



GENERAL CONDITIONS of Schäfer Elektronik GmbH, Achern

I. GENERAL CONDITIONS

1. The scope of the supplies or services (hereinafter called « Supplies ») shall be defined by the written declarations of both parties to the contract. General terms and conditions of the Purchaser shall apply only where expressly accepted in writing by the supplier or service provider (hereinafter called "Supplier").
2. For cost estimates, drawings and other documents (hereinafter called "Documents"), the Supplier reserves all rights, title right and interest in the property and the copyright. Such Documents may not be made available to third parties without the prior consent of the Supplier and they shall, upon request, be immediately returned to the Supplier if he is not awarded the contract. Sentences 1 and 2 shall apply reciprocally to Purchaser's Documents; however, these may be made available to those third parties to whom the Supplier may transfer Supplies.
3. The Purchaser shall have the non-exclusive right to use standard software in unchanged form with the stipulated performance characteristics for the agreed equipment. The Purchaser is allowed to make two backup copies without the Supplier's express consent.
4. Partial Supplies shall be permissible where they can be reasonably expected of the Supplier.

II. PRICES AND TERMS OF PAYMENT

1. Prices shall be ex works and shall exclude packing and the sales tax payable under the applicable law.
2. If the Supplier has undertaken the assembly or erection, the Purchaser shall bear all required incidental costs in addition to the agreed contract price unless otherwise agreed.
3. Payments shall be made free at Supplier's paying office.
4. The purchaser may set off only those claims that are undisputed or have been finally determined in a legally binding manner.

III. RETENTION OF TITLE

1. The items of Supplies (Secured Goods) shall remain the property of the Supplier until each and every claim against the Purchaser to which the Supplier is entitled under this business relationship has been duly satisfied. If the value of all security rights of the Supplier exceeds the value of all secured claims by more than 20%, the Supplier shall release a corresponding part of the security rights at the Purchaser's request.
2. For the duration of the retention of title, the Purchaser is prohibited from giving the items of Supplies in pledge or as security, and resale shall be permissible only to resellers in the ordinary course of business and only on condition that the reseller receives payment from his customer or retains title so that the property is transferred to the customer, only after fulfilment of his obligation to pay.
3. In case of seizure or other acts or interventions by third parties, the Supplier shall be immediately informed thereof in writing by the Purchaser.
4. In cases of fundamental non-performance of contractual obligations by the Purchaser, especially a delay in payment, the Supplier shall be entitled to take back the goods following a demand for payment. The Purchaser shall be obliged to return the purchased goods. The taking back, line assertion of the retention of title or the seizure of the Secured Goods by the Supplier does not mean termination of the contract except if expressly stated by the Supplier.

IV. TIME FOR DELIVERY AND DELAY

1. Observance of the stipulated time for delivery is conditional upon the timely receipt of all documents, necessary permits and releases especially of plans to be provided by the Purchaser, as well as fulfilment of the agreed terms of payment and other obligations by the Purchaser. Unless these conditions are fulfilled on time, the time for delivery will be extended accordingly, except where the Supplier is responsible for the delay.
2. If non-observance of the time for delivery is due to force majeure such as mobilisation, war, riot or similar events, e.g. strike or lockout, such time shall be extended accordingly.
3. Purchaser's claims for compensation shall be excluded in case of delayed delivery even after expiry of an extension of time that may have been granted to the Supplier. Purchaser's right to terminate the contract shall remain unaffected after the expiry of an extension granted to the Supplier that did not result in delivery.
4. If dispatch or delivery is delayed at Purchaser's request by more than one month after notice was given of the readiness for dispatch, the Purchaser may be charged storage costs for each month thereafter to the amount of 0,5% of the price of the supplied goods but in no event shall the aggregate storage charges exceed a total of 5% of the price. The parties to the contract are at liberty to furnish proof of higher or lower storage costs.

V. TRANSFER OF RISK

1. Even where "carriage paid" delivery has been agreed, the risk shall pass to the Purchaser as follows:
 - a) If the supply does not include assembly or erection, when goods have been delivered to or picked up by carrier. At the Purchaser's request and expense, Supplies shall be insured by the Supplier against the ordinary risks of transport.
 - b) If the supply includes assembly or erection, the day on which they are taken over into Purchaser's own service or, if so stipulated, after a satisfactory trial run.
2. If the dispatch, the delivery, the beginning or completion of assembly or erection, the taking over into Purchaser's own service or the trial run is delayed for reasons within the Purchaser's responsibility, or if the Purchaser has failed for other reasons to accept delivery, the risk shall pass to the Purchaser.

VI. ASSEMBLY AND ERECTION

Unless otherwise agreed in writing, assembly and erection shall be subject to the following provisions:

1. The Purchaser shall provide at his own expense and in a timely manner:
 - a) all earth-moving and construction work and other ancillary services not specific to the Supplier's trade as well as the necessary skilled and unskilled labour, materials and tools.
 - b) the equipment and materials necessary for assembly, erection and commissioning such as scaffolds, lifting equipment etc., fuels and lubricants.
 - c) energy and water at the point of use, including connections, heating and lighting.
 - d) suitable, dry and lockable rooms of sufficient size at the site for the storage of machine parts, apparatus, materials, tools etc. and adequate working and recreation rooms for the assembly personnel including appropriate sanitary facilities. Furthermore, the Purchaser shall take all measures he would take for the protection of his own property to safeguard the property of the Supplier and of the assembly personnel,
 - e) protective clothing and protective devices which are needed because of particular conditions on the site

2. Before the start of assembly or erection, the Purchaser shall make available of his own accord all necessary information concerning the location of concealed electric power, gas and water lines or of similar installations as well as the required data concerning statics and underlying conditions of the site.
3. Before the beginning of assembly or erection, the necessary materials and equipment to start work must be provided at the site and all preparations must have advanced to such a point that the assembly or erection can be started as agreed and carried out without interruption. Access roads and the site itself must be level and clear.
4. If the assembly, erection or commissioning is delayed by circumstances for which the Supplier is not responsible, the Purchaser shall bear an appropriate amount of the costs of waiting periods and of any additional travelling of the Supplier or the assembly personnel that may be necessary.
5. The Purchaser shall attest to the Supplier at weekly intervals the hours worked by the assembly personnel and he shall immediately confirm in writing the completion of assembly, erection or commissioning.
6. If, after completion, the Supplier requests acceptance of the Supplies, it shall be carried out by the Purchaser within two weeks of the Supplier's request, failing which acceptance is deemed to have taken place. Acceptance is also deemed to have taken place if after completion of any agreed test phase the Supplies are put to use.

VII. TAKING DELIVERY

Deliveries, even with minor defects, have to be accepted by the Purchaser.

VIII. WARRANTY

For defects which include the absence of expressly warranted characteristics, the Supplier shall be liable as follows:

1. The Supplier shall, at his option and expense, repair, replace or newly provide any parts or services whose usefulness is impaired more than insignificantly within 12 months from the date of the transfer of risk – regardless of the period of operation – owing to circumstances that existed before the transfer of risk.
2. Warranty claims are subject to a limitation period of 12 months after notification of the defect. Notice in writing shall be given to the Supplier immediately after discovery of the defect.
3. In case of notification of a defect, Purchaser's payments may be withheld in reasonable proportion to the noticed defect. If the contract pertains to the conduct of a Purchaser's business, the Purchaser can withhold payments only if the legitimacy of the asserted complaint can be established beyond doubt.
4. The Supplier shall be given adequate time and opportunity to remedy the defect. If he is refused these, the Supplier shall have no liability for the defect.
5. If an adequate extension granted to the Supplier expires without the defect being remedied, the Purchaser shall have the right to demand cancellation of the contract or a reduction of the purchase price.
6. The warranty does not cover natural wear and tear or damage arising after the transfer of risk, from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software errors. The warranty does not cover modifications or repairs carried out improperly by the Purchaser or by third parties.
7. The warranty period for repairs or replacement Supplies (of goods or services) shall be 6 months. It shall be the later of: (1) 6 months from the date of repair or replacement; or (2) the remaining length of the original warranty period for the Supplies. For those parts which cannot be put to the intended use because of the interruption of service, the warranty period shall be extended by the period of service interruption caused by the repair or replacement supply.
8. The periods specified in paras. 1., 2. and 7. shall not apply where longer periods are provided by law according to § 638 BGB.
9. Except as provided above, any other warranty claims of the Purchaser against the Supplier and the Supplier's agent shall be excluded. However, clause XI (Further liability) shall remain unaffected.

IX. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT

1. If a third party, because of an infringement of an industrial property right or copyright (hereinafter called "Property Rights") by products furnished by the Supplier and used in conformity with the contract, asserts legitimate claims against the Purchaser, the Supplier shall be liable to the Purchaser as follows:
 - a) At his own option and expense, the Supplier shall either obtain a right to use the product, modify the product so as not to infringe the Property Rights or replace the product. If this is not possible to the Supplier on acceptable terms, he shall have to take back the product and refund the purchase price.
 - b) Supplier's aforesaid obligations shall exist only on condition that the Purchaser immediately notifies the Supplier in writing of the claims asserted by the third party, that he does not acknowledge an infringement and that all countermeasures and settlement negotiations are reserved to the Supplier. If the Purchaser stops using the product to reduce the damage or for other important reasons, he shall be obliged to make it clear to the third party that the suspended use does not mean acknowledgement of an infringement of Property Rights.
2. Claims of the Purchaser shall be excluded if he is responsible for an infringement of Property Rights.
3. Claims of the Purchaser shall also be excluded if the infringement of Property Rights was caused by specific demands of the Purchaser, by a use of the product not foreseeable by the Supplier or by the product being altered by the Purchaser or being used together with products not provided by the Supplier.
4. Further claims against the Supplier shall be excluded. However, Clause XI (Further liability) shall remain unaffected and so shall be Purchaser's right to terminate the contract.

X. IMPOSSIBILITY OF PERFORMANCE, CONTRACT ADAPTATION

If it is impossible for the Supplier to carry out the Supplies or where unforeseeable events as described in Clause IV, para. 2., substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted accordingly with due regard to the principle of good faith. Where this is not economically reasonable, the Supplier shall have the right to terminate the contract. If the Supplier wants to make use of this right of termination, he shall notify the Purchaser in writing, immediately after becoming aware of the significance of the event. This shall apply even where at first an extension of the delivery time had been agreed with the Purchaser.

XI. FURTHER LIABILITY

Except as provided herein, any other claims for damages of the Purchaser shall be excluded regardless of whether they are based on positive breach of contractual obligations, violation of obligations in contract negotiations, breach of warranty, tort or other legal theory. This exclusion shall not apply where e.g. under the product liability law or in cases of wilful misconduct, of gross negligence, of the absence of warranted characteristics or of the fundamental non-performance of contractual obligations, there is a legally binding liability. However, liability for damages arising from the fundamental non-performance of contractual obligations shall be limited to the foreseeable damage normally covered by a contract except in cases of wilful misconduct or gross negligence. This limitation does not imply a change in the burden of proof to the detriment of the Purchaser.

XII. CHOICE OF FORUM

1. If the Purchaser is a businessman, the sole forum for all disputes arising directly or indirectly out of the contract shall be the place of the Supplier's head or branch office at the Supplier's option.
2. All relations arising out of the contract shall be governed by German law not including the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIII. VALIDITY OF THE CONTRACT

Even in case of legal invalidity of individual items, the remaining parts of the contract shall remain binding save where adherence to the contract would mean an undue hardship on one of the parties.