

## Article I: General Provisions

1. The terms of delivery and payment set forth below shall be an integral part of all offers and contracts with Seller concerning the delivery of goods, even those especially manufactured, for all current or future business relations.
2. Contracts with Seller shall be concluded only under these terms and conditions. Purchasing terms and any other contrary business terms of Purchaser are excluded, also in form of a confirmation to deviating contractual terms. These confirmations and conditions are herewith expressly rejected.
3. Supplier reserves, without any restrictions, all rights of exploitation under his ownership rights and copyrights to cost estimates, drawings and any other documentation. The documents in question may be made accessible to any third party only after having obtained Supplier's consent and are to be returned immediately to Supplier at his request if the order is not placed with Supplier.
4. Partial deliveries shall be admissible and are invoiced accordingly.
5. Purchaser shall have the non-exclusive right to use standard software and firmware with the agreed features without any changes on the agreed devices. Purchaser shall be entitled to make a backup copy of the standard software without an explicit agreement being required.

## Article II: Conclusion and subject matter of the contract

1. Our offers are subject to confirmation. An order is only considered to be accepted when we have confirmed it in writing; this shall also apply to orders placed with our sales representatives. Solely the text in our order confirmation shall be binding. Purchaser must check the confirmation carefully. Any revisions and subsidiary agreements must be agreed in writing.
2. Our obligation to perform is conditional on adequate protection against the risk of non-payment. As far as this is not covered or is revoked by the credit insurance, we shall be entitled, even after conclusion of the contract, to request advance payment or any other kind of security; otherwise we shall have the right to withdraw from the contract.
3. The subject matter of our delivery obligation shall be defined in the order confirmation. The contractually agreed properties of the items to be delivered shall correspond to our technical terms of delivery unless anything else has been agreed in writing. Any specimens and samples shall provide only an approximate example of quality, dimensions and colour; they shall not constitute any warranted properties.
4. We retain all property and copyright exploitation rights relating to our sales and contract documentation, such as catalogues, lists and drawings, even when we hand them over to Purchaser. The data and information contained therein have been compiled diligently. However,

we reserve the right to correct mistakes and errors even after conclusion of the contract; the same shall apply to technical changes as far as they serve technical progress. Should this entail any substantial changes in price or delivery schedule to the disadvantage of Purchaser, the latter shall have the right to withdraw from the contract; this shall not apply if the mistake or error had been evident for him.

5. If e.g. special ceiling parts, special luminaires or special colours have been agreed for order-related products, we shall have the right to over/under deliveries of  $\pm 10\%$ , at least however 1 unit, without an explicit further agreement being required.

## Article III: Delivery deadlines, default

1. Compliance with delivery deadlines shall require that all documentation to be supplied by Purchaser, all approvals and releases, in particular of plans, are received in due time and that Purchaser complies with the agreed terms of payments and his other obligations. If these conditions are not fulfilled in due time, the deadlines shall be extended accordingly for an adequate period of time. This shall not apply if Supplier is responsible for the delay.
2. If noncompliance with the deadlines is due to
  - a) Force Majeure, e.g. mobilization, war, acts of terror, riot or similar events [e.g. strike, lockout],
  - b) virus or other kind of attacks by a third party to Supplier's IT system, as far as they occur despite Supplier's due diligence with respect to protective measures,
  - c) obstacles due to German, US American or any other applicable national, EU or international provisions of Foreign Trade Law or due to any other circumstances for which Supplier is not responsible, or
  - d) the fact that deliveries to Supplier have not been made in time or not in the agreed form,

the deadlines shall be extended accordingly.

3. If Supplier is in default with deliveries, Purchaser – provided that there is sufficient evidence that he has suffered a damage therefrom – may request for each full week of delay damages of 0.5%, but not more than 5% in total, of the price for the part of the delivery which could not be used according to plan as a result of the delay.
4. Claims for damages on the part of Purchaser due to delayed delivery as well as claims for damages in lieu of performance which exceed the limits specified in No. 3 above shall be excluded in all cases of delayed delivery, even after expiry of any additional period granted to Supplier for delivery. This shall not apply in cases of liability for deliberate action, gross negligence or for injury to life, limb or health. Purchaser shall be entitled to withdraw from the contract within the framework of legal provisions only if Supplier is responsible for the delay of delivery. The pre-

ceding provision shall not imply any modification of the burden of proof to the disadvantage of Purchaser.

5. At Supplier's request, Purchaser shall be obliged to declare, within an appropriate period of time, whether he withdraws from the contract due to the delay in delivery or whether he insists on delivery of the goods.
6. If the contract is a time bargain in the sense of Section 376 of the German Commercial Code [HGB], Purchaser shall grant an additional period for subsequent performance in case of a delivery delay. Only after Supplier has also failed to deliver within this additional period shall Purchaser be entitled to withdraw from the contract in writing, any further rights being excluded.

#### Article IV: Passing of the risk, packaging

1. We shall fulfil our obligation to deliver generally at our place of production even if freight-free delivery has been agreed. The risk shall pass to Purchaser when the goods have left the factory or the delivery warehouse; this shall apply also to partial deliveries. If the delivery is delayed at Purchaser's request, the risk shall pass to Purchaser when a ready-for-dispatch note has been issued. The goods as well as any costs for storing the goods, etc. shall be invoiced.
2. We shall select the mode and route of transport, however without guaranteeing that the cheapest dispatch option, full use of the payload or the desired carriage or container sizes will be provided. The dispatch shall be made on behalf of Purchaser, FCA free carrier according to INCOTERM®2010.
3. We shall charge a share of freight and insurance costs [EVA] of 2% of the net value of the goods [abroad TKA 3.5%]. This includes proportionally the costs for freight and packaging of raw materials sent to our factory, the packaging material for dispatch from our factory, a transport insurance for the dispatch of the ordered goods, a disposal contribution according to the packaging regulation, and customs clearance fees where applicable. The transport insurance shall be taken out irrespective of who pays for the freight.  
The delivery must always be checked upon receipt and a note of receipt must be signed by the addressee, if necessary with certain restrictions.

#### Article V: Prices, terms of payment and offsetting

1. Prices are quoted ex factory without packaging and without the applicable VAT.
2. Payments shall be made without any deductions and free of transaction charges to Seller's account.
3. Purchaser may offset payments only against such claims that are undisputed or have been found to be final and conclusive by a court order.

#### Article VI: Retention of title

1. The items delivered [goods subject to retention of title] shall remain the property of Supplier until all and any claims towards Purchaser from the business relationship have been entirely fulfilled. As far as the value of all security rights to which Supplier is entitled exceeds the amount of all claims secured by more than 20%, Supplier, at Purchaser's request, shall release a corresponding part of the security rights; Supplier may decide at his own discretion what kind of security rights are to be released.
2. As long as this retention of title exists, Purchaser shall not be allowed to pledge or assign the goods by way of security, and reselling of the goods shall be admissible only for resellers in the ordinary course of business and only conditional on the fact that the reseller receives payment from his customer or makes the transfer of ownership to the customer dependent on the settlement of the payment obligations by the customer.
3. If Purchaser resells the goods subject to retention of title, he already now assigns by way of security to Supplier his future claims from the resale to his customers with any ancillary rights, including any current account balance claims, without the necessity of any further statement with respect thereto. If the goods subject to retention of title are resold together with other objects without an individual price having been agreed for the goods delivered with retention of title, Purchaser assigns to Supplier the part of the total amount of the price which corresponds to the price invoiced by Supplier for the goods subject to retention of title.
4. a) Purchaser shall be entitled to process or to combine or mix the goods subject to retention of title with other objects. The processing is made for Supplier. Purchaser shall preserve the new object resulting from the processing for Supplier with the due diligence of a merchant. In this respect, the new objects shall be considered as goods subject to retention of title.  
b) Supplier and Purchaser agree already now that, in case of a combination or mixing with other objects not belonging to Supplier, the latter shall be in any case entitled to a co-ownership share in the new object proportionally to the value of the combined or mixed goods subject to retention of title as against the other goods at the moment when the objects were combined or mixed. In this respect, the new objects shall be considered as goods subject to retention of title.  
c) The provision concerning the assignment of claims set forth in No. 3 shall also be applicable to the new objects. The assignment shall, however, concern only the amount corresponding to the amount invoiced by Supplier for the value of the processed, combined or mixed goods subject to retention of title.  
d) If Purchaser combines the goods subject to retention of title with landed property or movables, he also assigns by way of security to Supplier his claims for a remuneration for the combination with any ancillary

rights in the proportion of the value of the combined goods subject to retention of title as against the other combined goods at the moment of the combining, without a separate statement being required to this respect.

5. Until revocation of this authorization, Purchaser shall be entitled to collect the claims from the resale assigned to Supplier. In case of a material reason, in particular in case of delay of payments, stop of payments, opening of insolvency proceeding, protest of a bill or justified indications for indebtedness or threatening insolvency of Purchaser, Supplier shall be entitled to revoke this authorization to collect claims. Furthermore, Supplier may disclose the assignment for security, after he threatened to do so and an appropriate period of time has lapsed; he shall also be entitled to realize the assigned claims and request from Purchaser that the latter should disclose the assignment for security to his customer.
6. In case of seizures, confiscations or any other dispositions or interventions of a third party, Purchaser must inform Supplier immediately. If evidence for a justified interest can be provided, Purchaser shall provide to Supplier all information required for asserting his rights vis-à-vis the customer and to submit all required documents.
7. If Purchaser violates his obligations, in particular if he is in default of payment, Supplier shall be entitled not only to get back the goods but also to withdraw from the contract once an adequate period of time granted to Purchaser for fulfilling his obligations has lapsed without result; the statutory provisions regarding cases where the setting of a deadline is not required shall not be affected hereby. Purchaser shall be obliged to return the goods. Taking back the goods or asserting the claims of retention of title or seizing the goods subject to retention of title by Supplier shall not be considered as a withdrawal from the contract unless Supplier explicitly declares his withdrawal.

## Article VII: Installation and assembly

Unless agreed otherwise in writing, the following provisions shall apply to installation and assembly.

1. Purchaser shall be responsible to provide at his own costs and in due time:
  - a) all earthwork, construction work as well as any other ancillary works outside our branch of business, including all skilled and auxiliary labour, materials and tools required for this purpose.
  - b) commodities and supplies required for the setting up and taking into operation, such as scaffolding, lifting tools as well as any other kind of appliances, fuels and lubricants.
  - c) electric power and water at the installation site, including connections, heating and illumination.
  - d) at the installation site, there must be appropriate, dry

and lockable rooms of adequate size for storing the machine parts, apparatus, material, tools, etc. as well as adequate work and recreation rooms for the assembly personnel, including suitable sanitary facilities; furthermore, Purchaser must take the same measures to protect the property of Supplier and that of the assembly personnel on the installation site which he would take to protect his own property.

- e) protective clothing and equipment which is required due to the particular circumstances at the installation site.
2. Before the installation works are started, Purchaser has to provide the necessary details regarding the location of hidden electricity, gas and water connections or similar systems as well as the required structural information without being requested to do so.
3. Before the installation or assembly work is started, the materials and items required for a start of the works must be available at the installation or assembly site and any preparatory works must have been completed to such an extent that the installation or assembly works can be started as agreed in the contract and without any interruptions. The access routes and the installation or assembly site must be levelled and cleared.
4. If the installation, assembly or taking into operation is delayed due to circumstances for which Supplier is not responsible, Purchaser shall bear the costs for the waiting time and any additional travels of Supplier or the assembly personnel up to a reasonable extent.
5. Purchaser must confirm the duration of the working hours of the assembly personnel on a weekly basis and report the completion of the installation, assembly or taking into operation immediately.
6. If Supplier requests acceptance of the delivery after completion, Purchaser shall carry out the acceptance procedure within two weeks. If Purchaser lets the two-weeks' period lapse or if he has started to use the delivery, possibly after the end of an agreed test phase, this shall also be deemed as acceptance of the delivery.

## Article VIII: Accepting the delivery

Purchaser shall not be entitled to refuse to accept a delivery because of negligible defects.

## Article IX: Material defects

Supplier shall be liable for material defects as set forth below:

1. Any parts or services showing a material defect shall be, at Supplier's discretion, repaired, replaced or newly provided free of charge, provided that the defect already existed at the moment of the passing of the risk.

2. Any claims for subsequent performance shall become time-barred after 12 months from the starting date of the statutory period of limitation; the same shall apply to withdrawal and reduction of price. This period of limitation shall not apply as far as longer periods are required by law pursuant to Sect. 438, Para. 1, No. 2 [buildings and objects for buildings], Sect. 479, Para. 1 [recourse claim] and Sect. 634 a, Para. 1, No. 2 [constructional defects] of the German Civil Code [BGB], in case of deliberate action, fraudulent concealment of the defect or noncompliance with a warranted property. The statutory regulations concerning suspension, suspension of expiration and recommencement of the limitation period shall remain unaffected.
3. Purchaser must report any defects in writing without delay.
4. In case of a notice of defects, payments of Purchaser may be retained to such an extent that these retentions are in an adequate proportion to the material defects that have occurred. Purchaser may retain payments only if the complaint about the defect is undoubtedly justified. Purchaser shall not be entitled to retain payments if his claims for defects are time-barred. If the complaint about the defect turns out to be unjustified, Supplier shall be entitled to request from Purchaser reimbursement of the expenses he incurred.
5. Supplier shall be given the opportunity to provide subsequent performance within an adequate period of time.
6. If the subsequent performance fails to produce the desired result, Purchaser – notwithstanding any claims for damages pursuant to No. 10 below – may withdraw from the contract or reduce the payment.
7. Claims for material defects shall not be admissible if there is only a minor deviation from the agreed quality, if the usability is only negligibly impaired, in case of natural wear or damage that is caused after the passing of the risk as a result of incorrect or negligent handling, excessive use, inappropriate operational equipment, defective constructional works, unsuitable construction ground, or that occurs because of special external influences not provided for by the contract as well as in case of software errors that cannot be reproduced. Neither shall there be any liability of Supplier for modifications or repairs that have been carried out improperly by Purchaser or a third party nor for any results caused thereby.
8. Any claims of Purchaser regarding the expenses required for the subsequent performance, in particular transport, travel, labour and material costs, shall be excluded as far as the expenses increase due to the fact that the delivered item has been subsequently relocated to another place than the subsidiary of Purchaser unless the relocation complies with the intended use of the item.
9. Recourse claims of Purchaser towards Supplier pursuant to Section 478 of the German Civil Code BGB [businessperson's right of recourse] shall exist only as far as Purchaser and his customer have not made any agreements be-

yond the statutory claims for defects. With respect to the scope of the recourse claim of Purchaser towards Supplier pursuant to Section 478, Para. 2 of the German Civil Code, the provision of No. 8 above shall be applicable accordingly.

10. Any claims for damages of Purchaser because a material defect shall be excluded. This shall not apply in case of fraudulent concealment of the defect, noncompliance with a warranted quality, injury to life, limb or health or if Supplier violates his obligations by deliberate action or gross negligence. The preceding provision shall not imply any modification of the burden of proof to the disadvantage of Purchaser. Any further claims or any other claims than those provided for in this Article IX on the part of Purchaser for a material defect shall be excluded.

#### **Article X: Industrial and intellectual property rights; defects in title**

1. Unless otherwise agreed, Supplier shall be obliged to provide the delivery free from any industrial and intellectual property rights of a third party [hereinafter referred to as „property rights“] only in the country of the place of delivery. If a third party raises any justified claims towards Purchaser due to a violation of property rights in connection with deliveries provided by Supplier and used in accordance with the contract, Supplier shall be liable vis-à-vis Purchaser within the period of time specified in Art. IX, No. 2 as follows:
  - a) Supplier, at his discretion and at his costs, shall either obtain a right of use for the delivery concerned, modify the delivery in such a way that the property right is not violated or provide a replacement delivery. If this is not possible for Supplier under reasonable conditions, Purchaser shall be entitled to make use of his statutory rights of withdrawal or reduction of the price.
  - b) Supplier's obligation to pay damages shall be determined on the basis of Art. IX.
  - c) Supplier's obligations as set forth above shall exist only as far as Purchaser immediately informs Supplier in writing about any claims raised by a third party, does not acknowledge any violation and leaves any protective measures and settlement negotiations to the discretion of Supplier. If Purchaser ceases to use the delivery for reasons of minimizing the damage or for any other important reason, he shall be obliged to point out to the third party that the cessation of use is not connected to any acknowledgement of a violation of property rights.
2. Claims of Purchaser shall be excluded as far as he is responsible himself for the violation of property rights.
3. Any claims of Purchaser shall also be excluded as far as the violation of property rights is caused by special directives of Purchaser, a kind of use not foreseeable for Supplier or by the fact that the delivery is modified by Purchaser or is used together with products not delivered by Supplier.

4. In case of a violation of property rights, the provisions set forth in Art. IX, No. 4, 5 and 9 shall apply accordingly to the claims provided for in No. 1 a].
5. In case of any other defects in title, the provisions of Art. IX shall apply accordingly.
6. Any further claims or any other claims than those provided for in this Article X on the part of Purchaser towards Supplier and his authorized agents for a defect in title shall be excluded.

#### **Article XI: Conditions for fulfilment**

1. The fulfilment of the contract shall be conditional on the fact that there are no German, US American or any other applicable national, EU or international provisions of Foreign Trade Law or no embargos or any other sanctions opposing such fulfilment.
2. Purchaser shall be obliged to provide all information and documentation that is required for export, transfer or import.

#### **Article XII: Legal venue and applicable law**

1. The legal venue for all claims from this contractual relationship, in particular for claims with respect to the purchase price, shall be Schopfheim. However, we reserve the right to take legal action against Purchaser also before a court at his place of business.
2. In general, German law shall be applicable also to export contracts. The provisions of the Convention on Contracts for the International Sale of Goods [CCISG] shall be excluded as far as they do not correspond to the provisions set forth above.

#### **Article XIII: Binding force of the contract**

1. If individual provisions of the contract are legally invalid, the binding force of the other provisions shall be maintained. This shall not apply if a continuation of the contract meant an unreasonable hardship for one of the Parties.

Updated 27.09.2012