

GENERAL CONDITIONS

PREAMBLE

1. These General Conditions shall apply when the parties agree In Writing or otherwise thereto. Any modifications of or deviations from them must be agreed In Writing.

DEFINITIONS

2. In these General Conditions the following terms shall have the meanings hereunder assigned to them:

- **“Contract”**: the agreement In Writing between the parties concerning supply of the Product and all appendices, including agreed amendments and additions In Writing to the said documents;

- **“Gross Negligence”**: an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such an act or omission;

- **“In Writing”**: communication by document signed by both parties or by letter, fax, electronic mail and by such other means as are agreed by the parties;

- **“the Product”**: the object(s) to be supplied under the Contract, including software and documentation.

PRODUCT INFORMATION

3. All information and data contained in general product documentation and price lists shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.

DRAWINGS AND TECHNICAL INFORMATION

4. All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the Contract, shall remain the property of the submitting party.

Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

5. The Supplier shall, not later than at the date of delivery arrival at destination according to DAP terms), provide free of charge information and drawings which are necessary to permit the Purchaser to install, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

ACCEPTANCE TESTS

6. Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.

If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

7. The Supplier shall notify the Purchaser In Writing of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.

8. If the acceptance tests show the Product not to be in accordance with the Contract, the Supplier shall without delay remedy any deficiencies in order to ensure that the Product complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

9. The Supplier shall bear all costs for standard acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

DELIVERY AND PASSING OF RISK

10. Any agreed trade term shall be construed in accordance with the INCOTERMS® in force at the formation of the Contract.

If no trade term has been specifically agreed, the delivery shall be DAP at the place named by the Supplier.

If, in the case of delivery Free Carrier, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier.

Partial delivery shall not be permitted, unless otherwise agreed.

TIME FOR DELIVERY AND DELAY

11. If the parties, instead of specifying the date for delivery, have specified a period of time within which delivery shall take place, such period shall start to run as soon as the Contract is entered into and all agreed preconditions to be fulfilled by the Purchaser have been satisfied, such as official formalities, payments due at the formation of the Contract and securities.

12. If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the

Purchaser thereof In Writing, stating the reason and, if possible, the time when delivery can be expected.

13. If delay in delivery is caused by any of the circumstances mentioned in Clause 41, by an act or omission on the part of the Purchaser, including suspension under Clauses 21 and 44, or any other circumstances attributable to the Purchaser, the Supplier shall be entitled to extend the time for delivery by a period which is necessary having regard to all the circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

14. If the Product is not delivered at the time for delivery and the Purchaser suffers a loss because of this, the Purchaser shall be entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.5 per cent of the purchase price for each commenced week of delay. The liquidated damages shall not exceed 5 per cent of the purchase price.

If only part of the Product is delayed, the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Product as cannot in consequence of the delay be used as intended by the parties.

The liquidated damages shall become due at the Purchaser's demand In Writing but not before delivery has been completed or the Contract is terminated under Clause 15.

15. If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 14 and if the Product is still not delivered, the Purchaser may In Writing demand delivery within a final reasonable period which shall not be less than one week.

If the Supplier does not deliver within such final period and this is not due to any circumstances which are attributable to the Purchaser, then the Purchaser may by notice In Writing to the Supplier terminate the Contract in respect of such part of the Product as cannot in consequence of the Supplier's failure to deliver be used as intended by the parties.

If the Purchaser terminates the Contract he shall be entitled to compensation for the loss he suffers as a result of the Supplier's delay, including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 14, shall not exceed 10 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

16. Liquidated damages under Clause 14 and termination of the Contract with limited compensation under Clause 15 shall

be the only remedies available to the Purchaser in case of delay on the part of the Supplier. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of a negligent breach of a fundamental condition of the contract ("wesentliche Vertragspflichten"), intent or Gross Negligence according to Clause 2.

17. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the time for delivery, he shall forthwith notify the Supplier In Writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery at the time for delivery, he shall nevertheless pay any part of the purchase price which becomes due at the time for delivery, as if delivery had taken place at the time for delivery. The Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. The Supplier shall also, if the Purchaser so requires, insure the Product at the Purchaser's expense.

18. Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 41, the Supplier may by notice In Writing require the Purchaser to accept delivery within a final reasonable period.

If, for any reason which is not attributable to the Supplier, the Purchaser fails to accept delivery within such period, the Supplier may by notice In Writing terminate the Contract in whole or in part. The Supplier shall then be entitled to compensation for the loss he suffers by reason of the Purchaser's default, including any consequential and indirect loss. The compensation shall not exceed that part of the purchase price which is attributable to that part of the Product in respect of which the Contract is terminated.

PAYMENT

19. Unless otherwise agreed payment shall be made within 30 days after the date of invoice.

20. Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been irrevocably credited for the amount due.

21. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be as agreed between the parties or otherwise 8 percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be 1 per cent of the amount for which interest for late payment becomes due.

In case of late payment and in case the Purchaser fails to give an agreed security by the stipulated date the Supplier may, after having notified the Purchaser In Writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Purchaser gives the agreed security.

If the Purchaser has not paid the amount due within three months the Supplier shall be entitled to terminate the Contract by notice In Writing to the Purchaser and, in addition to the interest and compensation for recovery costs according to this Clause, to claim compensation for the loss he incurs. Such compensation shall not exceed the agreed purchase price.

RETENTION OF TITLE

22. The ownership of the goods shall remain with the Supplier until payment in full for all the goods has been received by the Supplier.

The Supplier shall retain full title of the goods that have been delivered until the Purchaser has discharged all claims arising from the business relationship.

Title in the goods shall not pass to the Purchaser but shall remain with the Supplier until the contract price has been paid to the Supplier in full by the Purchaser. Until such time as title in the goods has passed to the Purchaser:

- The Supplier shall have the absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in the Supplier;
- For the purpose specified above, the Supplier or any of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the goods or any part thereof is installed, stored or kept, or is reasonably believed so to be.

The Supplier shall be entitled to seek court injunction to prevent the Purchaser from selling, transferring or otherwise disposing of the goods.

Notwithstanding the foregoing, risk in the goods shall pass on delivery of the same to the customer, and until such time as title in the goods has passed to the Purchaser, the Purchaser shall insure such goods to its replacement value and the Purchaser shall forthwith, upon request, provide the Supplier with a certificate or other evidence of such insurance.

The Purchaser shall have the right to dispose of the goods delivered by us in the ordinary course of business. The Purchaser shall also have the right to process the goods delivered subject to the limitations as set out below:

- The Purchaser is in breach of any obligation owed to us, particularly in payment default
- The Supplier became aware of other incidents that give rise to doubts about the creditworthiness of the Purchaser

If the goods being delivered under retention of title shall be inseparably assembled or mixed with other goods being under property of any third party, then we shall acquire title in the newly assembled or mixed goods.

The proportion of title shall follow from the proportion of the invoice value of the goods delivered by us.

In the event of any third party action against the goods delivered by us under retention of title the Purchaser shall inform such part of our property and shall inform us about such action.

If the Purchaser shall be in breach of contract, in particular in payment default, he shall, upon demand, immediately return to us all goods delivered under retention of title.

LIABILITY FOR DEFECTS

23. Pursuant to the provisions of Clauses 24-39, the Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials or workmanship.

24. The Supplier shall not be liable for defects arising out of materials provided or a design stipulated or specified by the Purchaser.

25. The Supplier shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product.

26. The Supplier shall not be liable for defects caused by circumstances, which arise after the risk has passed to the Purchaser, e.g. defects due to faulty maintenance, incorrect installation or faulty repair by the Purchaser or to alterations carried out without the Supplier's consent In Writing. The Supplier shall neither be liable for normal wear and tear nor for deterioration.

27. Unless otherwise agreed the Supplier's liability shall be limited to defects which appear within a period of one year from delivery. If the use of the Product exceeds that which is agreed, this period shall be reduced proportionately. Claims for reimbursement of expenses of the Purchaser according to Sec. 445a BGB (recourse of the Supplier) also become statute-barred 12 months after the beginning of the statutory limitation period, provided that the last contract in the supply chain is not for the sale of consumer goods. The statutory provisions regarding suspension of the statute of limitations (specifically Sec. 445b BGB), suspension and recommencement of limitation periods remain unaffected.

28. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of one year. For the remaining parts of the Product the period mentioned in Clause 27 shall be extended only by a period equal to the period during which and to the extent that the Product could not be used as a result of the defect.

29. The Purchaser shall without undue delay notify the Supplier In Writing of any defect which appears. Such notice shall under no circumstances be given later than one week after the expiry of the period given in Clause 27 or the extended period(s) under Clause 28, where applicable.

The notice shall contain a description of the defect.

If the Purchaser fails to notify the Supplier in Writing of a defect within the time limits set forth in the first paragraph of this Clause, he shall lose his right to have the defect remedied.

Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Supplier in Writing. The Purchaser shall bear the risk of damage to the Product resulting from his failure so to notify. The Purchaser shall take reasonable measures to minimise damage and shall in that respect comply with instructions of the Supplier.

30. On receipt of the notice under Clause 29 the Supplier shall at his own cost remedy the defect without undue delay, as stipulated in Clauses 23-39. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

Repair shall be carried out at the place where the supplier is located unless the Supplier deems it more appropriate that the Product is repaired at the place where the product is located or another destination specified by the Supplier.

31. The Purchaser shall at his own expense provide access to the Product and arrange for any intervention in equipment other than the Product, to the extent that this is necessary to remedy the defect.

32. Unless otherwise agreed, necessary transport of the Product or parts thereof to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Purchaser. The Purchaser shall follow the Supplier's instructions regarding such transport.

33. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for remedying the defect caused by the Product being located in a place other than the destination stated at the formation of the Contract for the Supplier's delivery to the Purchaser or – if no destination has been stated – the place of delivery.
34. Defective parts which have been replaced shall be made available to the Supplier and shall be his property.
35. If the Purchaser has given such notice as mentioned in Clause 29 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he incurs as a result of the notice.
36. If the Supplier does not fulfil his obligations under Clause 30, the Purchaser may by notice In Writing fix a final reasonable period for completion of the Supplier's obligations, which shall not be less than one week.
- If the Supplier fails to fulfil his obligations within such final period, the Purchaser may himself undertake or employ a third party to undertake necessary repair work at the risk and expense of the Supplier.
- Where successful repair work has been undertaken by the Purchaser or a third party, reimbursement by the Supplier of reasonable costs incurred by the Purchaser shall be in full settlement of the Supplier's liabilities for the said defect.
37. Where the Product has not been successfully repaired, as stipulated under Clause 36,
- a) the Purchaser shall be entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided that under no circumstances shall such reduction exceed 10 per cent of the purchase price, or
- b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Product or a substantial part of it, the Purchaser may terminate the Contract by notice In Writing to the Supplier in respect of such part of the Product as cannot in consequence of the defect be used as intended by the parties. The Purchaser shall then be entitled to compensation for his loss, costs and damages up to a maximum of 10 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.
38. Notwithstanding the provisions of Clauses 23-37 the Supplier shall not be liable for defects in any part of the Product for more than one year from the end of the liability period referred to in Clause 27 or from the end of any other liability period agreed upon by the parties. Claims for reimbursement of expenses of the Purchaser according to Sec. 445a BGB (recourse of the Supplier) also become statute-barred 12 month after the beginning of the statutory limitation period, provided that the last contract in the supply chain is not for the sale of consumer goods. The statutory provisions regarding suspension of the statute of limitations (specifically Sec. 445b BGB), suspension and recommencement of limitation periods remain unaffected.
39. Save as stipulated in Clauses 23-38, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has

been guilty of intent or Gross Negligence as defined in Clause 2 or if the Supplier negligently causes damage to life, body or health. Furthermore, the limitation of liability shall not apply in cases of negligent breach of a fundamental condition of the contract ("wesentliche Vertragspflichten"). In the case of slight negligence the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract. Nor shall the said limitation of liability apply in the cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz"), for defects of the Product causing death or personal injury, or damage to items of property used privately.

FORCE MAJEURE

40. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by Force Majeure, meaning any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause.

A circumstance referred to in this Clause whether occurring prior to or after the formation of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

41. The party claiming to be affected by Force Majeure shall notify the other party In Writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice. The compensation for the additional costs is limited to 10% of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.

42. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice In Writing to the other party if performance of the Contract is suspended under Clause 41 for more than six months.

ANTICIPATED NON-PERFORMANCE

43. Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the Contract, where it is clear from the circumstances that the other party is not going to perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof In Writing.

CONSEQUENTIAL LOSSES

44. Save as otherwise stated in these General Conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever. The said exclusion of liability shall not apply in the case of intent or Gross Negligence under Clause 2 or if the Supplier negligently causes damage to life, body or health. Furthermore, the exclusion of

liability shall not apply in cases of negligent breach of a fundamental condition of the contract (“wesentliche Vertragspflichten”). In the case of a slightly negligent breach of a fundamental condition of the contract, the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract. Nor shall the exclusion of liability apply in cases of strict liability under the Product Liability Act (“Produkthaftungsgesetz”), for defects of the Product causing death or personal injury, or damage to items of property used privately. Neither does the said exclusion apply in the case of damage attributable to

fraudulent concealment or under a specific guarantee granted.

DISPUTES AND APPLICABLE LAW

- 45.** The place of jurisdiction for all disputes shall be the registered seat of CAVEX.
- 46.** The Contract shall be governed by the substantive law of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) from 11 April 1980 does not apply.