

General Standard Terms And Conditions

1. General Terms

- 1.1 These general standard terms and conditions apply exclusively. All of our \bar{n} also future \bar{n} deliveries and services including proposals, consultations and other ancillary services are performed exclusively based on these general standard terms and conditions. General standard terms and conditions in contrary to or deviating from these, especially purchasing conditions of the principal are hereby contradicted, unless we had expressly approved their applicability in writing.
- 1.2 Agreements \bar{n} especially to the extent as they modify these conditions \bar{n} become binding only by our written confirmation. This especially applies to the extent as they modify these conditions and/or this clause for form of writing.

2. Offer, Specifications, Documentation

- 2.1 We may accept an offer of the principal within 2 weeks.
- 2.2 We reserve title and copyright in illustrations, drawings, calculations and other documentation. This also applies to such written documentation designated as "confidential". The principal requires our express written approval before passing them on to third parties.
- 2.3 Engineering information as text, figures or illustrations, for instance about weight, dimensions, pressure, temperature or other performance figures in our brochures, drawings and publications are figures determined by approximate calculation, to the extent as they have not expressly been designated as binding. Our deliveries and services are to be made/performed in compliance with engineering standards applicable in the Federal Republic of Germany at the time of submission of the bid.

3. Price, Payment, Collateral

- 3.1 Prices are understood, if not agreed differently, ex works. They do not include packaging, freight charges, insurance premiums, foreign taxes and other ancillary cost (for instance customs tariffs, incidental customs charges, testing expenses). In addition to the net amounts of the respective invoices respectively payment requests, value added tax must be paid at the statutory rate applicable on the day of invoicing.
- 3.2 If nothing to the contrary has been agreed, then invoices respectively requests for payment are due immediately without deduction. Payment is only deemed effected when the amount is finally freely available in one of our accounts. The statutory regulations concerning default in payment apply.
- 3.3 The principal is only due authorization to setoff to the extent as the counterclaims are undisputed or are final and absolute. He is also only authorized to exercise a right of retention to the extent as his counterclaim is based on the same contractual relationship.
- 3.4 In case of default in payment or if our receivables are endangered due to deterioration of the credit rating of the principal, we are entitled to make our receivables due for payment or request collateral. We are then also entitled to perform outstanding deliveries and/or services only against prepayment or provision of collateral.
- 3.5 We and our associated companies (β 15 AktG) may setoff all receivables due us or the companies associated with us against any receivables due the principal or a company associated with him from us or companies associated with us. Upon request, we will announce the companies associated with us in the sense of β 15 AktG individually included in this clause.
- 3.6 Should any problems occur in transfer of the invoice amount to the Federal Republic of Germany, no matter for what reason, then the disadvantages caused by this are borne by the principal.

4. Weight

If the price is determined by weight or if the weight is important for other reasons, then the weight determined by us is applicable. In each case, the total weight of the shipment applies to the calculation, irrelevant of the fact by which means of transport the delivery is made. Differences with respect to the calculatory individual weights are distributed over them prorata. In case of bundling, we weight gross for net.

5. Packaging

If nothing different has been agreed, then delivery is made unpackaged and not protected against rust. Agreed packaging will be billed to the principal. Instead, we may \bar{n} charging reimbursement for use and a security deposit \bar{n} request return of packaging.

6. Performance of the Principal

- 6.1 The principal will assume the following performance free of charge for us:
- 6.1.1 Timely and complete delivery of all documentation we require for planning and implementation of our deliveries and services (like for instance construction draft including all specifications, plans, drawings and other documentation to be supplied to us);
- 6.1.2 immediate approval of all documentation subject to approval;
- 6.1.3 timely provision and securing of the construction site, a reasonable work room for implementation of our deliveries and services (like for instance release of assembly rooms and connecting points) as well as the required space for construction site equipment and storage in the immediate vicinity of our construction site;
- 6.1.4 responsible intermediate storage of our deliveries at the construction site to the extent required and timely delivery to our assembly personnel;
- 6.1.5 all civil construction, bricklaying, concrete, insulation and painting work including materials required for this purpose;

- 6.1.6 supply of lighting and power current, potable and service water, steam or other heating material, provision of waste water and sewage pipes directly at the construction site;
- 6.1.7 provision of scaffolding and working platforms higher than 2 m, lifting equipment and safety installations required under the local conditions and the statutory regulations and accident prevention rules for performance of our deliveries and services;
- 6.1.8 in case of need, provision of auxiliary personnel in the quantity deemed required by us; it will be available to our assembly personnel including supervisor for the complete duration of works and are instructed by them; otherwise, they remain under supervision, responsibility and insurance obligation of the principal.
- 6.2 If the principal does not comply with the above mentioned obligations or not in due time, then we are entitled to separately bill the principal for additional cost incurred thereby. Also, our deadlines are redetermined in a reasonable manner in case of need. Modifications and/or amendments of the construction draft to be supplied to us, like for instance specifications, plans, drawings and other documentation, become effective only after prior agreement about the resulting adjustments, especially about additional cost to be reimbursed and about reasonable postponement of completion deadlines.

7. Passing of Risk, Dispatch, Acceptance

- 7.1 For our deliveries, risk passes to the principal upon delivery to the principal, forwarding agent or carrier or any other person determined for execution of shipment, but at the latest upon leaving the works. In case of services as well as associated deliveries, distribution of risk is determined by β 7 VOB/B.
- 7.2 Interpretation of trade clauses is determined by INCOTERMS 2000.
- 7.3 Means of transport and transport route are left to our choice. We determine the forwarding agent and the carrier.
- 7.4 Goods notified as ready for dispatch must be called immediately; otherwise, we are entitled to store it at cost and risk of the principal at our discretion and charge it as delivered ex works.
- 7.5 We are entitled to make partial deliveries.
- 7.6 Formal acceptance must only be performed if agreed in the contract or if we request it. The principal is obliged to perform an acceptance upon our request and must perform it immediately.
- 7.7 Partial deliveries and completed partial performances as well as parts of performance, for which testing is not possible or only under added difficulty due to further execution of the order, must be separately accepted upon our request.
- 7.8 If acceptance or test operation inspite of our request is not performed in due time or not completely, for reasons not within our responsibility, then our contractually performed deliveries and services upon expiry of the 7th day after request are deemed accepted. If formal acceptance or test operation has not been agreed and if it is not requested by us, then the effects of acceptance or test operation occur 30 days after our notification of completion. The effects of acceptance and/or test operation in any case also occur if our deliveries and services are commissioned.
- 7.9 To the extent as for pure delivery transactions acceptance has been agreed or requested by us, in deviation of para. 7.8 the following applies: acceptance can only be performed in the workshop. If acceptance is not performed in due time or incompletely, without our fault, then we are entitled to perform delivery without acceptance or store the goods at cost and risk of the principal.
- 7.10 The principal must create the preconditions for implementation of acceptance at his own cost. The objective acceptance cost is borne by us; the remaining cost incurred in connection with acceptance or charged us by third parties is borne by the principal.
- 7.11 Acceptance may not be declined due to trivial defects which do not substantially impair usability.

8. Deadlines, Delays

- 8.1 The deadlines and/or delivery times agreed only apply under the condition of timely clarification of all details of the order and timely compliance with all obligations by the principal, like for instance provision of the required official approvals and other documentation, opening of a letter of credit or performance of down payment. In case of agreement of a final deadline, this is not complied with only if at this time our deliveries and/or services are incomplete or faulty to an extent that the total plant cannot be commissioned on the planned date. In case of deliveries, deadlines are deemed complied with upon notification of readiness to dispatch.
- 8.2 If we are prevented in fulfillment of our obligations by unforeseeable events, which concern us, our suppliers or our subcontractors, and which we could not avoid with reasonable care according to the circumstances of the case, for instance war, sovereign intervention, terrorism, internal unrest, natural disaster, accidents, other operating troubles and delays in supply of essential operating supplies or input materials, modifications or amendments of the construction draft after closing of the contract as well as additional or new requests and impositions of the authorities or testing authorities, then the deadlines will be extended by the duration of the obstruction and a reasonable startup time. If the deliveries and/or services become impossible or unreasonable for us due to the obstruction, then we may cancel the agreement; the principal has the same right if further implementation of the contract is unreasonable for him due to the delay. Strikes or lockouts are in any case deemed as an obstruction not within our responsibility in the sense of this paragraph.
- 8.3 If we are in default for reasons within our responsibility, then the principal after fruitless expiry of a reasonable grace period set by him in writing may cancel the agreement. The same applies if delivery and/or performance becomes impossible for reasons within our responsibility.

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- 8.4 A right to cancel due the principal or us according to para. 8.2 or para. 8.3 generally only extends to the part of the contract not yet fulfilled. To the extent as partial deliveries or partial performance performed for the principal is unusable for the principal due to default, he is also entitled to cancel with respect to these partial deliveries and part performances.
- 8.5 Otherwise, we are liable in case of default for each complete week of exceeding the contractual delivery date within the scope of lump sum reimbursement for default in the amount of 0.5 % of contractual value of the share of the contract concerned by default, but at maximum not more than 5 % of the contract value as liquidated damages being the full and final compensation for any damages due to the delay.
- 8.6 Further rights from default, especially claims for damages, are excluded for the scope determined in item 11.

9. Defects in Deliveries and Services

We are liable for defects in deliveries and services ñ no matter whether they are due to faulty engineering, bad materials or faulty workmanship ñ according to the following regulations:

- 9.1 We must be immediately notified of defects. Complaints about defects are excluded after execution of acceptance by the principal for those which could be detected at the agreed type of acceptance.
- 9.2 In case of faulty deliveries, we will, by our choice, remedy or take back and replace by faultless deliveries; we will also remedy or newly perform faulty services.
- 9.3 In case of failure of remedy or replacement delivery ñ especially after fruitless expiry of a reasonable grace period set by the principal ñ the principal may request cancellation of the contract or reduction of the price. The right for cancellation of the contract only extends to the faulty part of deliveries and services and to those parts which are unusable for the principal due to the defect.
- 9.4 The claim for defects is limited in time for 12 months after passage of risk.
- 9.5 Further rights due to defects ñ especially contractual or extracontractual claims for damages not caused to the deliveries and services themselves ñ are excluded to the extent determined in item 11.

10. Reservation of Title

- 10.1 We retain title to the goods delivered (privileged property) until fulfillment of all receivables, especially the respective balance of receivables, which we are due from the principal within the scope of the business relation.
- 10.2 Treatment and processing of the privileged property is performed for us as manufacturer in the sense of §950 BGB without obliging us. The goods treated and processed are deemed to be privileged property in the sense of para. 10.1. In case of processing, combination and blending of the privileged goods with other goods by the principal, we are due co-ownership in the new goods in relation of the invoice value of the privileged goods to the invoice value of the other goods used. If our title lapses due to combination or blending, then the principal even now assigns to us the title in the new stock or the goods due to him in the scope of the invoice value of the privileged goods and safekeeps them for us without charge. Our co-ownership rights are deemed to be privileged goods in the sense of para. 10.1.
- 10.3 The principal may only resell the privileged goods within the scope of his usual business transactions, under his normal business conditions and for as long as he is not in default, under the condition that he agrees on reservation of title with his customer and that the receivables from reselling pass to us according to the paragraphs 10.4 through 10.6. He is not authorized to perform other dispositions of the privileged goods. Also deemed to be reselling is use of the privileged goods to fulfill service contracts and contracts for work done and materials supplied.
- 10.4 The receivables of the principal from resale of the privileged goods are assigned to us even now; this applies in case of allocation to a current account of the receivable from resale in the amount also for the respective balance receivable. The receivables assigned serve as collateral to the same extent as the privileged goods.
- 10.5 If the privileged goods are resold by the principal together with other goods not delivered by us, then receivables from resale respectively the balance of receivables are assigned to us in relation of the invoice value of the privileged goods to the invoice value of the other goods.
- 10.6 In case of resale of goods, in which we hold co-ownership according to para. 10.2, we are assigned a share of the receivable corresponding to our share in ownership.
- 10.7 The principal is entitled to collect receivables from resale or receivables balances unless we revoke the authorization to collect in the cases stated in para. 3.4. Upon our request, he is obliged to immediately inform his customers about assignment to us ñ to the extent we do not do this ourselves ñ and provide us with the information and documentation necessary for collecting.
- 10.8 The principal is in no case authorized to otherwise assign the receivables. This also applies to factoring transactions; these are not allowed to the principal even based on the authorization to collect. But we are willing to approve factoring transactions in individual cases if the countervalue from this finally flows to the principal and payment of our receivables is not endangered.
- 10.9 In the cases stated in para. 3.4, we are also entitled to prohibit treatment and processing as well as resale of the privileged goods. In these cases as well as in case of violation by the principal of the obligations from para. 10.2, we may request return of the privileged goods at cost of the principal under exclusion of a right of retention. The principal even now authorizes us to enter his business operations and take away the privileged goods. Taking back is not assumed to be cancellation of the contract.
- 10.10 If the value of collateral provided exceeds the receivables secured by more than 10 % in total, then upon request of the principal we are to this extent obliged to release

collateral by our choice. The principal must immediately notify us about levy of execution or other impairment by third parties.

- 10.11 If the reservation of title or assignment is not valid under the law, under which the goods are located, then collateral corresponding to reservation of title or assignment under these laws is deemed agreed. If according to this cooperation of the principal is required, then he must take all measures required for establishment and receipt of such rights.

11. General Exclusion of Liability

- 11.1 Our liability is determined solely by the agreements made in the above sections. All rights not expressly granted there, for instance for cancellation, termination or reduction as well as for reimbursement of damages of any kind ñ no matter on what legal grounds, especially also for culpa in contrahendo, other breach of duty, tortious act ñ are excluded. We are not liable for indirect and/or consequential damage, like for instance loss of profit, loss of production, waiting time for personnel, loss of interest, missed business opportunities, etc.
- 11.2 This exclusion of liability does not apply

- in case of intent;
- in case of gross negligence by statutory representatives or senior executives;
- in case of culpable violation of substantial contractual obligations, to the extent as this endangers achievement of the purpose of the contract.

To the extent as we are not blamed of intentional breach of contract, the liability is limited to reimbursement of damage typical for the contract and foreseeable. Furthermore, compulsory liability for culpable injury to life, body or health as well as under product liability act remains untouched.

12. Place of Fulfillment, Partial Invalidity

- 12.1 Place of fulfillment for our deliveries is the location (supplying workshop, warehouse, trans-shipment point) in which they are located upon dispatch to the principal; for the payment obligation of the principal, it is our domicile.
- 12.2 In case of invalidity of individual contract regulations, the remainder remains binding; an invalid regulation must be replaced by a valid one coming as close as possible to the economic purpose of the invalid one.

13. Place of Jurisdiction, Applicable Law

- 13.1 Place of jurisdiction for all legal disputes, also for summary enforcement of bills of exchange and check proceedings, is Essen. But we may sue the principal also in courts of his general place of jurisdiction.
- 13.2 For all legal relations between us and the principal, exclusively the laws of the Federal Republic of Germany authoritative for legal relations of domestic parties apply.