

## General Conditions of Sale and Supply for commercial transactions between businesses<sup>1</sup>

### I. General

- All supplies and services shall be subject to the General Conditions of Sale and Supply and potential special contractual agreements. Differing general terms and conditions of the purchaser shall not be applicable even if an order has been accepted.
- All offers shall not be engaging and/or binding; supplier shall not be obliged to accept offers based on pricelists, circular letters or general offers that have been sent out.
- The supplier shall only be contractually obliged by written confirmation of an order; only written confirmation shall have relevance with regards to the extend and execution of an offer. Supplementary agreements, modifications and differing conditions shall only be valid if confirmed by the supplier in writing.
- The supplier shall retain its property and copyright for all samples, quotations, drawings and similar information of all kind –even in electronic form–; that information shall not be made accessible to third parties. Supplier shall be obliged to get purchaser's approval in case supplier wants to make accessible to third parties information and/or documents that have been referred to as confidential by purchaser.

### II. Prices and terms of payment

- If not otherwise agreed prices shall be quoted ex works including loading on-site, excluding, however, packaging and unloading. Tax on sales (VAT) as determined by applicable law shall be added to the prices.
- Payment shall be without any deduction on account of supplier, and if nothing else has expressly been agreed, as described below:  
50 % advance payment after receipt of order's confirmation,  
40 % as soon as supplier has notified purchaser that main parts are ready for supply,  
10 %, the remaining amount, within a month after passing of risk and issuing of an invoice.
- Purchaser may only retain payment or offset payments with own counterclaims insofar as counterclaims are undisputed or have become legally binding.

### III. Time for supply, delay

- Time for supply shall be determined by contractual agreement. Observation of supply time by supplier requires that all commercial and technical questions between parties have been clarified and purchaser has fulfilled all its obligations such as e.g. receipt of required governmental approvals and certificates or making of the advance payment. If such is not the case, time for supply shall be reasonably extended. This shall not be the case insofar as delay accrued because of supplier's default.
- Compliance with time for supply shall be under the reserve that supplier itself has been delivered properly and timely. Supplier shall notify purchaser as soon as possible about emerging delays.
- Supplier shall be deemed to have complied with time for supply if the product to be supplied has left supplier's work in time or supplier has notified purchaser about its readiness to supply in time. Insofar as sale or supply is on acceptance, the appointed acceptance day shall be decisive –apart from cases where purchaser legitimately declines to accept– alternatively notification about readiness for acceptance shall be decisive.
- In case delivery and/or acceptance of the product to be supplied is delayed due to purchaser's default, purchaser shall compensate supplier for all costs arising from delay, starting one month after readiness to supply or readiness for acceptance has been notified to purchaser.
- In case time for supply cannot be complied with by supplier because of force majeure, collective action or other events that are outside of supplier's control, time for supply shall be extended appropriately. Supplier shall notify purchaser as soon as possible about beginning and end of such circumstances.
- Purchaser shall have the right to withdraw from the contract in accordance with the rules provided by law in case purchaser has – under consideration of exceptional cases provided by law– set an appropriate time for delivery after maturity date and supplier has not complied with this set time. Further claims arising from delay of supply shall only be determined by section VII.2. of the General Conditions.

### IV. Transfer of risk, acceptance

- Risk shall pass to purchaser as soon as the product to be supplied has left supplier's work; this shall apply for part-supply or in cases where supplier has taken over other services such as supply costs and/or supply and installation, too. If purchase or supply is on acceptance, acceptance shall determine transfer of risk. Acceptance shall take place without delay on the set acceptance date, alternatively after supplier has notified purchaser about its readiness for acceptance. Purchaser shall not refuse acceptance other than in cases where a substantial defect exists.
- In cases where supply and/or acceptance is delayed or not happening due to circumstances supplier cannot be accounted for, transfer of a risk shall pass to purchaser on the day on which readiness to supply and/or readiness for acceptance has been notified to purchaser. Supplier shall be obliged to affect an insurance on purchaser's costs in case purchaser demands insurance.
- Part delivery shall be admissible insofar as part delivery is reasonable.

### V. Redemption of title

- The delivered product shall remain the sole property of supplier until all its claims arising out of the business connection with the purchaser have been met. This shall be the case for claims arising out of other contracts that have been concluded between the parties at the same time or later, too.
- If the combined value of supplier's security interest exceeds the value of all secured claims by more than 20 %, supplier shall release a corresponding part of the security interest if so requested by purchaser.
- Supplier shall be entitled to insure the product to be supplied on costs of purchaser against theft, breakage, fire, water and other damages, insofar as purchaser has not demonstrated that insurance has been effected.
- Purchaser shall have the always revocable right to resell the supplied product in the ordinary course of business unless its claim arising out of the resale has been ceded to a third party and/or cannot be ceded to supplier for other reasons; the right to resale shall automatically be revoked in case of suspension of payment.  
Purchaser by now cedes all its claims arising out of resale, lease or economically similar dispositions to supplier in order to safeguard supplier's claims; in this context it shall not matter if deposition over the supplied product happens without or after a connection of the supplied product with another product.  
Purchaser shall be entitled to assure claims that have been ceded to supplier; this right can be revoked by supplier. However, purchaser shall immediately transfer payments received to supplier insofar as payment to supplier is due.  
Furthermore purchaser shall not impawn or chattel mortgage the supplied products. Purchaser shall inform supplier forthwith of any seizure or other acts of intervention by third parties.
- Where purchaser fails to fulfill its contractual obligations, especially in cases of delayed payment, supplier shall be entitled to take back the supplied product after having sent a warning letter; purchaser shall be obliged to surrender the supplied product.  
In the above case purchaser's right to assure ceded claims in accordance with No.3 shall be revoked.
- Processing and modifications of the supplied product by purchaser shall be deemed to be exclusively for supplier. In case the supplied product is processed with other products that are not supplier's property, supplier shall be joined owner of the new product; proportion of joined ownership shall be determined by the accounted value of the supplied product in comparison to the purchase price of other products that have been processed (at the time of processing).
- Supplier's right to take back the supplied product because of the retained property title shall only be claimed once supplier has withdrawn from the contract.
- In case bankruptcy proceedings have been instituted against purchaser, supplier shall be entitled to withdraw from the contract and demand immediate return of the supplied product. In case purchaser has made an advance-payment, an amount of 25 % of the invoiced net amount shall remain with supplier. However, if supplier can prove that higher damage or higher costs have occurred because of the return of the supplied product, advance-payment shall remain with the supplier up to the damage or costs occurred.

<sup>1</sup> This text is a translation of the German version of Grunwald GmbH's General Conditions of Sale and Supply. In case of differences in the meaning of the German and English text, the German text shall prevail.

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### VI. Defects of quality, defects of title

Supplier shall be liable for defects of quality and defects of title as follows; other claims with exception of claims under section VII. shall be excluded:

#### Defects of quality

1. In case the supplied product is defective by supplier's default, supplier shall be entitled to remedy the defect by –at its own choice– subsequent improvement or replacement free of charge. Parts that have been replaced shall become property of supplier. In case supplier is not ready or able to subsequently improve or replace the defective product, especially if subsequent improvement and/or replacement is unduly delayed by supplier's default or at least three subsequent improvement efforts have failed, purchaser shall be entitled, notwithstanding claims for damages under section VII., to withdraw from the contract or demand an abatement of the purchase price. In case the defect is only insubstantial, purchaser shall only be entitled to demand an abatement of the purchase price.
2. In case of a defect of quality, purchaser shall consult supplier and give supplier the necessary time and opportunity to undertake subsequent improvement and/or replacement that is deemed to be necessary by supplier; otherwise supplier shall not be liable for accruing consequences. Purchaser shall be entitled to rectify the defect itself or through third parties and demand compensation from supplier for the costs necessary only in urgent cases where the operational safety is endangered and/or for the prevention of disproportional high damage; supplier shall be notified without any delay.
3. Supplier shall bear the direct costs of replacement parts including shipment costs accruing from subsequent improvement and/or replacement only insofar as the supplied product was legitimately rejected. Purchaser shall bear the costs for de-/reassembling as well as costs for the potentially necessary provision of mechanics and assistants required, including travel expenses.
4. Supplier shall not be liable in the following cases: Unsuitable or improper use, defective assembling and/or installation through purchaser and/or third parties, wear and tear, defective or negligent handling, improper maintenance, unsuitable equipment, defective construction works, unsuitable underground, chemical, electrochemical or electrical influences, as long as supplier cannot be accounted for these cases.
5. In case purchaser or a third party subsequently improve the supplied product improperly, the supplier shall not be liable for the accruing consequences. The same shall be the case for modifications of the supplied product without prior approval of supplier.

#### Defects of title

6. In case use of the supplied product infringes inland copyrights or other industrial property rights, supplier shall principally bear the costs to redress the right for further use of the supplied product to purchaser or reasonably modify the supplied product so that infringement is brought to an end. Purchaser shall have the right to withdraw from the contract in case the above is not possible within economically appropriate conditions or within an appropriate period of time. In case of the above the supplier shall have the right to withdraw from the contract, too. Furthermore, supplier shall indemnify purchaser from claims of the respective holder of the industrial property right, only if the claims are undisputed or have become legally binding.
7. In case of infringements of industrial property rights supplier's obligations under section VI.6. shall be exclusive with the exception of claims under section VII. 2.. Purchaser shall only have claims under section VI.6. if supplier has been immediately notified by purchaser about the asserted infringement and if purchaser supports supplier appropriately in defending the asserted claims and if purchaser enables supplier to modify the supplied product in accordance with section VI.6. and if supplier's right to defend against the asserted claims –including settlements– is reserved and if the defect in title is not caused by purchaser's instruction and if the infringement is not caused through an

arbitrary modification of the supplied product or through use of the supplied product in a non-contractual way.

### VII. Liability

1. In case purchaser cannot use the supplied product as contractually determined by supplier's default because of defaulted or defective proposals or advice before or after the conclusion of the contract, or through the infringement of other contractual secondary obligations – especially through instructions for the use and maintenance of the supplied product– sections VI. and VII. 2. shall be applicable accordingly; further claims shall be excluded.
2. Supplier shall be liable for damages accruing outside of the supplied product –no matter what the legal basis of the claim is– only for damages
  - a. caused deliberately,
  - b. caused by gross negligence of the proprietor or an executive of supplier's business,
  - c. to life, body, health caused by supplier's default,
  - d. caused by defects that have fraudulently been concealed or where the absence of the defect has been warranted by the supplier,
  - e. caused by defects of the supplied product insofar as supplier is liable for personal or property damage through privately used products in accordance with the German product liability law [Produkthaftungsgesetz].

In case of breach of essential contractual obligations supplier shall be liable for damages caused by cross negligence of its employees; in case of slight negligence supplier's liability shall be limited to the reasonably foreseeable damage which is intrinsic to the contract.

3. Further claims shall be excluded. In particular, supplier shall not be liable for loss of profit or loss of production.

### VIII. Limitation period

All purchaser's claims –no matter on which legal basis they are set– shall be subject to a limitation period of 12 months. Claims for damages in accordance with section VII.2a)–e) as well as recourse claims in accordance with § 479 of the German civil code [Bürgerliches Gesetzbuch] shall be subject to limitation periods provided by law. Limitation periods provided by law shall be applicable for defects of a building or defects of supplied products that are usually used in connection with a building and have caused the defectiveness of the building, too.

### IX. Use of software

In case the supplied product includes software, purchaser shall have the non-exclusive right to use the supplied software including documentation. Software is left to purchaser for the intended use with the supplied product only. Use of software on more than one system shall be prohibited. Purchaser shall copy, modify, translate or decompile the software only to the extent admitted by law (§§ 69a ff. German copyright law [Urhebergesetz]). Purchaser shall be obliged not to remove or modify manufacturer's information –especially copyright statements– without prior explicit approval of supplier. All other rights pertaining to software and documentation including copies hereof remain with the supplier and software deliverer respectively. Issuing of sub-licenses shall be prohibited.

### X. Applicable law, venue

1. Privy of contract shall be governed exclusively by the law of the Federal Republic of Germany, to the exclusion of the United Nations convention on contracts for the international sale of goods (CISG).
2. In case purchaser is a business person and/or a legal person under public law and/or a separate estate under public law, competent court for the entire legal relationship between the parties shall be the appropriate court at supplier's place of business. However, supplier shall be entitled to bring an action at purchaser's main place of business.

### XI. Severability clause

The legal invalidity of one or more provisions of the General Conditions of Sale and Supply shall in no way effect the validity of the remaining provisions. The invalidated clause shall be replaced by a clause that is admissible in accordance with law and judicature and that regulates the matter economically and legally in such a way that the clause comes as close as possible to the substituted clause and is legally admissible.

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