

GENERAL CONDITIONS OF SALES AND DELIVERY

1. General

1.1 These General Terms and Conditions of Delivery govern all legal relations between the parties to the purchase by the Customer of deliveries, services and goods from the Supplier, and form an integral part of contracts drawn up between the Supplier and the Customer unless explicitly agreed otherwise.

1.2 Any provisions deviating from the General Conditions of Sale will only be legally binding if they have been explicitly agreed in writing by the Supplier.

1.3 All offers made by the Supplier are without obligation. This applies likewise to all details provided by the Supplier, particularly in catalogs, price lists and brochures. Orders and instructions that can be executed immediately following receipt of the order or instruction will not be confirmed in writing. The contract will come into force with the execution of the order. If orders cannot be executed immediately following receipt of the order or instruction, the Supplier will issue written confirmation of receipt of the order or instruction. The contract will only come into force when the written confirmation of instructions is received by the Customer from the Supplier. The confirmation of instructions will represent a definitive record of the scope and execution of the delivery. Services not included in the confirmation of instructions will be charged separately.

1.4 All agreements and legally relevant declarations made by the contracting parties will only be valid in written form. Declarations in text form, which are transmitted or recorded by means of electronic media, will have equivalent validity to the written form if so agreed by the parties.

2. Scope of deliveries

The scope and content of deliveries from the Supplier will be listed definitively in the confirmation of order/instructions or the delivery note and any attachments thereto.

3. Brochures and technical documentation

3.1 All details in brochures, advertisements, price lists, catalogs, technical documentation, assembly and operating instructions, and on the web page of the Supplier will be subject to technical modification and improvement, and will only depict the contractual nature of the delivery item if so indicated explicitly.

3.2 All technical documentation will remain our intellectual property and must not be reproduced or passed to third parties without our prior agreement, nor must it be used for any purpose other than that for which it was supplied.

4. Regulations in the country of destination

4.1 The Customer must notify the Supplier, at the latest when placing the order, of any regulations and standards that must be adhered to in the country of destination and which relate to the execution of the deliveries, the operation of the delivery items, and to health and safety provisions.

4.2 Deliveries made by the Supplier will meet the relevant regulations and standards in force at the registered office of the Supplier.

5. Prices

5.1 Price details in catalogs, brochures and the like will not be binding. The prices specified by the Supplier in the confirmation of instructions will be definitive. If there is no confirmation of instructions, the current price list of the Supplier will be binding.

5.2 Unless otherwise agreed, all prices will be specified net ex works, inclusive of packing, in Swiss Francs or Euros, and without any deductions.

5.3 Unless otherwise agreed, the Customer will pay any additional charges, e.g. freight, insurance, export permits, transit permits, import or other permits, and certifications. The Customer will likewise pay for any form of tax, toll, tariff, customs duty or other such charge that may be payable in relation to the contract, or will refund the Supplier against corresponding proof of payment if the Supplier is obliged to pay said charges.

5.4 The Supplier reserves the right to make a price adjustment if wage rates or the cost of materials changes between the date the contract is concluded and the date of delivery. An appropriate price adjustment will also be made if the delivery period is extended due to any of the reasons cited under Paragraph 8.2, or if the type or scope of the agreed deliveries or services is changed, or if the documentation supplied by the Customer is incomplete or does not correspond to the actual circumstances.

6. Conditions of payment

6.1 Payments must be made in accordance with the agreed payment conditions, without any deductions for cash, expenses, taxes, tolls, tariffs, customs duties or other such charges. The Customer will not be entitled to refuse payment on the basis of any type of claim against the Supplier, or to offset the price asked with any form of counter claim. The term of payment will be 30 days from the date of invoice unless otherwise agreed.

6.2 Any objections to invoices must be notified within 10 days of receipt of invoice. Invoices will otherwise be deemed accepted.

6.3 Unless otherwise agreed in writing, demands made by the Supplier upon Buyers will be due for payment immediately, and must be paid net within 30 days of the date of invoice at the latest. The due date will also be the cut-off date. Interest at a rate of 8% and calculated from the due date plus reminder fees will be added to invoices that are not settled within the 30 day payment period. The Supplier will not be obliged to give notice of default. The Supplier will be entitled to sue for payment without further notice and have the debt recovered by a third party at the expense of the Customer, or to withdraw from the contract.

6.4 If the Supplier has justified cause to assume that claims, particularly claims for compensation, made by the Supplier under the terms of the contract may be prejudiced, the Supplier will be entitled to demand prepayment, payment of a deposit or a suitable security from the Customer after the contract is concluded. The Supplier will be entitled to withhold deliveries until prepayments, deposits or securities have been paid. If such prepayments, deposits or securities are not paid on time, the Supplier will be entitled to either continue the contract or withdraw from the contract, and to claim for damages in either case.

7. Reservation of ownership

7.1 The Supplier will remain the owner of all deliveries made by the Supplier until such time as the Supplier receives full payment in accordance with the contract. The Customer will have a duty to cooperate with any measures required to protect the property of the Supplier; in particular, the Customer will authorize the Supplier at the expense of the Customer to enter or note the reservation of ownership in public registers, books or similar records in accordance with the relevant state law, and to complete all the associated formalities. The Customer will be responsible for the maintenance of deliveries at the expense of the Customer for the duration of the reservation of ownership, and for insuring deliveries for the benefit of the Supplier against theft, breakage, fire, water and other risks. Furthermore, the Customer will take any measures required to ensure that the claim to ownership of the Supplier is neither prejudiced nor invalidated.

8. Delivery period and delivery dates

8.1 The delivery period will be defined in the confirmation of instructions, and will start on the date said confirmation is generated. If no confirmation of instructions is generated, the delivery period specified by the Customer will apply. The Supplier will endeavor to adhere to the delivery periods and dates. However, the Supplier cannot give any guarantee that delivery periods and dates will be adhered to. Unless otherwise agreed, the Customer will not be entitled to assert claims of any type on the basis of delays. Likewise, the Customer will not be entitled to cancel a delivery on the basis of failure to adhere to a delivery period or date.

8.2 The delivery period will be extended under the following circumstances:

- a) if the Supplier does not at the correct time receive details that are required by the Supplier in order to fulfill the contract or if said details are subsequently amended by the Customer, thereby causing a delay in the deliveries or services;
- b) if impediments occur that cannot be prevented by the Supplier despite the application of due care, irrespective whether said impediments arise on the premises of the Supplier, the Customer or a third party. Examples of such impediments are: significant equipment failures; accidents; labor disputes; delayed or defective delivery of the necessary raw materials, semi-finished or finished products; official actions or omissions; acts of God; if the Customer or a third party experiences a backlog in the work they have to carry out; or if the Customer fails to meet its contractual obligations, particularly the agreed conditions of payment.

9. Packing

Unless otherwise agreed, the Supplier will be responsible for packing.

10. Transfer of utility and risk

10.1 Utility and risk will be transferred to the Customer with the dispatch of deliveries from the factory at the latest.

10.2 If dispatch is delayed due to a fault of the Customer or a vicarious agent of the Customer, or for reasons not attributable to the Supplier, the risk of destruction of the delivery items will be transferred to the Customer at the time that was originally planned for the delivery. The deliveries will be stored thereafter at the expense and at the risk of the Customer.

11. Dispatch, transport and insurance

11.1 The Supplier must be notified at the correct time of any special preferences relating to dispatch or transport. Transport will take place at the expense and at the risk of the Customer. Any complaints relating to dispatch or transport must be submitted immediately by the Customer to the last freight forwarder upon receipt of the deliveries or the freight documents.

11.2 The Customer will be responsible for insurance against damages of any sort.

11.3 A processing fee of at least 15% of the price of a delivery will be charged for goods that are returned for reasons not attributable to the Supplier. The Customer will bear the return costs.

12. Checking and acceptance of deliveries

12.1 The Supplier will check deliveries before dispatch as part of the certified quality assurance process of the Supplier.

12.2 The Customer must check the deliveries within a period of 10 days from receipt, and notify any defects immediately in writing. Claims by the Customer must be submitted in accordance with Paragraph 13. Failing any such notification, the deliveries will be deemed accepted and approved. With regard to defects in the deliveries or services that cannot be identified at this time, the Customer will remain entitled to claim under the warranty against defects in accordance with Paragraph 13.

12.3 Deliveries will be deemed accepted if the Customer does not perform the check within the specified period, or if the Customer refuses to accept delivery without being so authorized, or if the Customer uses the deliveries from the Supplier.

12.4 Defects of any type in deliveries will not entitle the Customer to any rights or claims other than those explicitly cited in Paragraph 12 or in Paragraph 13.

13. Warranty, liability for defects

13.1 Scope of warranty

The Supplier will guarantee that the items included in deliveries from the Supplier are free from material defect or defect in title, and have the asserted and presumed nature and fitness at the transfer of risk. Where the nature has not been asserted or agreed, an item will be free from material defect if it is suitable for the presumed use in accordance with the contract, or if it is suitable for the customary use, and its nature is such as is normal for goods of the same type and is such as the Customer can expect from this type of goods. A material defect will be present if a delivery or service is flawed or unusable as a result of poor materials, faulty design or deficient construction. Details about characteristics that are given in public statements by the Supplier, the salesperson or their assistants, and in particular in advertisements or in the description of items, will only represent descriptions or assertions in relation to the nature of deliveries if said details are explicitly identified as such.

13.2 Exclusions from warranty

The warranty will exclude any defects or damages that are not demonstrably attributable to poor materials, faulty design or deficient construction of the deliveries or services, e.g. resulting from normal wear and tear, deficient maintenance, improper handling, failure to comply with assembly or operating instructions, excessive stress, unsuitable consumables, chemical or electrolytic effect, or resulting from other causes not attributable to the Supplier. The same will apply to the unregulated use of inhibitors, the untested use of corrosion protection agents, or the use of media that do not conform to the relevant standards. The Supplier will not be responsible for any type of deinstallation or reinstallation costs, travel costs, transport costs from or to the job site, assembly costs or costs payable to third parties.

13.3 Deliveries and services from subsuppliers

The Supplier will only accept responsibility for warranty in respect of deliveries and services from subsuppliers within the limits of the warranty given by the subsupplier.

13.4 Rights of the Customer in the event of defects

If a claim under warranty is made in respect of defects in deliveries, the Customer initially will only have the right to demand subsequent fulfillment of the contract. The Supplier will have the option to undertake subsequent fulfillment at the expense of the Supplier and in the form of repair or replacement delivery. Replacement refers to the provision of items of equal value, which items may be later products or thirdparty products. The Supplier can refuse the option of subsequent fulfillment if it entails disproportionate costs. In the event of complete or partial default of subsequent fulfillment, or if subsequent fulfillment is not possible, the Customer will be entitled to claim the compensation agreed for this event or, in the absence of such an agreement, to claim an appropriate reduction in the price. If the seriousness of the defect is such that the deliveries are usable only to a significantly restricted extent, the Customer will have the right to withdraw from that part of the contract relating to the deficient part of the deliveries. If partial acceptance of the deliveries is financially unacceptable for the Customer, the Customer will be entitled to withdraw from the whole contract. In this case, the Supplier will be obliged to refund any amounts paid to the Supplier in respect of the delivery components affected by the withdrawal.

13.5 Period of warranty

The period of warranty will be 24 months from delivery of the goods or 30 months from their date of manufacture. For parts that have been replaced or repaired, the period of warranty will recommence and last for 24 months from the delivery of the replacement parts.

13.6 Exclusion of further claims

All further claims by the Customer in respect of defects in materials, design or construction or in respect of the absence or inadequacy of characteristics will be excluded.

14. Cancellation of contract by the Supplier

If unforeseen events significantly change the financial importance or the content of the deliveries or services, or significantly affect the work of the Supplier, or if it is subsequently impossible to execute the contract, the contract will be adapted as appropriate. Where this is not economically viable, the Supplier will have the right to cancel the contract or the contract clause concerned. If the Supplier wishes to cancel the contract, the Supplier must notify the Customer as soon as the consequences of the event are known, even if an extension of the delivery period was initially agreed. In the event the contract is cancelled, the Supplier will be entitled to claim payment for deliveries already made. Claims for damages by the Customer in respect of such a cancellation of contract will be excluded.

15. Exclusion of further liability of the Supplier

All cases of breaches of contract and their legal consequences and all claims by the Customer, irrespective of their legal basis, will be governed conclusively by these conditions. In particular, any claims in respect of damages, diminution, termination of the contract or withdrawal from the contract will be excluded. Under no circumstances will claims by the Customer be admissible in respect of compensation for damages that do not occur in the delivery item or service itself, for example production failure, loss of use, loss of orders, loss of earnings or other indirect or direct damages. This exclusion from liability will not apply to illegal intent or gross negligence on the part of the Supplier, but will apply to illegal intent or gross negligence on the part of ancillary personnel. This exclusion from liability likewise will not apply if it contravenes obligatory law.

16. Right of recourse of the Supplier

If injury to individuals or damage to the property of a third party is caused by the actions or omissions of the Customer or the ancillary personnel of the Customer, and if a claim is made against the Supplier on this basis, the Supplier will have the right of recourse from the Customer.

17. Place of jurisdiction and applicable law

17.1 The place of jurisdiction for any disputes arising from the contractual agreement will be Urdorf/ZH (Switzerland), though the Supplier reserves the right to prosecute the Customer at the registered office of the Customer.

17.2 The contract between the Supplier and the Customer will be subject to Swiss law. The provisions of the Vienna Sales Law (United Nations agreement on contracts relating to the international sales of goods, concluded in Vienna on April 11, 1980) will apply.

Urdorf, 1. September 2002