and Conditions



## II. General Conditions of Purchase

**9.3** Invoices must comply with the statutory requirements as amended from time to time and be issued in two counterparts with the second counterpart being clearly marked as such. The invoice shall indicate the order number and material number. Each invoice shall also state VAT separately. The invoice shall be sent separately to the invoice address given in the order/commission.

**9.4** Unless agreed otherwise, the invoices shall be paid by us within 10 days at a 3% discount or net within 30 days. The payment period shall commence upon delivery of the goods at the place of receipt (shipping address) or acceptance of performance and receipt of the invoice at the invoice address given in the order/commission. Payment shall not amount to approval.

**9.5** Receipt of our transfer instruction by our bank shall be sufficient to meet the timeliness requirements in respect of the payments owed by us.

**9.6** In case of a payment delay we shall be liable for late payment interest in the amount of five percentage points over the base rate under Section 247 of the German Civil Code.

### **10. Guarantee claims**

**10.1** In case of defects we shall have full recourse to the statutory remedies. The guarantee period shall nevertheless, in a departure from the same, be 36 months.

**10.2** Our examination of the goods upon receipt shall be restricted to (transport) damage that is externally evident and to evident variations in the nature and amount of the goods. Complaints in relation to such defects shall be regarded as timely provided they are received by the Seller within five working days of delivery of the goods. We shall otherwise give notice of defects immediately upon their discovery in the course of normal commercial operations.

**10.3** Upon receipt by the Supplier of our written defect notices the limitation period for guarantee claims shall be suspended. In case of delivery of replacement items and removal of defects the guarantee period for parts that have been replaced or made good shall recommence unless we had to assume from the Supplier's behaviour that the latter did not consider itself obliged to undertake this measure but undertook the replacement delivery or removal of defects purely on grounds of goodwill or similar reasons.

### **11. Retention of title**

**11.1** All parts (goods subject to retention of title) and equipment made available by the Purchaser shall remain the property of the Purchaser. Where the Seller starts to process or alter the goods it does so on the Purchaser's behalf. Where the Seller's goods subject to retention of title are processed with items that it does not own, it shall acquire joint ownership of the resulting item pro rata to the value of the goods subject to retention of title that it supplied in relation to the other items used in the processing at the time of processing. The same shall apply where an item supplied by the Purchaser is inextricably mixed together with items that do not belong to it. Where, following the mixing, the Seller's item can be regarded as the main component, the Seller undertakes to transfer joint ownership to the Purchaser on a pro rata basis. In any case the Seller shall hold the Purchaser's sole ownership and/or joint ownership on trust for the latter.

**11.2** The equipment made available by the Seller may be used by the Purchaser exclusively for the goods ordered by the Purchaser and shall be insured by the Seller at its own expense against, fire, water damage and theft. The Seller hereby assigns the claims under these insurance policies to the Purchaser which, by this Agreement, accepts the assignment. The repair and maintenance of the equipment shall be promptly carried out by the Seller at its own expense in accordance with the relevant instructions for use.

Version: 06/2011

# General Terms and Conditions



## II. General Conditions of Purchase

**11.3** Any equipment, parts and documents received from the Purchaser may only be utilised by the Seller outside this Contract and passed on to third parties or third parties granted access to the same with the Purchaser's written consent. Following performance of the relevant contract the Seller shall return the same to the Purchaser at its own expense and without delay.

### **12. Defect claims, Supplier's liability**

**12.1** The Supplier guarantees that its delivery/service displays the features individually guaranteed and the contractually agreed quality for which the application assumed under contract is appropriate, are not impaired in terms of their value or suitability and meet the generally accepted technical regulations as well as the current legal and official requirements.

**12.2** Should the delivery/service not meet the provisions of Clause 12.1 or should they be defective on other grounds we may demand, in addition to all claims and rights regulated by statute, that the Supplier undertake supplementary performance immediately and free of charge to us and reimburse all expenditure caused us in relation to the supplementary performance. In urgent cases or where the Supplier is late with supplementary performance we may undertake the removal of the defect ourselves without delay or have it done by others at the Supplier's expense. Where the Supplier has guaranteed the quality or durability of the service/delivery we may, irrespective of the same, further also claim under the guarantee. Where we are obliged to carry out a product recall against third parties due to a fault in a product delivered by the Supplier the Supplier shall bear all the costs associated with the recall.

**12.3** The Supplier shall be liable for defective rights under the statutory regulations, in particular it shall be liable for any infringement in the agreed destination country of patents or other third-party intellectual property rights by the delivery/service or as a result of their use in accordance with the Contract. Where a third party brings a claims against us in this respect the Supplier shall be obliged to indemnify us upon our first written request against all claims (including court costs and legal fees) as essentially accrue out of or in conjunction with the third party claims. We shall not be entitled to make any agreements whatsoever with third parties imposing obligations on the Supplier without the agreement of the Supplier.

**12.4** The Supplier's liability shall otherwise be based exclusively on the statutory provisions. The Supplier shall indemnify us against third-party damages claims to the extent the Supplier or its own supplier has caused or is responsible for the defect that triggers liability.

**12.5** Even where the Supplier has its own industrial property rights, we or third parties engaged by us shall be permitted to undertake repairs on delivery items.

### **13. Insurance policies**

**13.1** The Supplier must keep third-party liability insurance cover with the normal conditions for the sector for the duration of the contractual relationship, including the guarantee and limitation period. The Supplier shall provide us with evidence of the same upon request.

### **14. Information**

**14.1** All information including drawings and other documents that we require for the deployment, operation, maintenance or repair of the delivery item shall be made available to us by the Supplier promptly, automatically and free of charge. This is without prejudice to Section 434(2) of the German Civil Code.

Version: 06/2011

# General Terms and Conditions



## II. General Conditions of Purchase

### **15. Pedestrian and vehicle access to work premises**

**15.1** When accessing our work premises on foot or in a vehicle the instructions given by our professional staff shall be complied with. Otherwise, the Supplier shall familiarise itself with and adhere to the site regulations (e.g. safety regulations).

### **16. Liability**

**16.1** We, our legal representatives and our employees shall be liable, irrespective of the legal basis, only in case of gross negligence, intent or where the obligation breached is material to the achievement of the purpose of the Contract (material contractual obligations). In case of negligent breach of material contractual obligations our liability for damages and costs shall be limited to foreseeable damage typical for the type of contract. This shall not apply to the extent that we are compulsorily liable in case of loss of life, personal injury or harm to health in respect of items in private use under the Product Liability Act or on other grounds.

### **17. Waste disposal**

**17.1** To the extent that waste as defined in waste legislation occurs in the course of the Supplier's deliveries/services it shall, subject to any agreement to the contrary, dispose of or remove the waste at its own cost in accordance with the provisions of waste legislation. Title, risk and responsibility under waste legislation shall pass to the Supplier at the time the waste is generated.

### **18. Confidentiality**

**18.1** The Supplier undertakes to keep confidential all information, knowledge and documents received from us or of which it has otherwise become aware from us or from an enterprise within our Group, e.g. technical and other data, measurements, technology, operating experience, trade secrets, know-how, drawings and other documentation (further referred to as "Information"), not to give third parties access to it and only to use it for the purpose of carrying out the relevant order/commission. The Supplier undertakes to return all information transferred as hard copies such as documents, models, samples or similar to us immediately upon request without retaining copies or records as well as immediately upon our request to destroy its own records, summaries and appraisals containing Information and confirm this to us in writing. We shall own the title and all industrial property rights to our Information.

### **19. Planning documents**

**19.1** Any drawings, drafts etc. prepared by the Supplier on the basis of our particular specifications shall become our property without additional remuneration irrespective of whether they remain in the Supplier's possession. Statements by the Supplier to the contrary e.g. on documents transferred to us shall not be binding.

### **20. Promotional material**

**20.1** The commercial relationship that exists with us may only be referred to in information and/or promotional material with our express prior written consent.

### **21. Exclusion of assignment**

**21.1** Assignments by the Supplier other than within the scope of Section 354(a) of the German Commercial Code shall be excluded; exceptions shall only be valid with our written consent.

### **22. Jurisdiction and applicable law**

**22.1** Where the Supplier is a businessman the place of jurisdiction shall be our company's registered office. We shall, however, be entitled to bring cases in the court with jurisdiction at the place of the Supplier's registered office.

Version: 06/2011

# General Terms and Conditions



## II. General Conditions of Purchase

**22.2** The laws of the Federal Republic of Germany shall apply to all legal relations between the Supplier and ourselves, subject to the exclusion of the conflict of law provisions of international private law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

### **23. Partial invalidity**

**23.1** Should individual provisions of the Conditions of Purchase be legally invalid either wholly or in part, this shall not affect the validity of the remaining provisions.

Version: 06/2011

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