

## **General terms of delivery for products and services of the Electrical Industry**

### **I. General provisions**

1. These general terms shall exclusively apply to the legal relations between the supplier and buyer associated with deliveries and/or the supplier's services (hereinafter: deliveries). The buyer's general terms and conditions shall only be applicable insofar the supplier has expressly consented to them. For the scope of the deliveries the written statements made by both parties shall be applicable.
2. The supplier shall retain unlimited ownership and exploitation rights to price estimates, illustrations and other documents (hereinafter: documents). The documents may only be disclosed to third parties upon prior consent by the supplier and shall be returned upon request if the order is not placed with the supplier. Accordingly, clause 1 and 2 shall be applicable to the buyer's documents; however the above may only be disclosed to third parties which the supplier has legitimately assigned with performing the deliveries.
3. The buyer shall be granted the non-exclusive right to use standard software and firmware according to the agreed service specifications, without altering them and on the equipment that was agreed. The buyer may not make a backup copy of standard software without express agreement.
4. Partial deliveries are permitted as far as this is reasonable for the buyer.
5. The term "damage claims" stated in these delivery terms also includes claims for the reimbursement of wasted expenditures.

### **II. Prices, payment terms and off-setting**

1. Prices are ex works and do not include packaging or the respective applicable statutory VAT.
2. In the event the supplier performs set-up or installation and no other agreements have been made, the buyer shall cover the additional costs such as travel expenses, cost of transporting tools and personal baggage and also field allowances in addition to the agreed compensation.
3. Payments shall be made ex paying agent of supplier.
4. The buyer can only set-off against claims which are not in dispute or have been legally established. The supplier shall have the right to set-off its own valid claims or valid claims by companies with headquarters in Germany that are affiliated companies of the supplier within the meaning of §§ 15 et. seq. of the German Companies Act (AktG) ("corporations") against all claims that the buyer has against the supplier. Corporations are companies that are shown on the list entitled "Corporations", which the supplier has to provide upon the buyer's request.

### **III. Retention of title**

1. The supplier shall retain ownership of all goods delivered (goods subject to retention of title) until the buyer has fulfilled all obligations arising from the business relationship with the supplier. In the event the value of all security interests to which the supplier is entitled exceeds the sum of all secured claims by more than 10%, the supplier will release the appropriate part of the security interest upon request by the buyer; the supplier has the right to choose between different security interests when the above is released.
2. While the retention of title is in effect, the buyer shall not be permitted to pledge or transfer security interests, and may only sell them to resellers within the context of regular business operations and upon the condition that the reseller receives payment from its customer, or that the sale is subject to the condition that title will only be transferred to the customer once he has met his payment obligation.
3. In case of attachments, seizures or other orders by third parties the buyer shall notify the supplier without delay.
4. If the buyer violates its obligations, in particular if a payment is in default, the supplier shall have the right to withdraw from the contract in addition to the right of revocation upon expiry of an adequate time period given to perform; statutory cases where the time limit may be waived are not affected. The buyer shall be obliged to return the goods. Recovery, assertion of retention of title or seizure of the goods subject to retention of title shall not be considered a withdrawal from the contract, unless expressly stated by the supplier.

### **IV. Delivery dates; default**

1. The supplier's obligation to meet delivery deadlines shall only arise once all documents, required permits and releases, in particular plans, have been received in due time, and when the agreed payment obligations and other obligations have been fulfilled by the buyer. If these requirements are not met in due time, the deadlines shall be extended accordingly; this shall not apply if the default is attributable to the supplier.
2. In case a non-adherence to deadlines is due to force majeure, i.e. mobilisation, war, unrest or other events, such as, for example strike or lock-out, the deadlines shall be extended accordingly. The same shall apply if the goods are not delivered to the supplier in due time or in a proper manner.
3. If the supplier is in default, the buyer may, inasmuch it can show that damages were suffered, request compensation in the amount of 0.5% for each completed week in default, however only up to a total of 5% of the price for the part of the deliveries which could not be placed into operations as intended.
4. Damage claims by the buyer based on delay of delivery as well as damage claims for performance which exceed the scope of the limit stated in no. 3, shall be excluded in all cases involving delayed delivery, also upon expiry of a time limit for delivery fixed by the supplier. This does not apply where limitation of liability is prohibited by law for cases involving intentional conduct, gross negligence or loss of life, and injury to body and health. The buyer may only withdraw from the contract within the scope of the statutory provisions, inasmuch the delay in delivery was attributable to the supplier. A change in the burden to show proof at the detriment of the buyer is not associated with the afore-mentioned provisions.
5. The buyer shall be obliged to state if, because of the delivery delay, it intends to withdraw from the contract or insists on delivery upon request by the supplier.

6. In the event shipment or delivery is delayed more than a month after the supplier indicated that it was ready to ship the goods because the buyer requested the above, the buyer may be assessed with warehousing charges in the amount of 0.5% of the price of the goods to be delivered, but only up to total of 5%, for each month or part thereof. The contract parties may provide proof that the warehousing costs were higher or lower.

#### **V. Passage of risk**

1. The risk will also be passed to the buyer as follows if the delivery is freight paid:
  - a) for deliveries that do not include set-up or installation, if they are shipped or picked up. The supplier will insure the deliveries against the common transport risks if desired by the buyer and at the buyer's expense;
  - b) for deliveries that include set-up or installation on the day they are transferred into its operations or, inasmuch agreed, after a correct trial operation.
2. If shipping, delivery, starting or carrying out the setup or installation, transfer to its own operation or the trial operation is delayed for reasons attributable to the buyer or if the buyer is in default for other reasons, the risk shall be passed to the buyer.

#### **VI. Acceptance**

The buyer may not reject acceptance of deliveries due to immaterial defects.

#### **VII. Material defects**

The supplier shall be liable for material defects as follows:

1. For all parts or services which show a material defect within the limitation period, without taking into consideration the period of operation, the supplier shall have the choice to rectify the defect, submit a new delivery or produce a new delivery free of charge, inasmuch its cause already existed at the time the risk was passed.
2. Claims for the rectification of defects shall be barred by limitation within 12 months of the start of the statutory limitation period; the same shall apply for withdrawal and price reduction. This limitation period shall not apply inasmuch the laws set forth under § 438 para. 1 no.2 (buildings and building materials), 479 para. 1 (right of recourse) and 634a para. 1 no. 2 (construction defects) of the German Civil Code (BGB) prescribe longer periods for cases involving intentional conduct, fraudulent concealment of the defect and also non-adherence to the warranty of quality. The statutory provisions on suspension of the statute of limitations, suspension and restart of the deadlines shall not be affected.
3. The buyer shall submit notification of defects in writing without delay.
4. In the event the buyer submits a notification of defects it may withhold payment in an amount that is adequate in comparison to the material defects that occurred. The buyer may only withhold payments if there is no doubt that the defects are legitimately asserted. The buyer shall not have a right of retention if its claims based on defects are barred by limitation. If the notification of defects is submitted in error, the supplier shall have the right to request compensation for its expenses from the buyer.
5. The supplier shall be granted the opportunity to rectify the defect within an adequate time period.
6. In the event the rectification of defects fails, the buyer may withdraw from the contract or reduce the price, any assertion of claims for damages notwithstanding.
7. Claims based on defects shall not exist if the condition only immaterially differs from the agreed condition, if usability is only reduced insignificantly, if it shows natural wear or damages which occur after passing the risk due to erroneous or negligent use, excessive use, inappropriate operating materials, defective construction, inappropriate building surface or due to special external influences, which are not provided under the contract, and also in the case of non-reproducible software errors. In the event the buyer or a third party modifies or performs maintenance work improperly, no claims based on defects will arise for the above or consequences of the above.
8. Claims by the buyer for expenses required for the purpose of supplementary performance, in particular costs associated with transportation, shipping, work and material costs, shall be excluded, inasmuch the expenses are higher because the delivered goods were shipped to a location other than the buyer's site after the fact, unless this shipment conforms with its intended use.
9. The buyer's recourse claims against the supplier pursuant to § 478 of the German Civil Code (BGB) (recourse by buyer) shall only exist to the extent that the buyer did not enter into any agreements with its buyers that exceed the statutory rights to assert claims based on defects. For the scope of the buyer's rights of recourse against the supplier pursuant to § 478 para. 2 of the German Civil Code (BGB), no. 8 shall also be applicable accordingly.
10. Damage claims by the buyer based on a material defect shall be excluded. The above is not applicable in cases involving fraudulent concealment of the defect, non-fulfilment of the warranty of quality, loss of life, injury to body, health or freedom, and in cases involving an intentional or grossly negligent violation of an obligation by the supplier. The burden of proof will not be changed at the detriment of the buyer in connection with the aforementioned provisions. Additional or other claims than those set forth in this article VII based on a material defect by the buyer shall be excluded.

#### **VIII. Industrial property rights and ownership rights; legal defects**

1. Unless otherwise agreed, the supplier shall be obliged to provide the deliveries free of third party industrial property rights and ownership rights (hereinafter: property rights). Inasmuch a third party asserts legitimate claims based on the violation of property rights by the deliveries produced by the supplier, which were used in the manner intended under the contract, the supplier shall be liable to the buyer within the period set for in art. VII no. 2 as follows:
  - a) The supplier has the choice to either acquire the usage rights for the affected deliveries at its own cost, to modify them in such a way that they do not violate the property rights, or to exchange them. In the

event the supplier is not able to do so within reasonable means, the buyer shall have statutory rights to withdraw from the contract or to reduce the price.

- b) The supplier's liability for damage compensation depends on the type of damages. X.
  - c) The afore-mentioned obligations of the supplier shall only exist inasmuch the buyer notifies the supplier about the claims asserted by third parties without delay, does not acknowledge a violation and the supplier retains all rights to undertake defence measures and settlement proceedings. In the event the buyer ceases to use the delivery to minimise damages or for other important reasons, it shall be obliged to notify the third party that the violation of property is not acknowledged with the suspension of use.
2. Claims by the buyer shall be excluded if it is responsible for the violation of property rights.
  3. Furthermore, the buyer's claims shall also be excluded inasmuch the violation of property rights was caused by special instructions given by the buyer, by usage not foreseeable by the supplier or by changes of the delivery effected by the buyer or if not used with the products delivered by the supplier.
  4. In the event of property rights violations, the provisions set forth in art. VII no. 4, 5 and 9 shall be applicable for the buyer's claims set forth under no. 1a) in all other respects.
  5. For other legal defects the provisions set forth in art. VII shall be applicable accordingly.
  6. Additional or other claims based on legal defects than those set forth in this article VIII by the buyer against the supplier and its vicarious agents shall be excluded.

#### **IX. Impossibility; contract amendment**

1. Inasmuch delivery is impossible the buyer shall have the right to request damage compensation unless the impossibility is not attributable to the supplier. However, the buyer's damage claims shall be limited to 10% of the value of the part of delivery which could not be put into operation appropriately because of impossibility. These limitations shall not apply inasmuch limitation of liability is prohibited by law in cases involving intentional conduct, gross negligence or loss of life, or injury to body or health; a change in the burden to show proof to the detriment of the buyer is not associated with the above. The buyer's right to withdraw from the contract shall not be affected hereby.
2. In the event unforeseeable circumstances within the meaning art IV no. 2 arise which significantly change the commercial significance or content of the delivery, or which have a considerable impact on the supplier's operation, the contract will be adjusted by adhering to principles of good faith. Inasmuch this is not reasonable for commercial reasons, the supplier shall have the right to withdraw from the contract. If the supplier intends to exercise its right of withdrawal, it shall notify the buyer without delay once the full scope of events is clear, also if an extension of the delivery time was initially agreed with the buyer.

#### **X. Other damage claims; limitation**

1. The buyer's damage claims, irrespective on which legal grounds they are based, in particular based on a violation of obligations owed and for illegal conduct, shall be excluded.
2. This shall not apply if limitation of liability is prohibited by law, for example by Product Liability Laws, in cases involving intentional conduct, gross negligence, loss of life, injury to body or health or based on the violation of material obligations under the contract. However, damage claims based on the violation of material obligations under the contract shall be limited to typical contractual, foreseeable damages, unless intentional conduct or gross negligence were involved or in cases involving loss of life, or injury to body or health. The burden of proof will not be changed at the detriment of the buyer in connection with the afore-mentioned provisions.
3. Inasmuch the buyer is entitled to damage claims, these shall be barred by limitation upon expiry of the applicable limitation period set forth in art. VII no. 2. The same shall apply to the buyer's claims asserted in connection with measures taken to avert damages (i.e. recall actions). For damage claims based on Product Liability Laws the statutory limitations periods shall apply

#### **XI. Place of jurisdiction and applicable law**

1. The location of the supplier's headquarters is the exclusive place of jurisdiction for all disputes directly and indirectly arising under the contractual relationship if the buyer is a merchant. However, the supplier is also entitled to lodge a claim at the buyer's headquarters.
2. German material law shall be applicable for all legal relations associated with this contract under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **XII. Binding effect of the contract**

The other parts of the contract shall remain in effect even if individual provisions become legally invalid. This shall not apply if adhering to the contract would constitute an unreasonable hardship for a party.