

General Terms and Conditions of Sale, Status July 2005

1. Scope

1.1 Our deliveries, services and offers are exclusively carried out according to the Terms and Conditions set out below. They shall also apply to all future business relations without any need of further express agreement thereon.

1.2 Any deviating terms and conditions of the Customer not accepted by us in writing shall not be binding to us, even if we do not expressly object to them.

2. Offer and Conclusion of Contract

2.1 Our offers are made without obligation.

2.2 The documents belonging to the offer, such as drawings, pictures, weight and size specifications, are only approximate unless they are explicitly designated as being binding.

Insignificant modifications made by us to our product design or equipment, that are reasonable also for the Customer, do not entitle the Customer to raise objections or to withdraw from the contract.

2.3 We reserve title and copyright to the documents belonging to the offer, such as drawings, etc.; it is not allowed to provide them to third parties for separate use or any utilization or exploitation whatsoever.

2.4 The contract shall be concluded only upon our written acknowledgement of order, provided that a written acknowledgement of order is made out. In this case it alone is authoritative for acceptance, scope and execution of the contract. Subject matter of the contract shall also be the valid company standards of TRIDELTA applicable to the specific delivery item.

2.5 Electronic signatures according to the current state of the art and in compliance with the relevant statutory provisions are admissible for the coming into effect of a conclusion of or amendment to the contract and are a legal alternative to the written form requirement.

2.6 We reserve the right to introduce procedural changes due to technical progress or practical requirements.

2.7 Collateral agreements, supplements, and amendments to the contract require our written confirmation to become effective. That also applies to the annulment of this written form clause.

3. Deadlines and Time Limits

3.1 Deadlines and time limits for performance are subject to the mutual agreements in writing.

3.2 Prerequisite for the compliance with time schedules, however, is the timely receipt of the documents, the required approvals and releases provided by the Customer, the timely clarification and approvals of the plans and the adherence to the agreed terms of payment and other obligations under the existing contractual relationship. If these conditions are not satisfied in good time, the stipulated periods shall be extended by a reasonable length of time taking into consideration our time schedules.

3.3 Times for performance are deemed to be complied with if the delivery items, which have not to be assembled, are operational and have been shipped or their readiness for collection has been notified within the period fixed. If the deliverables have to be assembled, the times for performance are deemed to be complied with if the deliverables have arrived at the installation site within the period fixed. If delivery is delayed for reasons the Customer is responsible for, the times for performance are deemed to be adhered to if readiness for shipment, collection or delivery has been notified within the period fixed.

3.4 In cases of force majeure and other unforeseeable impediments beyond our control which cannot be overcome by reasonable expenses (e.g. operational breakdowns, strikes, lock-outs, interventions by authorities, energy and raw material shortage, etc.), the time for performance shall be extended appropriately if we are prevented from fulfilling our obligation in due time.

This shall also apply if our upstream suppliers have to face such obstacles or if they occur during an already existing delay. If the delivery time is extended, the Customer shall not be entitled to derive claims for damages therefrom. We shall notify the Customer at the earliest possible moment of the commencement and expected end of such impediments.

3.5 We shall be entitled to withdraw from the contract if
a) the impediments, mentioned in subsection 3.4, presumably will last for a prolonged period;
b) we ourselves are not, inadequately or not in time supplied with the goods required in spite of subcontracting agreements concluded with third parties to fulfil the contractual obligations to the Customer;
c) the Customer infringes culpably essential contractual provisions.

3.6 If, in the event of contracts on call, the call or planning is not effected in due time, we shall be entitled - after having granted a period of grace without result - to effect the planning by ourselves and to render the service or - after warning of rejection - to withdraw from the overdue part of the contract and to claim damages for non-performance.

3.7 We have the right to effect partial deliveries after having arranged it accordingly with the Customer.

4. Prices, Repayment of Expenses

4.1 Our prices are net prices ex works (EXW, Incoterms 2000) plus the VAT applicable within the domestic territory.

4.2 The decisive prices are those quoted in our acknowledgement of order.

4.3 If the contract value is below €100.--, we shall be entitled to charge markups for small-volume purchases that amount to € 50.--.

4.4 If delivery is delayed on the Customer's request or for reasons the Customer is liable for, it shall have to reimburse the expenses incurred to us from the date the performance would have been furnished (such as storage costs, carriage charges, conservation, etc.) plus a standard administrative expense allowance of €50.--.

5. Payment

5.1 Invoices are payable without discount within 30 days from the date of invoice. Discounts shall be granted according to the respective contractual stipulations, provided that the Customer is not in default of payment for previous deliveries.

5.2 Received payments are credited according to §§ 366, 367 of the German Civil Code (BGB).

5.3 Default interest is charged according to § 288 of the German Civil Code.

5.4 Bills and cheques will only be accepted on account of payment with the proviso that we give our prior consent hereto. They do not represent payment until being cashed. Expenses and costs shall be borne by the Customer and are due immediately.

5.5 We reserve the right to ask for prepayments or the provision of securities at any time, in particular if circumstances become known that might reduce the creditworthiness of the Customer or Customer fails to comply with the terms of payment.

5.6 In the event of default of payment we shall be entitled to withhold the delivery and/or other performances under all contracts, until the claims due to us against the Customer have completely been satisfied.

5.7 After a period of grace of reasonable length with a warning of rejection we shall be entitled to withdraw from the contract and/or to claim damages for non-performance.

5.8 Offsetting against claims by the Customer shall only be allowed if its claims are undisputed or recognised by declaratory judgment.

5.9 The assignment of all claims of the Customer against us to third parties requires our prior written consent hereto to become valid.

6. Delivery and Passing of Risk

6.1 The deliveries are effected ex works.

6.2 Partial deliveries are admissible, but only insofar as they are acceptable to the contracting parties.

6.3 The risk passes to the Customer upon delivery of the items of sale to the Customer or to a third party commissioned by the same. If the items are forwarded upon request or by order of the Customer, the risk shall pass to the Customer upon handing over of the items to the forwarding agent or to another person ordered to carry out the shipment. As far as the delivery or assembly of the items has been agreed, the risk passes to the Customer when the items leave the works premises.

6.4 If dispatch or collection is delayed due to circumstances the Customer is responsible for, the risk shall pass to the Customer from the date of readiness for shipment or collection. In this case we shall, upon Customer's instructions in writing, insure the items of sale in its name and at its expense to the extent desired by it.

6.5 Upon Customer's instructions in writing we shall have the items insured in its name and at its expense also in any other case against theft, damage from breakage, transport, water or fire, and any other insurable risks.

6.6 The Customer assigns to us the rights and claims against the respective insurance companies due to it under these insurances. The assignment is effected with the proviso that the insurance benefits shall pass directly to us in the event of damage. This shall apply analogously if we have effected an insurance in our own name for the benefit of the Customer. Upon complete payment of all performances the Customer is entitled to reassignment.

6.7 The Customer has to accept our deliverables if they are without visible defects or if such defects relate only to an insignificant part of the delivery. The provisions of IEC 60424 apply hereto. Customer's rights to demand removal of the defects are not affected thereby.

7. Retention of Title

7.1 The following securities are granted to us until all accounts receivable (including balances receivable) due to us from the Customer now or in future, whatever the legal ground may be, have been settled. Upon request we will unblock these securities at our discretion completely or partially.

7.2 The goods remain our property until the receivables according to paragraph 7.1 have been settled. Processing or modification of the goods by the Customer shall always be effected on our behalf as the manufacturer, but without any obligation on our part. If our (co-)title expires due to combination, mixing or processing, it is already now agreed that the (co-)title of the Customer in the new product devolves upon us in the ratio of the value of goods supplied by us (invoiced value). The Customer shall hold our (co-)title in safe custody free of charge. Goods, in which we have a right to (co-)title, are hereinafter referred to as goods under retention of title.

7.3 The Customer shall be entitled to process and sell the goods under retention of title within the ordinary course of business unless it is in payment default. In particular, pledges, assignments as security, or the sale and leaseback procedure are inadmissible. The Customer hereby assigns to us to the full extent by way of security all receivables from the resale or from any other cause in law (insurance, torts) in respect of the goods under retention of title. We authorise the Customer, until revoked, to collect the receivables assigned to us for its account and in its own name. At our request, the Customer shall disclose the assignment, furnish the necessary information, and submit all essential documents.

7.4 In the event of any third party action aimed at obtaining the goods under retention of title, the Customer shall notify such party of our property and immediately inform us about such action. The Customer shall defray the costs and accept responsibility for the damage resulting in connection with any third party action aimed at obtaining the goods under retention of title.

7.5 We may revoke the authorisation to dispose of the goods under retention of title and the authorisation to collect the receivables assigned to us at any time, if the Customer is in breach of any obligation owed to us.

7.6 In the event of the Customer acting in breach of contract - in particular in the case of default of payment - we are entitled to take back the goods delivered under retention of title at Customer's expense or, where appropriate, to demand assignment of the Customer's claims for return of the goods from third parties. Any repossession or attachment of the goods delivered under retention of title shall not involve a rescission of contract - unless the Consumer Credit Law applies.

8. Warranty

8.1 Within the scope of the following provisions we guarantee that, at the time of passing of risk of the delivery or service, the products delivered and services rendered are free of defects that would reduce the value or restrict the suitability in normal use of the goods or services or in their use agreed according to contract.

8.2 All products and services having a defect during the warranty period, shall - at the discretion of the Supplier - be subsequently improved free of charge, re-supplied or performed afresh, provided that the cause of such defect is based on a material or legal defect which existed already at the time of passing of risk. Wear and tear by normal use and defects caused by improper use, improper handling, transport and storage, respectively, as well as by non-observance of manufacturer's, mounting or operating instructions, are not warranted.

8.3 Unless otherwise agreed in writing, the details about our products, in particular illustrations, drawings, technical data and references to standards and specifications contained in our offers and catalogues, do not represent any guarantee regarding quality and durability, but are only descriptions or markings. This applies mutatis mutandis to the delivery of samples and specimens.

8.4 The Customer shall inspect the goods immediately after delivery, even if it had been provided beforehand with samples and specimens, and notify us in writing, without delay, of any defects or variations in quantity. Otherwise the goods shall not be deemed as accepted, unless defects are concerned that could not be detected during the inspection.

8.5 The warranty period shall be 24 months from the date of handing over of the products to the Customer at the place of performance; at the latest, however, from the date of delivery on its premises. Insofar as work performances are subject of the contract, the warranty period shall begin upon acceptance.

8.6 We shall take over the costs accruing for subsequent performance, with the exception of additional costs incurred by dispatching the deliverables to a place other than the place of performance.

8.7 The costs accruing by any unjustified notices of defects shall be borne by the Customer. Lump-sum cost burdens for notices of defects given by Customers shall not be accepted.

8.8 Insofar as we act as a Supplier of materials or parts to our Customers, we are not subject to any liability according to § 478 of the German Civil Code [BGB].

8.9 Further claims are excluded, unless otherwise stipulated in these Terms and Conditions of Sale.

9. Limitation of Liability

Claims for damages, whatever the legal ground may be, are excluded against us as well as against our legal representatives and vicarious agents, unless in cases of wilful misconduct or gross negligence.

10. Packaging and Shipment

The goods are packed according to the contractual provisions following subject-specific and commercial points of view. If company-owned packing or rented containers are used, the Customer or its transport agents have to send them back to us without delay.

11. Place of Performance, Place of Jurisdiction

11.1 The place of performance for both parts of the contract and for all deliveries and payments, including return deliveries, is the Supplier's place of business.

11.2 The place of jurisdiction for all disputes arising from any business under these General Conditions is also the Supplier's place of business, for legal actions taken by us as well as for such taken against us.

12. Final Provisions

12.1 The relations between the Supplier and the Customer are exclusively governed by the law of the Federal Republic of Germany.

12.2 The applicability of the Conflict of Laws Provisions, as well as of the UN Sales Convention, the Hague Uniform Laws on the Sale of Goods, and the Convention on Contracts for the International Sale of Goods (CISG) is excluded.

12.3 Should any provision of these General Conditions or a provision within the framework of other agreements be or become invalid or impracticable, the validity of the other provisions or agreements shall not be affected hereby. The invalid or impracticable provision shall be replaced by a valid provision that most closely reflects its economic intent.