

## The International Sales Terms

### § 1 Application

(1) These Sales Terms shall apply exclusively and to the supply of the contractual goods and related services (if any) by us (hereinafter collectively referred to as “Products”) and shall together with the written Sales contract and/or framework agreement signed by both parties and the agreed Technical Specifications of the Products in writing (if any) collectively constitute the entire contract between the parties (hereinafter the “Contract”). Differing or contrary terms shall not apply except if expressly agreed upon in writing.

(2) Changes, amendments or the declaration of avoidance of the contract or of any of these terms take only effect when they are confirmed by us in writing.

(3) The parties correspond and negotiate in English.

(4) Our silence after communication of general terms and conditions of the Purchaser shall not be regarded as consent to incorporate said general terms and conditions of the Purchaser and does not constitute any tacit consent. It shall not be regarded as any declaration of intent.

(5) These terms and conditions of purchase shall also govern all future transactions between the parties and shall also apply if we accept delivery despite our knowledge of differing or contrary terms.

(6) These terms and conditions of purchase shall only apply vis avis entrepreneurs, governmental entities, or special governmental estates in the meaning of sec. 310 para.1 BGB (German Civil Code).

### § 2 Offer, Acceptance

Insofar as the order constitutes an offer within the meaning of § 145 BGB (German Civil Code) we are entitled to accept the offer within two weeks.

The contract shall be deemed to be entered in concluding the contents of our affirmation of order and our International Sales Terms, unless our affirmation of order is objected by the purchaser without undue delay. The objection is regarded to be unduly delayed after the expiry of a period of 3 days after receipt of our affirmation. The Purchaser shall bear the risk of receipt and the burden of proof for the accurate and timely objection.

### § 3 Prices and Terms of Payment

(1) Prices are ex works, exclusive of the statutory VAT and exclusive of costs for packaging, transport and insurance, except as otherwise expressly agreed upon.

(2) The Purchaser shall at our request provide us with the necessary documentation required by the competent tax authorities as evidence of an export tax exemption. The Purchaser shall reimburse us for any Value added taxes levied on us in the country of destination due to either the agreed terms of delivery, any failure to duly provide the requested documentation referred to above or any other circumstances attributable to the Purchaser. Any taxes, fees, duties and other charges which are levied on us in connection with the performance of the Contract in the country of destination of the Products shall be solely borne by the Purchaser and the Purchaser agrees to pay or reimburse us for any such taxes which we are required to pay.

(3) If the Parties have not agreed on other terms of payments, all payments shall be made to the bank account notified by us without any reservation or deduction. All bank charges and fees shall be borne by the Purchaser.

(4) If the Contract provides for payment by means of a letter of credit, the Purchaser shall within two (2) weeks after the conclusion of the Contract open an irrevocable and transferable letter of credit in accordance with and subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce (UCP 600) in favor of us in the amount of the Contract Price, confirmed by a first class European bank with a branch at our place of business and available at sight payment against the presentation of the documents further described in the Contract. The letter of credit shall have an expiry date of at least four (4) months from contractual delivery period. All bank charges and fees shall be at the Purchaser's expense.

(5) If we do not receive payment from the Purchaser when such payment has become due, we shall be entitled to charge interest at an annual rate of seven (7) percentage points above the rate for main refinancing operations of the European Central Bank (ECB) as applicable throughout the period of delay. This provision shall apply mutatis mutandis if a letter of credit is not opened in time. Any further rights and remedies of us provided by the Contract or under the applicable governing law shall remain unaffected.

(6) The purchase price becomes due and payable after the issue of the invoice, unless a differing agreement has been reached by the parties in writing.

(7) If the Purchaser defaults on his payment or if justified debts exist as to his solvency or creditworthiness, we are – our other rights notwithstanding – enabled to demand collateral or payment in advance for outstanding performances and immediately to call in all claims arising from our business dealings.

#### **§ 4 Set-Off, Retention**

The Purchaser may only set off claims in accordance with the governing law of the contract that are owed in the same currency as the main claim and that are either undisputed between the Parties or have been finally adjudicated. The aforementioned rule shall apply mutatis mutandis to any right of retention of the Purchaser.

#### **§ 5 Packaging and dispatch**

We will use our best judgment to decide on the most suitable method of carriage for the Products but without assuming further liability. Package, dispatch method and transport means are left to our choice if there is no special arrangement in writing. The acceptance of the Package by the forwarder or carrier without reservation shall suffice as evidence for satisfactory packaging. The dispatch is always carried out on invoice and the risk of the receiver even if a freight paid delivery is agreed.

#### **§ 6 Passing of risk**

(1) The risk of loss or damage of the Products is transferred to the Purchaser when the products are handed out to the forwarder or carrier or to the Purchaser's authorized representative at our warehouse. The time the goods are handed over to the forwarder or the carrier or the Purchaser's authorized representative, at the latest the time when the Products leave our warehouse, is decisive for the state of the Products in accordance with the contract.

(2) If dispatch or delivery is delayed due to the circumstances that can be attributed to our contractual partner, the risk shall pass upon notification of dispatch or readiness to surrender. However we shall be obligated at Purchaser's request and expense, to provide such insurance coverage as may be desired by Purchaser.

(3) The Purchaser bears the risk of Product returns.

(4) If the Purchaser is in default of acceptance, the risk of incidental destruction or incidental worsening passes to the Purchaser.

(5) Partial deliveries of the Products shall be permitted throughout the delivery period, as far as reasonable. The aforementioned rules (sec.1-3) shall apply mutatis mutandis.

(6) The rules under section 1-4 shall apply also, when we have taken over the costs of dispatch or the carriage and erection.

## **§ 7 Insurance**

The costs of insurance shall be borne by the Purchaser. If the Purchaser does not give special instructions, we are entitled to cover insurance for transport or transactions in precious metals (valuables insurance) on behalf and at the expense of the Purchaser. As requested by the Purchaser, we will insure the consignment against theft, breakage, fire, water damage as well as other insurable risks at the expense of the Purchaser.

## **§ 8 Delivery**

(1) The delivery period shall commence with the dispatch of the final order confirmation, however, not before possible cooperation obligations of the Purchaser (for example: procurement of necessary information, documents, files, permits, approvals) or a receipt of an agreed down payment.

(2) The delivery period shall be deemed observed if the ducts have left our warehouse by the end of the period or a cargo ready notification has been sent prior to the elapse of this term.

(3) If the delivery is delayed at the Purchaser's request or otherwise for reasons attributable to the Purchaser by more than fourteen (14) days after notice was given of the readiness for dispatch by us, we may charge the Purchaser liquidated storage costs for each commenced month thereafter amounting to 0.5 % of the Contract Price of the Products up to a maximum of 5 % of the Contract Price. The Purchaser remains entitled to claim further proven general damages in excess of the liquidated amount. Other rights and remedies provided by this Contract and/or applicable governing law, in particular the right to declare the Contract avoided, shall remain unaffected.

(4) In case of a delay in delivery or any other performance owed by us under the Contract, we shall only be liable for damages if the delay was caused by gross negligence or intentionally. Our liability for any damages shall in this case be limited to an amount of 0.5 % of the Contract Price for the Products (net) for each full week of delay up to a maximum amount of 5 % of the Contract Price (net) in the aggregate. Any claim for damages shall also be capped at this maximum amount if the Purchaser declares the avoidance of the Contract due to the delay. This limitation of liability shall not apply in any of the events stipulated in § 10 (6) of the present International Sales Terms. The Purchaser bears the burden of proof for the damages and our negligence or intent.

(5) The time of delivery agreed upon between the parties shall not be of essence. Accordingly and subject to any further prerequisites of the applicable governing law of this Contract, the Purchaser shall solely be entitled to declare the Contract avoided by reason of any delay if the delay is attributable to us, the Purchaser has threatened us with avoidance in writing after the date of delivery and in additional period of time of reasonable length, at least however 2 weeks, has not resulted in the delivery of the Products. § 11 shall remain unaffected.

(6) The delivery time can only be respected, if the customer fulfills his obligations resulting from this Contract (including cooperation obligations), particularly with regard to the terms of payment which were agreed upon.

(7) Our duty to deliver shall suspend as long as the Purchaser is in default of the duties incumbent on him. We may withhold delivery until due payments have been made (or, as the case may be, a letter of credit has been opened) by the Purchaser in accordance with the Contract and all other obligations owed by the Purchaser in accordance with the Contract and all other obligations owed by the Purchaser under the Contract that are necessary for the performance of the delivery of the products have been discharged.

## **§ 9 Default of acceptance**

If the Purchaser is in default of acceptance or if he violates other duties of cooperation, then we are authorized to claim the damage incurred by us, including possible additional expenses. Further rights remain unaffected.

## **§ 10 Quality Defects and defects of title**

(1) In case the Products do not conform with the contractual obligations as to quantity, quality or description (“Quality Defects”) or are not free from enforceable rights of third parties, including but not limited to enforceable rights based on intellectual property (“Defects of Title”) already at the time of transfer of risk, the Purchaser shall have the remedies provided by the UN Convention on Contracts for the International Sales of Goods (CISG) subject to the following provisions. These remedies (as amended hereafter) shall constitute Purchaser’s sole and exclusive remedies for any Quality defect or Defect of Title. The Purchaser shall in particular not be entitled to rescind the contract based on any mistake as to the actual condition of the Products.

### ***Quality Defects***

(2) The Products shall only be deemed to be non-conforming if they do not comply already at the time of transfer of risk with the specifications laid down in this Contract, which shall conclusively describe the applicable conformity standard of the Products. In the absence of agreed specifications, the Products shall only be deemed defective if they are at the time of transfer of risk not fit for the purpose for which products of the same description would ordinarily be used. The application of any further conformity standards implied by law or otherwise shall be explicitly excluded. We shall in particular not be responsible for the fitness of the Products for any particular purpose or for compliance of the products with any legal requirements existing outside our country of residence.

(3) Accordingly, we shall not be responsible for any non-conformity arising after transfer of risk such as but not limited to any defect due to faulty use, maintenance or modifications of the Products, use of unsuitable spare parts, defective installation or erection by the Purchaser or any third party not acting on behalf of us, natural wear and tear or damage or any other external influences not attributable to us.

(4) In Case of delivery of non-conforming Products, we shall at his option and subject to any further restrictions pursuant to the applicable governing law either repair any defect or replace any Products or any portion thereof that are non-conforming. We shall be given adequate time and opportunity to remedy the defect. For this purpose, the Purchaser shall grant us access to the Products. Additional costs incurred by us due to the relocation of the Products to a place other than the original place of destination shall be borne by the Purchaser. A right of the Purchaser to claim delivery of substitute Products shall be explicitly excluded.

(5) The Purchaser shall have the right to a reduction of the contract price pursuant to the applicable governing law once either two attempts of us to make good the defect have failed or we have not undertaken such remedial measures within a reasonable time after receipt of a notice indicating a Quality Defect and lapse of an additional final respite set by the Purchaser. Subject to any further limitations set forth in § 11 below and by the applicable governing law, the same prerequisites shall apply for any claim for damages in lieu of performance. If the Quality Defect amounts to a fundamental breach of contract, the Purchaser is in this event alternatively entitled to declare the contract avoided subject to any further preconditions and restrictions set forth by the applicable governing law.

(6) Any and all remedies of the Purchaser for any Quality Defect are conditional upon prompt notice to be given by the Purchaser not later than seven (7) calendar days after the Purchaser has discovered our ought to have discovered the defect in accordance with his duty to examine the Products. The Purchaser shall examine the Products after handover within as short a period as is practicable in the circumstances whereas the period of time for the examination of the Products shall in any event not exceed a period of fourteen (14) days commencing upon handover of the Products. The Purchaser shall not be entitled to rely on any excuse for its failure to give the required notice. We are not entitled to rely on this § 5 (6) if the lack of conformity relates to facts that we have or ought to have been aware of at the time of handover of the goods and which we did not disclose to the Purchaser.

### ***Defects of Title***

(7) The Products shall only have deficiency in title if they are not free from enforceable rights of third parties that exist already at the time of transfer of risk. Third parties enforceable rights founded on intellectual property shall only be deemed to constitute Defects of Title to the extent that a) the intellectual property right is registered in the country of use specified in the Contract and such right is based on the identical invention disclosed and claimed in a property right registered and made public in our country of residence and b) the ordinary use of the Products as foreseen in the Contract by the Purchaser is thereby impeded.

(8) If the Purchaser will be refrained from the regular use of the Products due to industrial or intellectual property rights in the Products of any third party, we shall upon Purchaser's request subject to the conditions and limitations stated in § 10 (7) at our discretion and cost either:

a) Procure for the Purchaser the right to use the Product, or

b) Provide the Purchaser with non-infringing replacement product or modify the Product so that it becomes non-infringing, provided that the replacement product/modified Product meets substantially the same functional specifications as the Product.

c) Refund the purchase price to the Purchaser upon return of the Products less a reasonable amount of depreciation for any period of use of the Products. If we have not undertaken such remedial measures within a reasonable time after receipt of notice of default by the Purchaser, the Purchaser

may subject to any preconditions under governing law declare the avoidance of the Contract and (subject to the limitations set forth in § 11 below) claim damages.

(9) We shall be only liable for any Defect of Title if the Purchaser gives us a promptly written notice pursuant to the applicable governing law and he neither consents to any judgment or decree nor undertakes any other act in comprise of any claim without first obtaining our written consent. The Purchaser shall not be entitled to rely on any excuse for his failure to give the required notice. We are not entitled to rely on a delayed notice of the Purchaser if he knew of the right or claim of the third party and the nature of it at the time of handover of the Products.

### ***Limitation of Claims***

(10) The Purchaser loses the right to rely on a Quality Defect of the Products or on a Defect of title if he does not give us notice thereof at the latest within a period of one year from the Date of passing of risk to the Purchaser, regardless of whether the defect has been or ought to have been detected by that time. This provision shall not apply if the defect relates to facts that we have been or ought to have been aware of at the time of handover of the goods and which we did not disclose to the Purchaser or if we have provided a guarantee.

### **§ 11 Exclusion of damage claims**

(1) Without prejudice to § 8 (Delay in Delivery) but notwithstanding anything to the contrary elsewhere, we shall in no event and irrespective of the legal basis (contract, tort, indemnity or any other area of law) be liable to the Purchaser for loss of profit or revenue, wasted overhead, loss production, loss of use, loss of data, cost of capital, cost of substitute goods and/or any other expenditures, damages or losses.

(2) The aforesaid in (1) shall apply mutatis mutandis for property damage external to the Products and any damages, loss or expenditure arising from such damage, any incidental, indirect or consequential damage or any of the foregoing suffered by any third party, when these damages are untypical and not foreseeable. Without prejudice to any further limitation of liability stipulated in this § 11 or elsewhere, our overall liability arising from or connected to this Contract shall irrespective of the legal basis (contract, tort, indemnity or any other area of law) in the aggregate be limited to the Contract Price.

(3) This exclusion of liability applies regardless of whether any such damages, losses or expenditures have been directly caused by us or by any of our subcontractors, agents, advisors or employees acting on our behalf.

(4) § 11 (1) shall not apply in the following events for whose occurrence the burden of proof shall rest with the Purchaser:

a) The damages, losses or expenditures are attributable to malicious intent or gross negligence by us, our legal representatives or executive employee or are caused by our severe organizational negligence.

b) In the event of damage resulting from injury to life, the body or health based on a negligent breach of duty.

c) For any negligent breach of contract, that is fundamental, particularly in case of absence of the warranted qualities. A breach of contract committed by one of the parties is fundamental if it results

in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

d) Beyond fundamental contractual obligations we are liable also for any gross negligence on the part of simple assistants, unless we can contract out of it by virtue of commercial custom: In that case also our liability shall be limited to reimbursement of typical, foreseeable damage, losses or expenditures.

e) Claims for damages, losses or expenditures because of defects, if we have maliciously concealed a defect or assumed a guarantee for the quality of the article or assumed a guarantee for the quality of the article.

f) The liability limitation also does not apply in those cases in which for personal injury or property damage to objects for mainly personal use liability is mandatory provided for defects of delivered items in accordance with the German Product Liability Act. In the case any legitimate claims under a foreign Product Liability Act should be asserted, we shall only be liable up to the level of the cover sum of our Product Liability Insurance, any amount exceeding shall be borne by the Purchaser. The Purchaser shall be obliged to inform us about all dangers and risks concerning the Products, which are resulting from the use of the delivered Products and/or which have become known subsequently.

g) "Reimbursement of typical, foreseeable damage, losses or expenditures" under c) and d) means: such reimbursement may not exceed the loss, damage or expenditure which we in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which we then knew or ought to have known, as a possible consequence of the breach of contract.

(5) In so far as our liability is excluded or limited, this shall also apply to the personal liability of our staff, representatives, vicarious agents and assistants.

## **§ 12 Force Majeure**

(1) Neither party shall be in breach of this Contract if and to the extent that the performance of the Contract is prevented or made excessively onerous by an Event of Force Majeure as defined below in § 12 Abs.2. However, no ground for relief under this § 12 shall exist if the non-performing party could have reasonably expected both the impediment and its effects upon its ability to perform at the time of the conclusion of the Contract or reasonably avoided or overcome it or its effects.

(2) Any event that is beyond either party's reasonable control shall be deemed to constitute an Event of Force Majeure regardless of whether such event occurs before or after the conclusion of the Contract. An event of Force Majeure shall include but shall not be limited to natural disasters or catastrophic events, nuclear accidents, fire, flood, typhoons or earthquakes, terrorism, acts or omissions by governmental authorities, allocations or restrictions upon the use of materials or manpower, war, riots, sabotage or revolutions, strikes or lockouts, operational interruptions that are not the fault of us, or other circumstances which we are not responsible for.

(3) If either Party claims that an Event of Force Majeure has occurred affecting its performance, it shall promptly notify the other Party. If the Event of Force Majeure continues for a period of six (6) weeks upon notice, either Party may terminate the Contract in writing after the lapse of that period.

(4) § 12 shall not prejudice any further exemption provisions provided either by these International Sales Terms or the applicable governing law.

(5) Should our pre-supplier not be able to deliver, the aforementioned rules shall apply mutatis mutandis. This shall only be applicable if we have met the required precautions for purchasing goods to be supplied by us and have carefully selected our pre-suppliers.

### **§ 13 Export Control Regulations**

(1) Delivery obligations of us shall be subject to the condition that required export licenses are issued and that no other restrictions imposed by mandatory export control regulations of the European Union, the United States of America or any other relevant jurisdiction exist. In the event that the delivery of the Products is prevented by export control regulations or other legally mandated restrictions for more than three (3) months from the scheduled delivery date, both parties shall be entitled to declare the avoidance of the Contract.

(2) The Purchaser undertakes to comply with all export control regulations of the national export control authorities applicable to him, in particular the authorities in the European Union and in the United States of America. In particular, the Purchaser undertakes not to directly or indirectly export or reexport the Products to any country for which such export may be prohibited by the aforementioned regulations. Failure to comply strictly with all laws relating to embargoes, sanctions, export and re-export applicable to the Purchaser shall entitle us to declare the Contract avoided.

### **§ 14 Transfer of Title, Retention**

(1) Title to the Products shall not pass to the Purchaser until we have unconditionally received the full amount of the contract price due under this Contract. The transfer of risk shall remain unaffected by this retention of title. Until title to the Products has passed to the Purchaser he shall support us in any matter concerning the protection of our title in the country of destination.

(2) Until title to the Products has passed to the Purchaser pursuant to the foregoing, the Products shall be insured with a reputable insurance company for their full replacement value against all risks by the Purchaser and should be kept in good repair and condition by the Purchaser.

(3) Until transfer of title, Purchaser shall not be entitled to pledge, transfer ownership as security, lease or otherwise dispose of the Products without our prior written approval. The Purchaser may however resell the goods in the ordinary course of business provided he receives payment from his customer or retains title so that the property is transferred to Purchaser's customer only after fulfillment of the customer's obligation to pay. If the Purchaser sells the Products obtained from us under retention of title to third parties, the rights of the Purchaser from the assertion of the retention of title shall be considered already as ceded to us, especially the right to restitution of the delivered Products. However, we undertake not to collect the amount owing as long as the customer complies with his payment obligations deriving from the monies received, and does not default on payment and in particular as long as no application is lodged for the institution of insolvency or composition proceedings against him or as long as he has not suspended payments.

(4) In case of delay of payment of the Purchaser as well as in payment and/or operation cessation and in cases of submission of a request for the opening of insolvency proceedings, we may demand that the contract partner reveals the surrendered receivables and their debtor and furthermore that he gives all necessary information and provides all necessary documentation for the collection and also that he notifies the debtors (third parties) of the surrender.

(5) If the relevant domestic property laws do not recognize a retention of title or provide for additional requirements such as but not limited to registration requirements etc., the Purchaser

undertakes to support us at our request in order to either fulfill any of these requirements or to establish a comparable security interest for us in relation to the Products. Costs reasonably incurred by us in this regard shall be borne by the Purchaser.

(6) If the product is processed with other items not belonging to us, we obtain co-ownership of the new product, this being in the proportion of the value of the supplied product to the value of the other processed items at the time of processing.

(7) If the value of the security exceeds the value of the claims being secured against by more than 10 %, we are obliged to release the Products at the Purchasers request.

#### **§ 15 Avoidance of the Contract by the Seller**

Without Prejudice to any such right or other remedies provided by the applicable governing law of this Contract, we shall be entitled to declare the Contract avoided without any further preconditions if

- a) The Purchaser fails to make payment of the Contract Price to us under this Contract within thirty (30) days after it has become due and payable, or fails to open a letter of credit pursuant to the Contract within such period after the due date, or
- b) The Purchaser fails to perform his contractual obligations whose performance is necessary.

#### **§ 16 Property Rights and Confidentiality**

(1) The Parties shall keep all know-how, data and other information (collectively hereinafter “Information”) received from other Party under this Contract confidential with respect to any third parties and shall use the Information solely for the purpose of this Contract.

(2) The Confidentiality obligation shall not apply to Information which

- a) Is in the public domain at the time of disclosure or later becomes part of the public domain without any breach of this confidentiality obligation.
- b) Was known to the receiving Party prior to disclosure by the disclosing Party,
- c) is disclosed to the receiving Party by a third without any breach of a confidentiality obligation,
- d) has been independently developed by receiving Party.

The receiving Party bears the burden of proof that any one of the foregoing requirements for an exemption is fulfilled.

(3) The confidentiality obligations stipulated in this § 15 shall remain in force after the Parties have discharged their performance obligations. They shall also survive an avoidance of this Contract.

#### **§ 17 Place of jurisdiction and place of performance**

The place of performance concerning delivery shall be the respective place of departure. The place of performance is the location of our place of business. If the Purchaser is a chartered merchant, a legal entity under public law or special federal funding, the sole venue shall be Frankfurt am Main in the

Federal Republic of Germany for all disputes resulting directly or indirectly from the contractual relationship.

#### **§ 18 Governing law and Arbitration**

(1) This Contract and any and all disputes arising from or related to this Contract shall be governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) The substantive laws of Germany shall apply with regard to all matters arising from or related to this Contract that are not governed by the CISG, including but not limited to any concurring claims under tort.

(3) All disputes arising from or related to the Contract, regardless of their legal basis (contract, tort or otherwise), shall be submitted to the International Court of Arbitration of the International Chamber of Commerce (ICC) and shall be finally settled under the Rules of Arbitration of the ICC (hereinafter the "Rules") by one (1) arbitrator appointed in accordance with the Rules. The language to be used in the arbitration proceedings shall be English. The seat of Arbitration shall be Frankfurt am Main, Germany.

#### **§ 19 Miscellaneous**

(1) This Contract contains the entire understanding between the Parties and fully replaces any other agreements or understandings between the parties on its subject matter entered into before the conclusion of this Contract. Accordingly, this § 18 (1) shall prevail over Art 8 (3) and 11 CISG.

(2) The Purchaser shall not be entitled to assign any rights or claims arising from or related to this Contract to any third party without the prior written consent of us.

(3) As long as they are not based upon willful actions, all claims against us fall under a one-year period of limitations, as of the date of the passing of risk as set forth in paragraph 6 of these Terms.

(4) Should any of the provisions of this contract be or become invalid or otherwise unenforceable, this shall not affect the validity and enforceability of the remaining contractual provisions.