

# General Terms and Conditions of Delivery

## § 1 Applicability

- 1) All deliveries, services and offers made by the seller occur exclusively on the basis of these General Terms and Conditions of Delivery, which are a component of all contracts with companies, legal persons under public law or public law special funds in the meaning of Article 310 I of the German Civil Code (Bürgerliches Gesetzbuch – BGB) that the seller concludes with its contract partners (hereinafter also referred to as “principals”) regarding the goods or services offered by it. They also apply to all future deliveries, services or offers to the principal, insofar as they involve legal transactions of a similar nature, even if they are not separately agreed again.
- 2) Terms and conditions of business of the principal or third parties do not apply, even if the seller does not separately object to their applicability in an individual case. Even if the seller refers to a letter which contains terms and conditions of business of the principal or a third party or refers to such terms and conditions of business, this shall not constitute agreement to the applicability of those terms and conditions of business.

## § 2 Offer and the conclusion of the contract

- 1) All offers of the seller are subject to confirmation and are not binding, unless they are explicitly marked as binding or contain a specific time limit for acceptance.
- 2) The purchase contract concluded in writing, including these General Terms and Conditions of Delivery, is solely applicable for the legal relationships between the seller and buyer. It lays down in full all the arrangements between the parties regarding the subject of the contract. Oral commitments of the seller prior to the conclusion of this contract are legally non-binding and any oral arrangements of the parties shall be superseded by the written contract, unless it is explicitly agreed that they will continue to be effective. Any additions or changes to the arrangements made, including these general terms and conditions of business, must be in writing in order to be effective. Transmission by fax is sufficient to comply with the requirement of written form. Other transmission via telecommunications channels, particularly by e-mail, is not sufficient.
- 3) Information of the seller regarding the subject of the delivery or service (e.g. weight data, dimensions, functional values, resilience, tolerances and technical data) and our representations of the same (e.g. drawings and images) are only approximations, unless usability for the contractually envisaged purpose requires exact conformity. They do not constitute guaranteed characteristics but are merely descriptions or designations of the delivery or service. Deviations customary in commercial practice and deviations which occur due to legal regulations or constitute technical improvements, and the replacement of components with parts of equivalent value, are permissible insofar as they do not impair usability for the contractually envisaged purpose.
- 4) The seller shall retain the ownership title or copyright to all offers and quotations submitted by it and to any drawings, images, calculations, prospectuses, catalogues, models, tools or other documents or aids provided to the principal. The principal is not permitted to make either these items or their contents available to third parties, to disclose them or use or reproduce them, either itself or through third parties, without the explicit consent of the seller. At the request of the seller, it must fully return these items to it and destroy any copies it may have made if they are no longer needed by it in the normal course of business or if negotiations do not lead to the conclusion of a contract.

## § 3 Prices and payment

- 1) The prices apply for the scope of the services and delivery specified in the order confirmations. Additional or special services will be separately charged. The prices should be understood as being in euros ex works in Bochum plus packaging and statutory VAT, and in the case of export deliveries plus customs duty, charges and other official duties.
- 2) Invoice amounts must be paid within ten (10) days, unless otherwise agreed in writing. The date when the seller receives the funds shall be considered the date of payment. Cheques shall only be considered payment once they have been redeemed. If the principal fails to make a due payment, the outstanding amounts shall accrue interest from the due date at 10% p.a. The right to claim higher interest and further losses in the event of a delay remains unaffected.
- 3) Offsetting with counterclaims of the principal or retaining payments due to such claims is only permitted if the counterclaims are undisputed or have been established with legally binding effect.
- 4) The seller shall have the right to carry out or provide outstanding deliveries or services only against prepayment or the provision of security if it learns, after the conclusion of the contract, of circumstances which may significantly reduce the principal's creditworthiness and as a result of which payment by the principal of the open receivables of the seller from the relevant contractual relationship (including from other individual purchase orders covered by the same master contract) is jeopardised.

## § 4 Deliveries and delivery time

- 1) Deliveries shall be carried out ex works.
- 2) Time limits or deadlines for deliveries and services announced by the seller shall only ever be considered approximate, unless a fixed time limit or fixed deadline has been explicitly promised or agreed. If shipment has been agreed, delivery time limits and deadlines relate to the moment of handover to the carrier, forwarder or other third party commissioned to handle the transportation.
- 3) Without prejudice to its rights arising from a default by the principal, the seller will be able to demand from the principal an extension of delivery and service periods or a postponement of delivery and service deadlines by the period for which the principal fails to fulfil its contractual obligations with respect to the seller. The agreed delivery period shall be calculated from the date when all the details of the order have been clarified.
- 4) The seller shall not be liable for impossibility of the delivery or for delays in making delivery insofar as they are caused by an event of force majeure or other events which are not foreseeable upon the conclusion of the contract (e.g. operational disruptions of any kind, difficulties in acquiring materials or energy, transportation delays, strikes, lawful lock-outs, shortfalls of manpower, energy or raw materials, difficulties in obtaining necessary official approvals, governmental measures or failure by our suppliers to make delivery to us or make delivery correctly or on time) for which the seller is not responsible. If such events significantly impede the seller in making delivery or make it impossible and the impediment is not purely temporary, the seller shall have the right to rescind the contract. In the event of temporary obstacles, the time limits for delivering goods or providing services will be extended or the delivery/service deadlines will be postponed for the duration of the obstacle plus a reasonable lead time. If, as a result of the delay, the principal cannot be reasonably expected to accept the delivery or service, it shall have the right to rescind the contract by promptly making a written declaration to the seller.
- 5) If the seller is late in making delivery or providing a service or if it becomes impossible for it to make delivery or provide a service, irrespective of the reason, its liability shall be limited to compensation for losses in accordance with § 8 of these General Terms and Conditions of Delivery.

## § 5 Place of performance, shipping, packaging, transfer of risk and acceptance

- 1) The place of performance for all the obligations arising from the contractual relationship is Bochum, unless agreed otherwise.
- 2) The shipping method and the packaging are subject to the seller's professional judgement.
- 3) The risk shall transfer to the principal no later than upon the handover of the goods to be delivered (the beginning of the loading process is the decisive factor) to the carrier, forwarder or other third party commissioned to carry out the shipment. This shall also apply if partial deliveries are carried out or if the seller has agreed to perform further services (e.g. shipment or installation). If the shipment or handover is delayed as a result of a circumstance whose cause is attributable to the principal, the risk shall transfer to the principal from the day on which the seller is ready to ship the goods and has notified the principal to that effect.

## § 6 Warranty

- 1) The warranty period amounts to one year from the delivery date.
- 2) The delivered goods must be carefully inspected immediately after delivery to the principal or the third party specified by it. They shall be deemed to be approved if the seller does not receive a complaint in the form specified in § 2(2) sentences 4 and 5 regarding obvious defects or other defects which were identifiable upon an immediate, careful inspection, within seven business days of the delivery of the goods or otherwise within seven business days of the discovery of the defect or the moment when the defect was identifiable for the principal in the course of normal use of the subject of the delivery without a closer inspection. At the seller's request, the goods being the subject of the complaint must be sent back to it. In the event of a legitimate complaint, the seller shall reimburse the costs of the lowest cost shipping method. This shall not apply if the costs increase because the subject of the delivery is at a location other than the site of its intended use.
- 3) In the event of material defects in the delivered goods, the seller shall have the obligation and right to first carry out repairs or provide a replacement delivery, according to its choice to be made within a reasonable period of time. If the repairs or replacement delivery fail, i.e. if they are impossible or unreasonable or are refused or unreasonably delayed, the principal will be able to rescind the contract or reasonably reduce the purchase price.
- 4) If the defect is due to the fault of the seller, the principal will be able to demand compensation subject to the conditions provided for in § 8.
- 5) The warranty shall be forfeit if the principal alters the subject of the delivery or has it altered by third parties without the seller's consent and as a result the elimina-

tion of the defects is impossible or unreasonably impeded. In any event, the principal must bear the additional costs of the elimination of the defects that arise due to the alteration.

#### **§ 7 Intellectual property rights**

- 1) The seller warrants in accordance with this § 7 that the subject of the delivery is free from intellectual property rights or copyrights of third parties. Each contract partner shall promptly notify the other contract partner in writing if any claims are asserted against it due to an infringement of such rights.
- 2) In the event that the subject of the delivery infringes an intellectual property right or copyright of a third party, the seller shall alter or replace the subject of the delivery, according to its choice and at its own expense, such that third-party rights are no longer infringed but the subject of the delivery still performs the contractually agreed functions, or shall procure a usage right for the principal by concluding a license contract. If it does not succeed in doing so within a reasonable period of time, the principal shall have the right to rescind the contract or reasonably reduce the purchase price. Any claims for compensation for losses of the principal are subject to the restrictions provided for in § 8 of these General Terms and Conditions of Delivery.
- 3) In the event of infringements of rights by products of other manufacturers delivered by the seller, the seller shall either assert its claims against the manufacturers and upstream suppliers for the principal's account or assign them to the principal, according to the seller's choice. Claims against the seller shall only exist in these cases in accordance with this § 7 if the judicial enforcement of the above-mentioned claims against the manufacturers and upstream suppliers has been unsuccessful or is futile, for example due to insolvency.

#### **§ 8 Liability for compensation for losses due to culpability**

- 1) The seller's liability, irrespective of the legal basis, particularly related to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contractual negotiations or impermissible action shall be limited in accordance with this § 8, insofar as it is at fault.
- 2) The seller shall not be liable:
  - a) in the event of simple negligence on the part of its governing bodies, statutory representatives, employees or other vicarious agents,
  - b) in the event of gross negligence on the part of its non-managerial employees or other vicarious agents,except in the event of a breach of key contractual obligations. Key contractual obligations are the obligations to deliver and carry out the installation on time and without defects as well as the obligations to provide advice, protection and due care, which are aimed at enabling the principal to use the delivered items in accordance with the contract or whose purpose is the protection of the life or limb of personnel of the principal or of third parties or the principal's property from significant damage.
- 3) If the seller is liable for compensation for losses based on merits in accordance with § 8 (2), that liability shall be limited to losses that the seller foresaw upon the conclusion of the contract as possible consequences of a breach of contract or which it should have foreseen taking into account the circumstances of which it was aware or should have been aware exercising due diligence. Indirect losses and consequential losses being the result of defects in the delivered goods shall otherwise only be eligible for compensation if such losses are typically to be expected when the delivered goods are used for their intended purpose.
- 4) In the event of liability for simple negligence, the seller's obligation to pay compensation shall be limited, for damage to property or personal injury, to the amount of 1,000,000.00 per event of damage, including with regard to a breach of key contractual obligations.
- 5) The above exclusions and limitations of liability apply to an equal extent in favour of the seller's governing bodies, statutory representatives, employees and other vicarious agents.
- 6) If the seller provides technical information or provides advice and that information or advice does not fall within the contractually agreed scope of the services to be provided by it, it shall do so free of charge and to the exclusion of any liability.
- 7) The limitations provided for in this § 8 do not apply for the seller's liability due to intentional conduct, for guaranteed characteristics, for loss of life or injury to the body or health or under the German Product Liability Act (Produkthaftungsgesetz).

#### **§ 9 Retention of ownership**

- 1) The retention of ownership agreed below serves the purpose of securing all currently existing and future receivables of the seller against the buyer from the supply relationship existing between the contract partners concerning vibration technology products (including balance claims from a current account agreement restricted to that supply relationship).
- 2) The goods delivered by the seller to the buyer shall remain the seller's property until all secured receivables have been paid in full. The goods, as well as goods taking their place in accordance with this clause which are covered by the retention of ownership, shall hereinafter be referred to as goods subject to retention of title.
- 3) The buyer shall store the goods subject to retention of title for the seller free of charge.
- 4) The buyer shall have the right to process and sell the goods subject to retention of title in the normal course of business until such time as the retention of ownership is enforced (see paragraph 9). Pledging and assignment for security are impermissible.
- 5) It is agreed that if the goods subject to retention of title are processed by the buyer the processing shall be carried out in the name and for the account of the seller as the manufacturer and the seller shall directly acquire the ownership title or, if the processing occurs from materials of several owners or the value of the processed item is higher than the value of the goods subject to retention of title, the co-ownership title (fractional ownership) to the newly created item in the ratio of the value of the goods subject to retention of title to the value of the newly created item. For the event that no such acquisition of ownership occurs for the seller, the buyer already now transfers to the seller its future ownership title or (in the above-mentioned ratio) co-ownership title to the newly created item as security. If the goods subject to retention of title are combined with other items to form an integral item or inseparably mixed and if one of the other items is to be considered the main item, the seller hereby transfers the co-ownership title to the integral item to the buyer on a pro rata basis, insofar as the main item belongs to it, in the ratio referred to in sentence 1.
- 6) For the event the goods subject to retention of title are resold, the hereby now assigns to the seller for security the resulting claim against the customer (in the case of co-ownership by the seller of the goods subject to retention of title pro rata according to the co-ownership share). The same applies for other receivables which take the place of the goods subject to retention of title or otherwise arise with respect to the goods subject to retention of title, such as insurance claims or claims stemming from tort in the event of loss or destruction. The seller revocably authorises the buyer to collect the receivables assigned to the seller in its own name and for the seller's account. The seller can only revoke that collection authorisation in the event of enforcement.
- 7) If third parties lay claim to the goods subject to retention of title, specifically by attaching them, the buyer shall promptly bring to the attention of such third parties the ownership title retained by the seller and inform the seller of this to enable it to enforce its ownership rights. If the third party is unable to reimburse the seller for the court and out-of-court costs arising in this context, the buyer shall be liable towards the seller in that respect.
- 8) Upon request the seller shall release the goods subject to retention of title and the items or claims that take their place according to its choice, insofar as their value exceeds the amount of the secured receivables by more than 20%.
- 9) If the seller rescinds the contract due to breaches of contract by the buyer, particularly a payment default (enforcement), it shall have the right to demand the return of the goods subject to retention of title.

#### **§10 Final provisions**

- 1) The place of jurisdiction for all and any disputes stemming from the business relationship between the seller and the principal is Bochum. For any lawsuits against the seller, Bochum is the exclusive place of jurisdiction. Mandatory provisions of law on exclusive places of jurisdiction are not affected by this provision.
- 2) The relationships between the seller and the principal are exclusively subject to the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 does not apply.
- 3) Should the contract or these General Terms and Conditions of Delivery contain any unintended gaps or omissions, in order to fill those gaps or omissions the legally effective provisions which the parties would have agreed in view of the commercial objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had been aware of the gaps or omissions shall be deemed to have been agreed.
- 4) Note:

The principal acknowledges that the seller stores data from the contractual relationship in accordance with Article 28 of the German Data Protection Act (Bundesdatenschutzgesetz) for purposes of data processing and reserves the right to transmit the data to third parties (e.g. insurance companies) to the extent this is necessary for the performance of the contract.